

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 157 Sentencing

SPONSOR(S): Burgess, Jr.

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 1 N, As CS	White	White
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

A felony offender who receives a sentence in excess of one year typically serves his or her sentence in a facility operated by the Department of Corrections (DOC); however, other options are statutorily authorized and sometimes available. These include a prison diversion program or placement in a local detention facility pursuant to certain contractual agreements between the DOC and counties.

The bill creates a new alternative that would enable certain types of felony offenders to serve their sentences in the jail for the county in which the offense was committed.

Effective for offenses committed on or after 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 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 burglary or trespass offense is eligible to be sentenced to a county jail.
- 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. A specific appropriation amount has not yet been established. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Generally

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.¹ “State penitentiary” includes state correctional facilities.² In general, an offender must be imprisoned in the state penitentiary for each sentence that exceeds one year.³ An offender who receives a sentence of a year or less for a felony serves that sentence in a county jail.⁴

Sentencing for Felonies

A Criminal Punishment Code worksheet must be completed for offenders who have a committed one or more felony offenses. The total sentence points calculated by the worksheet determine the lowest permissible sentence (LPS) for an offender.⁵ The LPS for an offender who receives less than or equal to 44 points on his or her worksheet is a nonstate prison sanction.⁶ The LPS for an offender with 45 or more points is determined by the total number of sentence points minus 28 multiplied by .75.⁷ For example, the LPS is 12.75 months for 45 points and 24 months for 60 points.⁸

In general, a sentencing judge, in his or her discretion, may sentence an offender to a term that is between the LPS and the statutory maximum for the offense, unless the judge’s discretion is limited because a mandatory minimum sentence applies.⁹ The statutory maximum for a: (a) felony of the first degree is 30 years; (b) felony of the second degree is 15 years; and (c) felony of the third degree is 5 years.¹⁰

A sentencing judge may depart below the LPS, unless a mandatory minimum sentence that exceeds the LPS applies, if the judge enters a written statement delineating the reasons for the departure.¹¹ A non-exclusive list of mitigating factors that may be considered by a sentencing judge in imposing a downward departure sentence is specified in s. 921.0026, F.S.

Imprisonment

An offender with a sentence in excess of one year typically serves his or her sentence in a facility operated by the Department of Corrections (DOC); 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.¹²

¹ Fla. Const. art. X, s. 10; s. 775.08(1), F.S.

² s. 775.08(1), F.S.

³ *Id.*

⁴ s. 775.08(2), F.S.

⁵ s. 921.0024(1) –(3), F.S.

⁶ s. 921.0042(2), F.S.

⁷ Florida Department of Corrections and the Office of State Courts Administrator, *Florida Criminal Punishment Code Scoresheet Preparation Manual*, July 1, 2015, at p. 26, available at http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf.

⁸ *Id.*

⁹ s. 921.0024(2), F.S.

¹⁰ s. 775.082(3)(b), (d), and (e), F.S.

¹¹ s. 921.00265, F.S.

¹² A court may order a nonstate prison sanction for an offender whose primary offense is a felony of the third degree; whose total sentence points do not exceed specified maximums; the offender has not been convicted of specified violent felonies; and a minimum mandatory sentence is not applicable. A sentence under this provision of law must be to a term of probation, community control, or community supervision with mandatory participation in a prison diversion program of the Department of Corrections if such program exists in the judicial circuit in which the offender is sentenced. Such programs may require residential, nonresidential, or day-reporting; substance abuse treatment; employment; restitution; academic or vocational opportunities; or community service work. s. 921.00241, F.S.

- 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.¹³
- 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.¹⁴

Gain-Time

Pursuant to s. 944.275(4)(b)3., F.S., the DOC is authorized to award gain-time to offenders; however, an offender may not earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a offender’s release, prior to serving a minimum of 85 percent of the sentence imposed.

Effect of the Bill

Effective for offenses committed on or after 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 CPC 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.,¹⁵ except that an offender whose primary offense is a third degree felony under chapter 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.

An offender who is sentenced to county jail under this section may not receive gain-time or other sentence credit in an amount that would cause the offender’s sentence to expire, end, or terminate, or that would result in the offender’s release, prior to serving a minimum of 85 percent of the sentence imposed.

Under the bill, 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 executed, as provided in the bill, 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

¹³ s. 921.188, F.S.

¹⁴ DOC, Agency Analysis of HB 157 (2017), p. 3 (January 13, 2017) (on file with the Florida House of Representatives, Criminal Justice Subcommittee).

¹⁵ “Forcible felony” means “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.” s. 776.08, F.S.

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.

B. SECTION DIRECTORY:

Section 1. Creates s. 950.021, F.S., relating to sentencing of offenders to county jail.

Section 2. Provides an effective date of July 1, 2017.

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 requires the DOC to 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. 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 \$48.28. The bill limits the total potential per diem for a county to \$60. If a contracted county's per diem is \$60 and the county chooses to contract with the DOC for 100 inmates, the total daily cost would be \$6,000 per day with \$4,828 (\$48.28 per inmate per day) of that amount representing the cost that the DOC would have expended if those offenders were sentenced to state prison. The difference of \$1,172 would be paid from the funds provided in the ISCJ specific appropriation category. A specific appropriation amount has not yet been established for this category.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
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

On February 15, 2017, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies that an offender who is sentenced to county jail under the bill must serve at least 85 percent of his or her sentence. This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.