

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1206

INTRODUCER: Senator Brandes

SUBJECT: Supervised Community Release

DATE: January 12, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 1206 authorizes an inmate to participate in a supervised community release program (Program) up to 90 days before the inmate's tentative release date as an extension of the inmate's confinement. The supervised community release program must include electronic monitoring and community control as defined in s. 948.001, F.S.

An inmate's participation in the Program may be terminated by the Department of Corrections (DOC) if the inmate fails to comply with any of the terms of the Program as proscribed by the rules promulgated under this act. If an inmate is terminated from the supervision, he or she must be recommitted to the DOC.

If there is a reasonable belief that the inmate violated his or her supervised community release in a material respect, the bill authorizes an inmate to be arrested without a warrant by a:

- Law enforcement officer who is aware of the inmate's supervised community release status;
- Probation officer; or
- County or municipal law enforcement officer upon request by a correctional probation officer.

An alleged violation of the conditions of the supervised community release program must be reported to a correctional officer for disposition of disciplinary charges as proscribed in the DOC rules.

The bill provides the inmate is still considered to be in confinement for purposes of earning and losing gain-time pursuant to s. 944.275, F.S. However, the inmate may not be counted as part of the inmate population and the approved community-based housing in which the inmate lives cannot be counted in capacity figures for the prison system.

The bill is effective October 1, 2018.

II. Present Situation:

The Criminal Punishment Code¹ (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.² The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence as determined by the Code to the statutory maximum for the primary offense. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is five years.³

The sentence imposed by the sentencing judge reflects the length of actual time to be served, lessened only by the application of gain-time,⁴ and may not be reduced in an amount that results in the defendant serving less than 85 percent of his or her term of imprisonment.⁵ However, there are a limited number of instances where an inmate who is in the custody of the DOC may continue serving his or her sentence outside the physical walls of a prison.

Extension on the Limits of Confinement

When a reasonable belief exists that an inmate will adhere to conditions placed upon him or her, s. 945.091, F.S., authorizes the DOC to allow an inmate to leave the confines of a physical facility unaccompanied for a specified period of time to:

- Visit a:
 - Dying relative or attend a funeral of a relative;
 - Specified location to arrange for employment or for a suitable residence for use upon release;
 - Specified place to aide in the successful transition back into the community;
 - Specifically designated location for any other compelling reason;⁶
- Work at paid employment;⁷
- Participate in an educational or training program;⁸
- Voluntarily serve a public or nonprofit agency or faith-based service group in the community;⁹ or

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 Section 921.0022, F.S.

³ Section 775.082, F.S.

⁴ Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.

⁵ Section 921.002(1), F.S.

⁶ Section 945.091(1)(a), F.S. An inmate released from the custody of a facility under this subsection must return to the same or another facility as designated by the DOC. See also Department of Corrections, *Senate Bill 1206 Analysis*, at p. 3 (January 8, 2018) (on file with the Senate Committee on Criminal Justice)[hereinafter cited as “The DOC SB 1206 Analysis”].

⁷ This provision is commonly referred to as “Work Release.” Section 945.091(1)(b), F.S., further provides that this form of release occurs while the inmate continues as an inmate of the institution or facility in which the inmate is confined. The only time in which the inmate is released unaccompanied is during the hours of his or her employment, education, training, or service and traveling to and from such approved activity. An inmate is permitted to travel to and from the place of employment, education, or training by walking, bicycling, or using public transportation or transportation that is provided by a family member or employer.

⁸ *Id.*

⁹ *Id.*

- Participate in a residential or nonresidential rehabilitative program.¹⁰

The DOC must perform an investigation to determine whether the inmate is suitable for consideration of extension of his or her confinement prior to being approved for one of the provisions described above.¹¹

Prior to July 1, 1996, a fourth provision, known as the Supervised Community Release Program (SCRCP), existed that allowed inmates to be released on an extension of confinement to participate in a rehabilitative community reentry program on conditional release.¹² This release was for a period of no more than 90 days prior to the termination of his or her confinement. The inmate was released and placed on community supervision, but was not considered to be in the custody or care of the DOC or in confinement. If the inmate did not demonstrate sufficient progress with the reentry program, the DOC was able to terminate the inmate's participation and return the inmate to the prior institution or a new facility as designated by the DOC.¹³

Gain-time

Gain-time awards, which result in deductions to the court-ordered sentences of specified eligible inmates, are used to encourage satisfactory prisoner behavior or to provide incentives for prisoners to participate in productive activities while incarcerated.¹⁴ An inmate is not eligible to earn or receive gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.¹⁵

Basic gain-time, which automatically reduced an inmate's sentence by a designated amount each month, was eliminated for offenses committed on or after January 1, 1994.¹⁶ The only forms of gain-time that can currently be earned are:

- Incentive gain-time, which is a total of up to ten days per month that may be awarded to inmates for institutional adjustment, performing work in a diligent manner, and actively participating in training and programs;¹⁷

¹⁰ Section 945.091(1)(c), F.S. The treatment program must be operated by a public or private nonprofit agency, including faith-based service groups, with which the DOC has contracted for the treatment of such inmate. The provisions of ss. 216.311 and 287.057, F.S., must apply to all contracts considered under this provision. The DOC must ensure each agency provides appropriate supervision of inmates participating in such program.

¹¹ Section 945.091(1), F.S.

¹² Section 945.091(1)(d), F.S. (1995). This paragraph was repealed in ch. 96-312, L.O.F.

¹³ *Id.*

¹⁴ Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further provides that an inmate serving a life sentence is not able to earn gain-time. Additionally, an inmate serving the portion of his or her sentence that is included in an imposed mandatory minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

¹⁵ Section 944.275(4)(f), F.S.

¹⁶ Chapter 93-406, L.O.F.

¹⁷ Section 944.275(4)(b), F.S. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.

- Meritorious gain-time, which is awarded to an inmate who commits an outstanding deed or whose performance warrants additional credit, such as saving a life or assisting in recapturing an escaped inmate;¹⁸ and
- Educational achievement gain-time, which is a one-time award of 60 days that is granted to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program.¹⁹

The procedure for applying gain-time awards to an inmate's sentence is dependent upon the calculation of a "maximum sentence expiration date" and a "tentative release date." The tentative release date may not be later than the maximum sentence expiration date.²⁰ The maximum sentence expiration date represents the date when the sentence or combined sentences imposed on a prisoner will expire.²¹ To calculate the maximum sentence expiration date, the DOC reduces the total time to be served by any time lawfully credited.²²

The tentative release is the date projected for the prisoner's release from custody after gain-time is granted or forfeited in accordance with s. 944.275, F.S.²³ Gain-time is applied when granted or restored to make the tentative release date proportionately earlier; and forfeitures of gain-time, when ordered, are applied to make the tentative release date proportionately later.²⁴

Community Control

Section 948.001(3), F.S., defines "community control" to mean a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.²⁵ The community control program is rigidly structured and designed to accommodate offenders who, in the absence of such a program, will be committed to the custody of the DOC or a county jail.²⁶

A person on community control (controlee) has an individualized program and is restricted to his or her home or noninstitutional residential placement, unless working, attending school, performing public service hours, participating in treatment or another special activity that has been approved in advance by his or her parole and probation officer.²⁷

¹⁸ Section 944.275(4)(c), F.S. The award may range from one day to 60 days and the statute does not prohibit an inmate from earning meritorious gain-time on multiple occasions if warranted.

¹⁹ Section 944.275(4)(d), F.S.

²⁰ Section 944.275(3)(c), F.S.

²¹ Section 944.275(2)(a), F.S.

²² *Id.*

²³ Section 944.275(3)(a), F.S.

²⁴ *Id.* See also s. 944.275(4)(b), F.S.

²⁵ Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

²⁶ Section 948.10(1), F.S.

²⁷ *Id.* See also Florida Department of Corrections, *Succeeding on Community Control*, available at <http://www.dc.state.fl.us/oth/cc/Succeeding-on-Community-Control.pdf> (last visited on January 10, 2018). A Community Control Offender Schedule and Daily Activity Log must be submitted weekly with a proposed schedule for the week and the parolee's officer reviews such schedule and either approves or denies the schedule. Additionally, a person is required to provide an hourly accounting of his or her whereabouts for the previous week to verify any deviations from the pre-approved schedule.

Conditions of community control are determined by the court when the offender is placed on such supervision. However, there are standard conditions of community control that all controlees must comply with, including, but not limited to:

- Specified contact with the parole and probation officer;
- Confinement to an agreed-upon residence during hours away from employment and public service activities;
- Mandatory public service;
- Supervision by the DOC through an electronic monitoring device or system;²⁸ and
- The standard conditions of probation set forth in s. 948.03, F.S.²⁹

A person may be placed on additional terms of supervision as part of his or her community control sentence.³⁰ If a controlee violates the terms of his or her community control, the supervision can be revoked in accordance with s. 948.06, F.S.³¹ A violation can be the result of a new violation of law or a technical violation of the conditions imposed.

Arrest Authority

Section 901.15, F.S., provides that a law enforcement officer may arrest a person without a warrant under specified circumstances, including, but not limited to, when:

- The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer.
- A felony has been committed and the officer reasonably believes that the person committed it.
- The officer reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.
- A warrant for the arrest has been issued and is held by another peace officer for execution.
- A violation of ch. 316, F.S. (state uniform traffic control), has been committed in the presence of the officer.
- There is probable cause to believe that the person has violated s. 790.233, F.S. (possession of firearms by a convicted felon), s. 741.31, F.S. (possession of prohibited ammunition), a protective injunction order, or a specified foreign protection order.
- There is probable cause to believe that the person has committed an act of domestic violence or dating violence.

Additionally, a probation officer is authorized to issue an arrest warrant or arrest an offender in limited circumstances. Section 944.405(1), F.S., authorizes the DOC to issue an arrest warrant for a person who has “absconded from a rehabilitative community reentry program before the offender has satisfied his or her sentence or combined sentences.”

²⁸ An electronic monitoring device (EM) is a tamper-resistant device worn on the body that monitors the location of a person at all times of the day. The monitoring agency is notified for various violations of the terms of supervision, such as if the person travels to a location he or she is not authorized to be or if the device is removed by the person. EM systems can be either “passive” or “active” and are typically operated through radio frequency or global positioning system (GPS) monitoring. Office of Juvenile Justice and Delinquency Prevention, *Home Confinement and Electronic Monitoring*, October, 2014, available at https://www.ojjdp.gov/mpg/litreviews/Home_Confinement_EM.pdf (last visited January 10, 2018).

²⁹ Section 948.101(1), F.S.

³⁰ Section 948.101(2), F.S.

³¹ Section 948.10(3), F.S.

Section 948.06(1), F.S., also authorizes probation officers or law enforcement officers to arrest probationers and community controlees without a written warrant based on a reasonable belief the offender has violated terms of supervision in a material respect.

III. Effect of Proposed Changes:

The bill amends s. 945.091, F.S., allowing an inmate to participate in a supervised community release program as an extension of the inmate's confinement, similar to the former SCRP discussed above. The supervised community release term may begin 90 days before the inmate's provisional or tentative release date and must include electronic monitoring and community control as defined in s. 948.001, F.S.

The bill authorizes the DOC to create rules to implement the supervised community release program created in the act.

The DOC is authorized to terminate the inmate's participation in the program if he or she fails to comply with any of the terms of the supervised community release as proscribed by rule. If an inmate is terminated from the supervision, he or she must be recommitted to the same institution or another institution designated by the DOC.

Additionally, if there is reasonable belief that the inmate violated his or her supervised community release in a material respect, the bill authorizes an inmate to be arrested without a warrant by a:

- Law enforcement officer who is aware of the inmate's supervised community release status;
- Probation officer; or
- County or municipal law enforcement officer upon request by a correctional probation officer.

The bill authorizes a probation officer or law enforcement officer to arrest an inmate without a warrant, which is similar to the authority currently provided in s. 948.06(1), F.S.

A law enforcement officer or probation officer that arrests an inmate for a violation of the conditions of the supervised community release program is required to report the inmate's alleged violations to a correctional officer for disposition of disciplinary charges as proscribed in the DOC rules.

The bill provides that an inmate released on supervised community release in accordance with this provision is eligible to earn and lose gain-time, but is not counted as part of the inmate population. The approved community-based housing in which the inmate lives is also not counted in capacity figures for the prison system.

The DOC reports that there are approximately 770 inmates assigned to a community facility who have between 10-90 days remaining on their sentence and an additional 580 community custody inmates who have not been to work release who are within this time frame to release.³²

³² The DOC SB 1206 Analysis, p. 4.

The bill is effective October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill allows an inmate to be released into the community on supervised release up to 90 days earlier than the calculated tentative release date. This will provide private companies the opportunity to hire an inmate earlier than without the act.

C. Government Sector Impact:

The Criminal Justice Estimating Conference has not heard the bill at this time. The DOC reports that the bill will likely have a negative indeterminate prison bed impact (i.e. an indeterminate decrease in prison beds). The DOC states that the number is indeterminate for several reasons, including not being able to quantify how many inmates will be interested in the program and of those inmates, how many can obtain proper housing placements to warrant release.³³

The bill requires an inmate released on the Program to be placed on electronic monitoring. The current per diem rate for electronic monitoring is \$4.90 for inmates placed on electronic monitoring who are assigned to community release centers.³⁴ The current variable per diem rate is \$15.81, which is associated with the individual inmate care costs such as medical, food, inmate clothing, and personal care items.³⁵ Therefore, for inmates released to this Program on electronic monitoring, the DOC will likely pay

³³ The DOC SB 1206 Analysis, p. 4.

³⁴ *Id.* at p. 4-6.

³⁵ *Id.*

the electronic monitoring per diem rate, rather than the variable per diem rate, for the 90 days with which the inmate is out in the community instead of housed in an institution.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 945.091 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.