

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 1604

INTRODUCER: Governmental Oversight and Accountability Committee; Criminal Justice Committee;  
and Senator Bracy

SUBJECT: Department of Corrections

DATE: April 19, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Ferrin</u>	<u>Ferrin</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1604 amends various provisions related to the Department of Corrections (DOC).

The bill authorizes the Florida Department of Law Enforcement (FDLE), when conducting an investigation or assisting the investigation of an injury to or death of an inmate under the custody or control of the Department of Corrections (DOC), to serve a demand for production of the inmate's protected health information, medical records, or mental health records on the DOC.

The bill also makes the following changes:

- Revises the duties of the security review committee and the Secretary of Corrections;
  - Authorizes the DOC to receive documents electronically for inmate admission;
  - Allows *all* inmates who are recommended and otherwise eligible to be granted a one-time award of 60 additional days of incentive gain-time;
  - Revises training requirements for prisoner transport company employees;
  - Exempts employees of contracted community correctional centers from health testing regulations for administering urine screen drug tests on inmates and releasees;
  - Aligns the age limits for housing youthful offenders with the federal Prison Rape Elimination Act (PREA) by reducing the maximum age from 19 to 18 years of age when designating separate institutions and programs for youthful offenders and making conforming changes;
- and

- Expands the eligibility of inmates released under the conditional medical release program to include inmates with debilitating illnesses and places additional criteria on eligibility for this type of supervised release.

The impact of this bill to DOC is a small shift in the release date of some inmates (those that meet the criteria and do not already get to their 85 percent dates), the estimated long-term impact is indeterminate. The cost of the changes to the Conditional Medical Release program are unknown at this time. However, costs associated with the supervised release of eligible inmates may be offset by savings related to the housing and care of such inmates by the DOC. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2017

## II. Present Situation:

### **Criminal Justice Investigations and Forensic Science Program**

The FDLE houses the Criminal Justice Investigations and Forensic Science Program. The purpose of the program is to investigate violations of any of the criminal laws of the state. Investigators have the authority to bear arms, make arrests and apply for, serve, and execute warrants, capias, and other process of the court.<sup>1</sup>

The General Appropriations Act directs the FDLE to investigate all deaths of inmates who are in the custody of the DOC and all use of force incidents that result in death or serious bodily injury.<sup>2</sup> An investigation can be initiated by executive order of the Governor or by an existing MOU which requires the FDLE to investigate any incident that results in life-threatening injuries or death of an inmate or person on the property at a DOC facility which occurs as a result of anything other than apparent natural causes. Additionally, the DOC can request the FDLE to assist with the investigation of a credible complaint or other significant evidence of major organized criminal activity involving inmates or DOC employees. In Fiscal Year 2015-2016, there were 148 cases related to the DOC that were investigated by the FDLE.<sup>3</sup>

### **Security of Corrections Institutions and Facilities**

Pursuant to s. 944.151, F.S., the DOC is responsible for the security of the state's correctional institutions and facilities. To ensure public safety and contain violent and chronic offenders until released from the DOC's custody, the Secretary of Corrections is assigned certain minimum responsibilities:

- Appoint a security review committee.
- Maintain and produce quarterly reports with accurate escape statistics.

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<sup>1</sup> Section 943.04, F.S.

<sup>2</sup> Introductory proviso for specific appropriations 1217 through 1229, ch. 2016-66, L.O.F. See also introductory proviso for specific appropriations 1252 through 1264, ch. 2015-232, L.O.F.

<sup>3</sup> Florida Department of Law Enforcement, *Long Range Program Plan FY 17-18 through 21-22*, September 30, 2016, pages 6-7.

- Adopt, enforce, and annually evaluate the emergency escape response procedures, which include, at a minimum, the immediate notification and inclusion of local and state law enforcement through a mutual aid agreement.
- Submit in the annual legislative budget request a prioritized summary of critical repair and renovation security needs.

The security review committee is required to be composed of the following individuals, appointed by the Secretary: the DOC's inspector general, the statewide security coordinator, the regional security coordinators, three wardens, and one correctional officer. The security review committee must:

- Establish a periodic schedule for the physical inspection of buildings and structures of each state and private correctional institution to determine security deficiencies. Priority must be given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a significant number of escapes or escape attempts in the past.
- Conduct announced and unannounced comprehensive security audits of all state and private correctional institutions. Priority must be given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced 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. Each correctional institution must be audited at least annually. The Secretary reports the general survey findings annually to the Governor and the Legislature.
- Adopt and enforce minimum security standards and policies that include, but are not limited to:
  - Random monitoring of outgoing telephone calls by inmates;
  - Maintenance of current photographs of all inmates;
  - Daily inmate counts at varied intervals;
  - Use of canine units, where appropriate;
  - Use of escape alarms and perimeter lighting;
  - Florida Crime Information Center/National Crime Information Center capabilities; and
  - Employment background investigations.
- Make annual written prioritized budget recommendations to the Secretary that identify critical security deficiencies at major correctional institutions.
- 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.
- Contract, if deemed necessary, with security personnel, consulting engineers, architects, or other security experts for security audits and security consultant services.
- Establish a periodic schedule for conducting announced and unannounced escape simulation drills.

### **Commitments and Classification; Transfers**

Section 944.17, F.S., provides that prisoners sentenced to state prison must be committed by the court to the custody of the DOC. Usually the prisoner has been in the custody of a sheriff in

county jail. The sheriff receives the documents from the clerk of court required for the DOC to accept an inmate.<sup>4</sup>

The sheriff or chief correctional officer, or a designated representative, must submit the following forms before a person will be admitted into the state correctional system:

- The uniform commitment and judgment and sentence forms;
- The sheriff's certificate (information related to time spent in the sheriff's custody);
- A certified copy of the indictment or information relating to the offense for which the person was convicted;
- A copy of the probable cause affidavit for each offense identified in the current indictment or information;
- A copy of the Criminal Punishment Code scoresheet and any attachments thereto prepared pursuant to Rule 3.701, Rule 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or any other rule pertaining to the preparation of felony sentencing scoresheets;
- A copy of the restitution order or the reasons by the court for not requiring restitution;
- The name and address of any victim, if available;
- A printout of a current criminal history record as provided through an FCIC/NCIC printer; and
- Any available health assessments including medical, mental health, and dental, including laboratory or test findings; custody classification; disciplinary and adjustment; and substance abuse assessment and treatment information which may have been developed during the period of incarceration prior to the transfer of the person to the DOC's custody.<sup>5</sup>

In addition to the above, the sheriff or other officer must provide any available presentence investigation reports and any attached documents. Usually, transport officers provide the documents to DOC's staff at the reception facility at the time the inmate is transported.<sup>6</sup> After a prisoner is admitted into the state correctional system, the DOC may request such additional records relating to the prisoner from the clerk of the court, the Department of Children and Families, or any other state or county agency for determining the prisoner's proper custody classification, gain-time eligibility, or eligibility for early release programs.

### **Gain-Time**

Section 944.275, F.S., allows the DOC to grant deductions from sentences in the form of gain-time in order to encourage satisfactory prisoner behavior, to provide incentive for prisoners to participate in productive activities, and to reward prisoners who perform outstanding deeds or services.

The DOC grants basic gain-time at the rate of 10 days for each month of each sentence imposed on a prisoner to encourage satisfactory behavior, subject to the following:

- Portions of any sentences to be served concurrently are treated as a single sentence when determining basic gain-time;

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<sup>4</sup> Department of Corrections, *Agency Bill Analysis: SB 1604*, March 10, 2017 (on file with the Senate Committee on Criminal Justice).

<sup>5</sup> Section 944.17(5), F.S.

<sup>6</sup> Department of Corrections, *Agency Bill Analysis: SB 1604*, March 10, 2017.

- Basic gain-time for a partial month is prorated on the basis of a 30-day month; and
- When a prisoner receives a new maximum sentence expiration date because of additional sentences imposed, basic gain-time is granted for the amount of time the maximum sentence expiration date was extended.<sup>7</sup>

The DOC may grant incentive gain-time for each month during which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities. The rate of incentive gain-time in effect on the date the inmate committed the offense which resulted in his or her incarceration is the inmate's rate of eligibility to earn incentive gain-time throughout the period of incarceration and cannot be altered by a subsequent change in the severity level of the offense for which the inmate was sentenced.<sup>8</sup>

The DOC may grant meritorious gain-time to an inmate who performs some outstanding deed, such as saving a life or assisting in recapturing an escaped inmate, or who in some manner performs an outstanding service that would merit the granting of additional deductions from the term of his or her sentence. The grant of meritorious gain-time may be 1 to 60 days.<sup>9</sup>

The DOC may grant, upon a recommendation of the education program manager, 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 inmate may not receive more than 60 days for educational attainment.<sup>10</sup>

For sentences imposed for offenses committed on or after October 1, 1995, an inmate cannot earn any type of gain-time in an amount that would cause his or her sentence to expire, end, or terminate, or that would result in his or her release, prior to serving a minimum of 85 percent of the sentence imposed.<sup>11</sup> However, inmates with sentences imposed for offenses committed prior to October 1, 1995, can earn the educational gain-time over and above the rate of monthly gain-time eligibility limitations.<sup>12</sup>

### **Transportation and Return of Prisoners by Private Transport Company**

Section 944.597, F.S., authorizes the DOC to contract with private companies for the transport of prisoners within and beyond the limits of the state. A contract with the transport company must include, but is not limited to, the following requirements:

- That the transport company maintains adequate liability coverage with respect to the transportation of prisoners;
- That transport company personnel based in the state meet the minimum standards in accordance with the statutory requirements for Florida law enforcement and correctional officers, and that personnel based outside of Florida meet the minimum standards for a law enforcement or correctional officers in the state where the employee is based;

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<sup>7</sup> Section 944.275(4)(a), F.S.

<sup>8</sup> Section 944.275(4)(b), F.S.

<sup>9</sup> Section 944.275(4)(c), F.S.

<sup>10</sup> Section 944.275(4)(d), F.S.

<sup>11</sup> Section 944.275(4)(b)3., F.S.

<sup>12</sup> Section 944.275(4)(d), F.S. (“Notwithstanding subparagraphs (b)1. and 2., ...”). *See also* s. 944.275(4)(b)1. and 2., F.S.

- That the transport company adheres to standards which provide for humane treatment of prisoners while in the custody of the transport company; and
- That the transport company submits reports to the DOC regarding incidents of escape, use of force, and accidents involving prisoners in the custody of the transport company.

### **Exemptions from Health Testing Regulations for Personnel Conducting Drug Tests on Inmates and Releasees**

Section 945.36, F.S., exempts law enforcement officers, state or county probation officers, or employees of the DOC from the minimum standards found under part I of ch. 483, F.S., governing state clinical laboratories, when administering a urine screen drug test to:

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

The DOC is required to develop a procedure for certification of any law enforcement officer, state or county probation officer, or DOC employee to perform a urine screen drug test on the persons specified above.

### **Institutions and Programs for Youthful Offenders**

Section 958.11, F.S., requires the DOC to designate separate institutions and programs for youthful offenders and employ and utilize personnel specially qualified by training and experience to operate all such institutions and programs for youthful offenders.

Youthful offenders who are at least 14 years of age but are under 19 years of age at the time of reception must be separated from youthful offenders who are 19 years of age or older. If the population of the facilities designated for 14 to 18-year-old youthful offenders exceeds 100 percent of lawful capacity, the DOC may assign 18-year-old youthful offenders to the 19 to 24-year-old facility.

If the youthful offender was originally assigned to a facility designated for 14 to 18-year-old youthful offenders, but subsequently reaches 19 years of age, the DOC may retain the youthful offender in the facility if the DOC determines it is in the best interest of the youthful offender and the DOC.

If the DOC determines that a youthful offender assigned to the 19 to 24-year-old facility is mentally or physically vulnerable, the youthful offender may be reassigned to a facility designated for the 14 to 18-year-old group if the department determines that a reassignment is necessary to protect the safety of the youthful offender or the institution.

If the DOC determines that a youthful offender originally assigned to a facility designated for the 14 to 18-year-old group is disruptive, incorrigible, or uncontrollable, the youthful offender may be assigned to a facility designated for the 19 to 24-year-old group if the DOC determines that a reassignment would best serve the interests of the youthful offender and the DOC.

The guidelines of the Federal Prison Rape Elimination Act (PREA) of 2003 require that inmates under the age of 18 be separated from anyone 18 years of age or older.<sup>13</sup> The DOC states that it currently maintains separate housing for those inmates who are 17 years of age and under, those who are 18 years of age, and those who are 19 to 21 years of age, in order to meet both the statutes and PREA guidelines.<sup>14</sup>

### **Conditional Medical Release**

In 1992, the Florida Legislature created the Conditional Medical Release Program<sup>15</sup> which is a discretionary release process allowing the Florida Commission on Offender Review (FCOR) to release inmates on supervision who are terminally ill<sup>16</sup> or permanently incapacitated<sup>17</sup> and who are not a danger to others.<sup>18</sup> The DOC is responsible for recommending to the FCOR inmates who are eligible to be considered for conditional medical release.<sup>19</sup> The FCOR has the discretion and sole authority on whether or not to grant conditional medical release.<sup>20</sup> Upon release, the offender is subject to conditions of supervision set by the FCOR. The FCOR monitors the offender's progress through periodic medical reviews.<sup>21</sup> Supervision can be revoked and the offender returned to prison if the FCOR determines that a willful and substantial violation of supervision has occurred or if their medical or physical condition improves to the point that the offender no longer meets release criteria.<sup>22</sup> The DOC has recommended 107 inmates for release in the past three fiscal years. The FCOR granted release to 52, or 49%, of those recommended. In the 2015-2016 fiscal year, the FCOR granted 29 of the 51 inmates recommended for conditional medical release, or 57%.<sup>23</sup>

## **III. Effect of Proposed Changes:**

### **Criminal Justice Investigations (Section 1)**

Currently, the DOC requires the FDLE to serve on the DOC a HIPAA complaint subpoena or search warrant in order to receive an inmate's protected health information, medical record, or mental health record when the FDLE is investigating or assisting the DOC in the investigation of

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<sup>13</sup> National PREA Resource Center, *Youthful Inmate Implementation*, available at <https://www.prearesourcecenter.org/training-technical-assistance/prea-in-action/youthful-inmate-implementation> (last visited March 16, 2017). 28 CFR 115.5 (*youthful inmate*) and 115.14.

<sup>14</sup> Department of Corrections, *2017 Agency Bill Analysis: SB 1604*, March 10, 2017.

<sup>15</sup> Ch.92-310, Laws of Fla.

<sup>16</sup> Section 947.149(1)(b), F.S. Terminally ill means an inmate who has a condition caused by injury, disease, or illness, which, to a reasonable degree of medical certainty renders the inmate permanently and irreversibly physical, incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others.

<sup>17</sup> Section 947.149(1)(a), F.S. Permanently incapacitated means inmate who has a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others.

<sup>18</sup> Section 947.149(1), F.S.

<sup>19</sup> Section 947.149(2), F.S.

<sup>20</sup> Section 947.149(3), F.S.

<sup>21</sup> Section 947.149(4), F.S.

<sup>22</sup> Section 947.149(5), F.S.

<sup>23</sup> Florida Commission on Offender Review, *2016 Annual Report*, available at <https://www.fcor.state.fl.us/docs/reports/FCORannualreport201516.pdf> (last visited April 4, 2017).

an inmate's injury or death and the inmate cannot (due to unresponsiveness or death) or does not consent to release of the information.<sup>24</sup>

Section 1 amends s. 943.04, F.S., to provide that if the FDLE is conducting an investigation or assisting in the investigation of an injury to or death of an inmate under the custody or control of the DOC, then the FDLE is authorized to serve a demand for production of the inmate's protected health information, medical records, or mental health records on the DOC. The FDLE must use the records for the limited purpose of investigating or assisting in an investigation of an injury to or death of an inmate. Any records disclosed to the FDLE pursuant to the investigation must remain confidential and exempt from public inspection and copying.<sup>25</sup>

### **Security of Corrections Institutions and Facilities (Section 2)**

Section 2 amends s. 944.151, F.S., to align the statute with current DOC policies and practices.<sup>26</sup>

The section adds to the DOC's responsibilities:

- "Safe operation" of correctional institutions and facilities.
- Ensuring the "safety of department employees and offenders."

The section revises the duties of the security review committee and the Secretary of Corrections.

The section revises the composition, title, and duties of the security review committee making it the "safety and security review committee" and providing 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 DOC management. The bill replaces the former composition of the committee with "appropriate department staff" appointed by the Secretary.

Other duties of the former security review committee, discussed above in the Present Situation, are transferred to the Secretary, who is required to direct appropriate DOC staff to accomplish the duties. Under the bill, these former duties are also amended as follows:

- Inspect institutions and facilities that have experienced a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse.
- Announced an unannounced comprehensive security audits must give priority to institutions and facilities that have experienced a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or sexual abuse. This replaces current statutory priority given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a history of escapes or escape attempts.
- Audit requirements include an evaluation of the confinement, arsenal, key and lock, and entrance and exit policies.

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<sup>24</sup> *Id.*

<sup>25</sup> These records are already confidential and exempt under s. 945.10, F.S. See SB 1526 (2017), which amends s. 945.10, F.S., to expand the public records exemption to include additional health information and aligns disclosures allowed by the statute with federal Health Insurance Portability and Accountability Act laws.

<sup>26</sup> Department of Corrections, *2017 Agency Bill Analysis: SB 1604*, March 10, 2017.



- Evaluation of the physical plant polices include the identification of blind spots or areas where staff or inmates may be isolated and the deployment of video monitoring systems and other appropriate monitoring technologies in the spots or areas.

### **Commitments and Classification; Transfers (Section 3)**

Section 3 amends s. 944.17, F.S., to allow electronic transmission of documents from the sheriff, chief correctional officer, other officer, clerk of the court, and other state agencies to the DOC relating to the admission of the inmate into the correctional system.

### **Gain-Time (Section 4)**

Section 4 revises the conditions in s. 944.275(4)(d), F.S., allowing the education program manager to recommend 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 or has been during the current commitment, awarded a high school equivalency diploma or vocational certificate.<sup>27</sup> An inmate with a sentence imposed for an offense committed on or after October 1, 1995, will be ineligible to earn educational gain-time if earning such gain-time would cause his or her sentence to expire, end, or terminate, or would result in his or her release, prior to serving a minimum of 85 percent of the sentence imposed.

### **Transportation and Return of Prisoners by Private Transport Company (Section 5)**

Section 5 amends s. 944.597, F.S., to revise the requirements for contract provisions relating to training of transport company employees. The transport company must require its employees to complete at least 100 hours of training before transporting prisoners. The training curriculum must be approved by the DOC and 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.

This change aligns the requirements for the transport of prisoners from prisons with the requirements for the transport of prisoners from jail.<sup>28</sup>

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<sup>27</sup> Offenses committed prior to January 1, 1994; on or after January 1, 1994, and before October 1, 1995; and on or after October 1, 1995.

<sup>28</sup> Department of Corrections, *2017 Agency Bill Analysis: SB 1604*, March 10, 2017. The DOC cites the example of s. 30.24, F.S., relating to sheriffs' transportation and return of prisoners, which exempts personnel employed by any transport company for the transportation of prisoners from being deputy sheriffs, providing bond, or meeting requirements and training as provided by the Criminal Justice Standards and Training.

**Exemptions from Health Testing Regulations for Personnel Conducting Drug Tests on Inmates and Releasees (Section 6)**

Section 6 amends s. 945.36, F.S., to exempt employees of a contracted community correctional center from health testing regulations (found under part I of ch. 483, F.S., governing state clinical laboratories) for the limited purpose of administering urine screen drug tests on inmates and releasees. This will allow on-site testing and eliminate the need for a correctional officer to travel to a facility to perform the test.

**Institutions and Programs for Youthful Offenders (Section 7)**

Section 7 amends s. 958.11, F.S., to change the age limits on the housing of youthful offenders to align with the federal PREA requirements. It changes the maximum age from 19 to 18 years of age when designating separate institutions and programs for youthful offenders.

The section authorizes the DOC to assign a youthful offender who is 18 years of age or older to a facility that is not designated for youthful offenders or an age group if he or she is convicted of a new crime that is a felony; is a serious management or disciplinary problem that is detrimental to the program or other inmates; needs medical or other treatment; should be transferred outside of the facility for services; or when bed space is not available in a designated community residential facility.

The section authorizes inmates who are 17 years of age or under to be placed at an adult facility for medical or mental health reasons, for protective management, or for close management. The youthful offender must be separated from offenders who are 18 years of age or older.

If the youthful offender was originally assigned to a facility designated for 14 to 17-year-old youthful offenders, but subsequently reaches 18 years of age, the DOC may retain the youthful offender in the facility if the DOC determines it is in the best interest of the youthful offender and the DOC. Additionally, if the youthful offender was originally assigned to a facility designated for 18 to 22-year-old youthful offenders, but subsequently reaches 23 years of age, the DOC may retain the youthful offender in the facility until he or she reaches 25 years of age if the department determines that it is in the best interest of the child and the DOC.

The section repeals a provision that allowed reassignment of mentally or physically vulnerable youthful offenders between 19 to 24 years of age to facilities designated for the 14 to 18-year-old age group if the DOC determined that the reassignment was necessary to protect the safety of the youthful offender or the institution.

The section also repeals a provision that allowed reassignment of disruptive, incorrigible, or uncontrollable youthful offenders between 14 and 18 years of age to facilities for the 19 to 24-year-old age group if the department determined that a reassignment would be in the youthful offender's and the DOC's best interests.

### **Conditional Medical Release Program (Section 9)**

Section 9 amends s. 947.149, F.S. to expand the eligibility of inmate release under the conditional medical release program to include inmates with debilitating illnesses. An “inmate with a debilitating illness” is defined as an inmate who is determined to be suffering from a significant and permanent non-terminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that he or she does not present any danger to society and must have served at least 50 percent of their sentence.

Under the section, an inmate eligible for supervised medical release must have a debilitating illness, be permanently incapacitated, or be terminally ill, and:

- Have been convicted of a felony;
- Have no current or prior conviction for a capital or first degree felony, for a sexual offense, or for an offense involving a child;
- Have not received a disciplinary report within the previous 6 months;
- Have never received a disciplinary report for a violent act; and
- Have renounced any gang affiliation.

The section requires that DOC refer the eligible inmates to the Florida Commission on Offender Review (FCOR) who must verify the referral.

The referral must include a proposed conditional medical release plan, medical history, and prison experience, criminal history, any history of substance abuse and mental health issues, any disciplinary action against the inmate while in prison, any participation in prison work and other prison programs, any other information deemed necessary by DOC. The criminal history must include:

- A claim of innocence, if any;
- The degree to which the inmate accepts responsibility for the acts leading to the conviction; and
- How any claim of responsibility has affected the inmate’s feelings of remorse.

The section requires FCOR to finish its verification of the eligibility of an inmate within 60 days after the DOC refers the inmate for conditional medical release. It also requires conditional medical release to be granted to inmates that FCOR verifies are eligible. Any discretion the FCOR has is limited to conditions placed on the supervision of a released inmate.

### **Effective Date**

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:

None.

C. Government Sector Impact:

**(Section 4 – Educational Gain-Time)**

The impact of this bill to DOC is a small shift in the release date of some inmates (those that meet the criteria and do not already get to their 85 percent dates), the estimated long-term impact is indeterminate.

However, using the inmate variable per diem (health care costs and personal care items), the DOC estimates that the first year of implementation will have an impact on the average daily population (ADP) of approximately 86 fewer inmates.

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

**(Section 9 – Conditional Medical Release)**

The cost of the changes to the Conditional Medical Release program are unknown at this time. The expansion of eligibility for conditional medical release together with the requirement for DOC to refer eligible inmates to FCOR for review will increase the volume and workload for both the DOC and the FCOR. However, costs associated with the supervised release of eligible inmates may be offset by savings related to the housing and care of such inmates by the DOC.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 943.04, 944.151, 944.17, 944.275, 944.597, 945.36, 947.149, and 958.11.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Governmental Oversight and Accountability on April 3, 2017:**

- Removes Section 1 of CS/SB 1604, which converted employee classification for correctional officer lieutenants and captains and correctional probation officer supervisors and senior supervisors from Career Service to Select Exempt Service.
- Expands the eligibility of inmate release under the conditional medical release program to include inmates with debilitating illnesses, and places additional criteria on eligibility for this type of supervised release.

**CS by Criminal Justice on March 21, 2017:**

The CS amends s. 944.275, F.S., clarifying that the 85 percent limitation on earning gain-time applies to all the types of gain-time.

- B. **Amendments:**

None.