

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 641 Criminal Justice
SPONSOR(S): Criminal Justice Subcommittee; Shaw and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	White	White
2) Justice Appropriations Subcommittee	12 Y, 1 N	Smith	Gusky
3) Judiciary Committee			

SUMMARY ANALYSIS

CS/HB 641 requires that certain offenders convicted of simple possession of a controlled substance receive a nonstate prison sanction unless such sentence could present a danger to the public.

Section 775.082(10), F.S., currently provides that a court must sentence a defendant to a nonstate prison sanction if the defendant is sentenced for a third degree felony that is not a forcible felony and total sentence points under the Criminal Punishment Code (Code) are 22 points or fewer, unless the court determines that such sentence could present a danger to the public.

The bill amends s. 775.082, F.S., to provide that if a defendant is sentenced for a primary offense of possession of a controlled substance committed on or after October 1, 2017, and if the total sentence points under the Code are 60 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a term of incarceration in a state correctional facility.

The bill defines "possession of a controlled substance" as possession of a controlled substance in violation of s. 893.13, F.S., but does not include possession with intent to sell, manufacture, or deliver a controlled substance or possession of a controlled substance in violation of s. 893.135, F.S., which punishes drug trafficking.

The Criminal Justice Impact Conference (CJIC) met on March 29, 2017, and determined that the bill could reduce the need for prison beds by 155 beds in Fiscal Year (FY) 2017-2018 and by a cumulative total of 1,001 beds through FY 2021-2022. According to CJIC, assuming that 50 percent of eligible inmates will be diverted, the bill could result in savings of \$468,720 for prison operating costs in FY 2017-2018, and a cumulative savings of up to \$9,827,925 for prison operating costs through FY 2021-2022.

The bill does not appear to have a fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code¹ (Code) as Florida's "primary sentencing policy."² Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).³ Points are assigned on a CPC scoresheet and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.⁴ Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. Absent mitigation,⁵ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.⁶

Departure from a Code Sentence

Multiple exceptions to typical Code sentencing exist. Nonstate prison sanctions are sometimes required or allowed in cases where a sentence of imprisonment in a state correctional facility would have otherwise been required or authorized under the Code. For each of the following examples, the defendant must have committed his or her offense on or after July 1, 2009:

- Under s. 775.082(10), F.S., a defendant who is sentenced for a third degree felony that is not a forcible felony,⁷ and whose total sentence points pursuant to s. 921.0024, F.S., are 22 points or fewer, *must be sentenced to a nonstate prison sanction*. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to state prison.
- Under s. 921.00241, F.S., a defendant who would otherwise receive a prison sentence *may be sentenced to a nonstate prison sanction* if:
 - The offender's primary offense is a third degree felony.
 - The offender's total scoresheet points are not more than 48 points, or are 54 points and six of those points are for a violation of probation, community control, or other community supervision, and do not involve a new violation of law.
 - The offender has not been convicted or previously convicted of a forcible felony.
 - The offender's primary offense does not require a mandatory minimum sentence.

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

² *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013)* (Executive Summary), Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited on March 26, 2017).

³ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

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

⁵ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

⁶ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment.

⁷ Section 776.08, F.S., defines a "forcible felony" as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

- Under s. 948.01(7), F.S., a defendant *may be placed into a postadjudicatory treatment-based drug court program* if:
 - His or her scoresheet result is 60 points or fewer;
 - He or she is amenable to substance abuse treatment; and
 - He or she otherwise qualifies under s. 397.334(3), F.S.⁸

Effect of Bill

The bill amends s. 775.082, F.S., to provide that if a defendant is sentenced for a primary offense of possession of a controlled substance committed on or after October 1, 2017, and if the total sentence points under the Code are 60 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a term of incarceration in a state correctional facility.

The bill defines “possession of a controlled substance” as possession of a controlled substance in violation of s. 893.13, F.S., but does not include possession with intent to sell, manufacture, or deliver a controlled substance or possession of a controlled substance in violation of s. 893.135, F.S., which punishes drug trafficking.

This diversion provision could apply to a defendant who has a prior record, which might include a prior violent offense. For example, a defendant with a current offense of possession of a controlled substance and a prior offense of aggravated assault would score fewer than 60 total points. However, under the bill, the court may choose not to divert such defendant from prison if the court finds that the nonstate prison sanction could present a danger to the public.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 775.082, F.S., relating to penalties.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have a fiscal impact on state government revenues.
2. Expenditures: The Criminal Justice Impact Conference (CJIC) met on March 29, 2017, and determined that the bill could reduce the need for prison beds by 155 beds in Fiscal Year (FY) 2017-2018 and by a cumulative total of 1,001 beds through FY 2021-2022. According to CJIC, assuming that 50 percent of eligible inmates will be diverted, the bill could result in savings of \$468,720 for prison operating costs in FY 2017-2018, and a cumulative savings of up to \$9,827,925 for prison operating costs through FY 2021-2022. To the extent that inmates are sentenced to probation or community control, there will be an increase in the costs of supervision. However, the costs of supervision are significantly lower than the costs of incarceration. While the net fiscal impact is indeterminate, it is anticipated that there will be significant savings.

⁸ Section 397.334(3)(a), F.S., provides that entry into any post-adjudicatory treatment-based drug court program as a condition of probation or community control pursuant to s. 948.01, F.S., s. 948.06, F.S., or s. 948.20, F.S., must be based upon the sentencing court’s assessment of the defendant’s criminal history, substance abuse screening outcome, amenability to the services of the program, total sentence points, the recommendation of the state attorney and the victim, if any, and the defendant’s agreement to enter the program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have a fiscal impact on local government revenues.
2. Expenditures: The bill does not appear to have a fiscal 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: This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.
2. Other: None.

B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute (CS). The PCS removed language in the original filed version of HB 641 that:

- Authorizes a court to depart from a mandatory minimum term of imprisonment for a nonviolent felony or misdemeanor if the court finds that specified criteria are met;
- Reestablishes a sentencing commission to provide recommendations to the Governor, the Supreme Court, and the Legislature regarding the appropriate offense severity level rankings for noncapital felonies;
- Authorizes a court to sentence a defendant to a nonstate prison sanction within a prison diversion program if the defendant is convicted of a nonviolent second degree felony and meets other criteria;
- Restores a mitigating circumstance based on substance abuse or addiction and amenability to treatment and creates a new mitigating circumstance for certain nonviolent felony offenders; and
- Requires a court to place certain nonviolent felony offenders who are amendable to substance abuse treatment into postadjudicatory treatment-based drug court program, into residential drug treatment, or on drug offender probation.

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