

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 Appropriations

BILL: PCS/CS/SB 484 (452514)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senator Bradley

SUBJECT: Housing of State Inmates

DATE: December 7, 2017

REVISED: 12/14/17

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cox</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Forbes</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	<u>Forbes</u>	<u>Sadberry</u>	<u>AP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 484 authorizes a court to sentence an offender to a term of imprisonment in the county jail, in the county where the offense was committed, for up to twenty-four months. A court can order such a sentence for offenses committed on or after July 1, 2018, if the offender's:

- Total sentence points score is more than 44 points, but less than or equal to 60 points;
- Primary offense is not a forcible felony, unless the primary offense is a third-degree felony under ch. 810, F.S. (burglary and trespass); and
- Primary offense is not subject to a minimum mandatory sentence of more than 24 months.

The bill authorizes the Department of Corrections (DOC) to transfer an inmate to a county jail if the inmate:

- Has less than 24 months remaining on his or her sentence; or
- Is a terminally ill inmate with less than 12 months to live.

The bill specifies that an inmate housed in a county jail is under the jurisdiction of the DOC and will be transferred to a DOC facility if the contract expires, terminates, or is not renewed. An inmate housed in a county jail can request to be transferred to a DOC facility if he or she is not receiving substantially similar services and programming as provided in a DOC facility.

The bill specifies contractual terms that must be included in a contract to house an inmate in a county jail. The contractual terms include, but are not limited to:

- Establishing the maximum number of beds and validated per diem rate;
- Providing a per diem reimbursement rate for the days an inmate is in the custody of the county jail, not to exceed \$60 per inmate;
- Requiring substantially similar services and programming for an inmate housed in a county jail as received by an inmate in a state facility;
- Establishing regular intervals for the county jail and the DOC to communicate information related to an inmate housed in a county jail; and
- Requiring the county jail to provide documentation to verify the expenses related to an inmate sentenced to the county jail.

The bill provides that a contract to house an inmate is contingent upon an appropriation by the legislature for the specific purpose of funding inmates housed in a county jail. Contracts are awarded on a first-come, first-served basis up to the maximum appropriation allowable.

The bill requires the DOC to transfer funds, consistent with the requirements of ch. 216, F.S., each time a contract to house inmates in a county jail is executed or ends. Prior to any transfers, the DOC must estimate the obligations of the contracted county beds to house inmates in a county jail to estimate that amount in which these obligations exceed the DOC per diems. The DOC must assume the maximum annual value of all contracts to house inmates in a county jail when determining the full use of funds.

To the extent the DOC contracts with counties to house inmates in a county jail and the average costs of those contracts exceed the average per diem costs incurred by the DOC to house the inmates in state facilities, the DOC will incur higher costs. Counties contracting with the DOC will experience an indeterminate fiscal impact, with higher revenues based on contract payments and higher costs based on the costs to house the inmates. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2018.

II. Present Situation:

Criminal Punishment Code

The Criminal Punishment Code¹ applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the “offense severity ranking chart” from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature.² If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.³

A defendant’s sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the

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 921.0023, F.S.

defendant committed at the time of the primary offense; the defendant's prior record; and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense.⁴ A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are mitigating "circumstances or factors that reasonably justify the downward departure."⁵

The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence 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 5 years.⁶ The lowest permissible sentence in which total sentence points equal to or are less than 44 points is any nonstate prison sanction.⁷ 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.⁸

The lowest permissible sentence for a person who scores between 45 and 60 points ranges from 12.75 months to 24 months, respectively.

Placement of State Inmates in Local Detention Facilities

Section 921.188, F.S., permits the court to sentence an offender to a local detention facility as a condition of probation or community control for a felony offense if the offender scores between 40 and 52 points, or if the presumptive sentence is between 366 days and 22 months,⁹ and there is a contract between the DOC and the chief correctional officer for the applicable county.¹⁰ Section 921.188, F.S., provides that the contract:

- May include all operational functions or only housing (such as staffing and medical) costs;
- Must include the per diem or partial per diem reimbursement payable by the DOC; and
- Per diem must not exceed the per diem published in the DOC's most recent annual report.

⁴ Section 921.0024, F.S.

⁵ Section 921.0026, F.S.

⁶ Section 775.082, F.S.

⁷ Section 921.0042(2), F.S.

⁸ Florida Department of Corrections and the Office of State Courts Administrator, *Florida Criminal Punishment Code Scoresheet Preparation Manual*, July 1, 2016, at p. 20, available at http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf (last visited on November 6, 2017).

⁹ Section 921.188, F.S., went into effect on June 17, 1993, when the revised sentencing guidelines were established, but prior to the enactment of the Criminal Punishment Code in 1998. The 1994 revised sentencing guidelines assigned a point score to felony offenses and the presumptive sentence was determined by the total number of points. Section 921.188, F.S., authorizes a judge to sentence a person convicted of a felony offense, as defined in the former sentencing guidelines categories five through nine, to a local detention facility for the period of time equal to the offender's presumptive sentence.

¹⁰ Section 921.188, F.S.

Alternative Sentencing

An offender with a state prison sentence in excess of one year typically serves his or her sentence in a state correctional facility operated by the DOC;¹¹ 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
- Imprisonment in county jail if the total of the prisoner's cumulative sentences is not more than one year;¹³ or
- County work camp operated under a contractual agreement between the county and the state.¹⁴

Inmates Sentenced to the Department of Corrections

Contracting with Counties to House Inmates

Section 944.171, F.S., authorizes the DOC to contract with counties or other states to house inmates that have been committed to the DOC.¹⁵ Contracts must be competitively procured in accordance with s. 287.057, F.S.,¹⁶ and are entered into after the parties mutually agree upon the terms of the contract. The following contract terms must be considered by the county and the DOC include, but are not limited to, a contract termination date, provisions concerning the cost of inmate maintenance and extraordinary medical or dental expenses, provisions related to inmate employment, and waiver of extradition for inmates transferred out of Florida.¹⁷ Inmates placed in a county facility remain under the jurisdiction of the DOC.

The DOC does not currently have any contracts to house inmates with counties.¹⁸

Services and Programming Provided to Inmates

Chapter 944, F.S., requires the DOC to provide a variety of services and programming to inmates committed to the custody of the DOC, including:

- Substance abuse treatment programs;¹⁹

¹¹ Section 921.0024(2), F.S.

¹² Section 921.00241, F.S. The court may sentence the offender to a term of probation, community control, or community supervision with mandatory participation in a prison diversion program of the DOC.

¹³ Section 922.051, F.S.

¹⁴ Section 950.002, F.S.

¹⁵ Section 944.171(1) and (2), F.S.

¹⁶ Section 287.057, F.S., provides for the competitive solicitation processes to be used by the state of Florida in conducting state business. Specifically, s. 287.057(1), F.S., provides for invitations to bid, requests for proposals, and invitations to negotiate.

¹⁷ Section 944.171(2)(a), F.S.

¹⁸ Florida Department of Corrections, *Senate Bill 484 Analysis*, at p. 3 (November 8, 2017) (on file with the Senate Committee on Criminal Justice)(hereinafter cited as "The DOC SB 484 Analysis").

¹⁹ Section 944.473(2), F.S., requires each inmate to be assessed to determine if he or she qualifies to receive mandated substance-abuse treatment while incarcerated. The DOC provides four levels of inmate substance abuse programming, including intensive outpatient, residential therapeutic community, program centers, and work release centers. In FY 2015-16, a total of 12,234 inmates participated in some form of substance abuse treatment. See Department of Corrections, *Annual*

- Transitional services;²⁰
- Educational and vocational programs;²¹ and
- Faith- and character-based programs.²²

These services and programs provide inmates with skills and tools to assist with an inmate's successful transition into the community upon release.²³

Determining an Inmate's Classification Level

Section 944.1905, F.S., requires each inmate placed in the custody of the DOC to be classified or reclassified based upon the inmate's risk level. An inmate's initial classification is determined by a number of factors including, but not limited to, length of sentence, criminal history, any history of violence, and escape history.²⁴

Classification levels impact the facility placement and programming that an inmate is eligible to participate in while incarcerated.²⁵

Conditional Medical Release

Conditional Medical Release (CMR) is a discretionary release of inmates who are "terminally ill" or "permanently incapacitated" and who are not a danger to others.²⁶ The Commission on Offender Review (commission) reviews eligible inmates for release under the CMR program. Eligible inmates include inmates that are designated by the DOC as a:

- "Permanently incapacitated inmate," which is 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 physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others; or
- "Terminally ill inmate," which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to

Report, Fiscal Year 2015-2016, p. 21, http://www.dc.state.fl.us/pub/annual/1516/FDC_AR2015-16.pdf (last visited December 7, 2017)(hereinafter cited as "Annual Report").

²⁰ Sections 944.701-944.708, F.S., provide for a variety of transitional services that are used to increase the likelihood that an inmate will not recidivate upon release from prison. Some of the transitional services include: release orientation programming, including, but not limited to, employment skills, and money management skills; basic support services upon release; a 100-hour transition course that covers job readiness and life management skills; and post release services such as substance abuse counseling, family counseling, and employment support programs.

²¹ Section 944.801, F.S., requires the DOC to operate the Correctional Education Program, which oversees the educational and vocational training for the DOC. In FY 2015-16, the DOC had 24,053 inmates participating in educational programs (18,734 in academic programs and 5,319 in vocational programs); 5,563 inmates were enrolled in General Education Development (GED) classes and 1,312 GED diplomas were awarded. Annual Report, at p. 9.

²² Section 944.803, F.S., encourages the DOC to operate faith- and character-based facilities, which emphasize the importance of personal responsibility, meaningful work, education, substance abuse treatment, and peer support.

²³ Annual Report at p. 21.

²⁴ Florida Department of Corrections, *Inmate Orientation Handbook, Reception Center Processing*, revised December 2, 2016, p. 8, <http://www.dc.state.fl.us/pub/files/Inmate%20Orientation%20Handbook.pdf> (last visited December 5, 2017)(hereinafter referenced as "Inmate Handbook") See also Section 944.1905(1)-(3), F.S.

²⁵ Inmate Handbook at p. 7.

²⁶ Florida Commission on Offender Review, *Release Types, Post Release*, <https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease> (last visited December 7, 2017).

the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.²⁷

The release of an inmate on CMR is for the remainder of the inmate's sentence and requires that periodic medical evaluations at intervals determined by the commission at the time of release.²⁸ If an inmate's medical condition changes improves to the extent that he or she no longer qualifies for CMR, the commission can order that the inmate be transferred back to a DOC facility to serve the remainder of the sentence.²⁹

III. Effect of Proposed Changes:

The bill creates two new provisions that allow inmates that otherwise qualify for placement in a DOC facility to be housed in a county jail.

Sentencing of Specified Felony Offenders to a County Jail under s. 921.188, F.S.

The bill amends s. 921.188, F.S., authorizing a court to sentence an offender to a term of imprisonment in the county jail, in the county where the offense was committed, for up to twenty-four months. A court can order such a sentence for offenses committed on or after July 1, 2018, if the offender's:

- Total sentence points score is more than 44 points, but less than or equal to 60 points;
- Primary offense is not a forcible felony, unless the primary offense is a third degree felony under ch. 810, F.S. (burglary and trespass); and
- Primary offense is not subject to a minimum mandatory sentence of more than 24 months.

As a condition of the offender's sentence to a county jail, the court must order that the offender:

- Is placed under the jurisdiction of the DOC while in the county jail;
- Must serve the remainder of his or her sentence in a DOC facility if the contract expires, terminates, or is not renewed; and
- May request to be transferred to a DOC facility if he or she is not receiving services and programming that are substantially similar to those provided in a DOC facility.

The bill also provides that a felony offense for which an inmate is sentenced to a county jail be considered to be a prior felony commitment at a state or federal correctional institution for the purposes of ss. 944.291, 947.1405, and 948.12, F.S.

Transferring of Specified Inmates from the DOC to a County Jails under s. 944.172, F.S.

The bill creates s. 944.172, F.S., authorizing the DOC to transfer an inmate to a county jail if the inmate:

- Has less than 24 months remaining on his or her sentence; or
- Is a terminally ill inmate with less than 12 months to live.

²⁷ Section 947.149(1), F.S.

²⁸ Section 947.149(4), F.S.

²⁹ Section 947.149(5), F.S.

An inmate who has less than 24 months remaining on his or her sentence is eligible to be transferred to a county jail in the county where he or she will reside upon release. A terminally ill inmate can be transferred to a county jail in the county where his or her family resides for the remainder of his or her imprisonment or life, whichever occurs first.

The bill defines “terminally ill inmate” as an inmate who has a condition caused by injury, disease, or illness, which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is expected within 12 months. A terminally ill inmate transferred to a DOC facility does not have to be reviewed and approved by the commission as required by CMR and regardless of the amount of time remaining on the sentence. A terminally ill inmate that is transferred to a county jail is eligible to be subsequently released on CMR in accordance with s. 947.149, F.S.

The DOC must transfer an inmate if the inmate is eligible under one of the above-listed criteria and qualifies under the contractual agreement between the DOC and the designated county of release. Additionally, an inmate transferred from the DOC to a county jail:

- Remains under the jurisdiction of the DOC;
- Must serve the remainder of his or sentence in a DOC facility if the contract expires, terminates, or is not renewed; and
- May request to be transferred back to a DOC facility if he or she is not receiving services and programming that are substantially similar to those provided in a DOC facility.

The bill provides the DOC with rule making authority to implement s. 944.172, F.S.

Contracts to House Inmates in a County Jail under ss. 921.188 and 944.172, F.S.

The court may only sentence an offender and the DOC may only transfer an inmate to a county jail if there is a contractual agreement between the chief correctional officer of the county and the DOC. The bill requires the DOC to enter into a contract to house inmates in the county jail if the county requests such a contract. A contract entered into between the county and the DOC must include specified contract terms:

- Establishing the maximum number of beds and validated per diem rate;
- Providing a per diem reimbursement rate for the days an inmate is in the custody of the county jail based on specified county annual per diem rates, not to exceed \$60 per inmate;
- Requiring substantially similar services and programming for an inmate sentenced to the county jail as received by an inmate in a state facility;
- Specifying the services and programming the county will provide to an inmate;
- Authorizing the county jail to contract with private providers to provide required services and programming;
- Establishing regular intervals for the county jail and the DOC to communicate information related to an inmate, including confinement status and relevant information related to calculating a tentative release date; and
- Requiring the county jail to provide documentation to verify the expenses related to an inmate housed in a county jail.

The bill provides that inmates housed in a county jail are able to earn gain-time and other sentence credit in a substantially similar manner as he or she would in a DOC facility. However, these inmates cannot earn gain-time or other sentence in a manner that would result in his or her release, before serving a minimum of 85 percent of the sentence imposed.

A contract to house an inmate in a county jail is contingent upon an appropriation by the legislature for the specific purpose of funding inmates housed in a county jail. Contracts must be awarded by the DOC on a first-come, first-served basis up to the maximum appropriation allowable. The "maximum appropriation allowable" means the sum of the appropriations made by the legislature to fund inmates housed in a county jail and the net amount of appropriations transferred to or from the State Inmates Housed in County Jail appropriation category for these contracts.

The bill requires the DOC to transfer funds from other appropriation categories within the Adult Male Custody Operations or the Adult and Youthful Offender Female Custody Operations budget entities to the State Inmates Housed in County Jail appropriation category each time the DOC executes a contract to house inmates in a county jail. These transfers must be consistent with the requirements of ch. 216, F.S., and in an amount necessary to satisfy the requirements of each executed contract, but not to exceed the DOC's average total per diem published for the preceding fiscal year for adult male custody or adult and youthful offender female custody inmates.

Prior to the transfer of any funds, the DOC is required to estimate the appropriation amount that is obligated for the county jail beds contracted under each provision to estimate the amount in which these obligations exceed the DOC's per diem for adult male and female inmates.

When an executed contract ends, the DOC is required to transfer funds from the State Inmates Housed in County Jail appropriation category to the other appropriation categories within the Adult Male Custody Operations or the Adult and Youthful Offender Female Custody Operations budget entities. These transfers are also prohibited from exceeding the DOC's average total per diem published for the preceding fiscal year for adult male custody or adult and youthful offender female custody inmates for each county jail bed contracted.

The bill requires the DOC to assume maximum annual value of each executed contract to house inmates in a county jail when determining the full use of funds appropriated to ensure that the maximum appropriation allowable is not exceeded. All contractual per diem rates to house an inmate in a county jail and all per diem rates used by the DOC must be validated by the Auditor General before payments are made.

Additionally, contracts entered into transfer state inmates from the DOC to a county jail must:

- Specify whether the county will accept the transfer of terminally ill inmates;
- Designate the classification levels that the county will accept for transfer; and
- Provide for the delivery and retaking of inmates.

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:

None.

C. Government Sector Impact:

Local Governments

The fiscal impact on local governments is indeterminate. A county can choose to contract with DOC to house state inmates in its local jail. Such contracts can generate up to \$60 per inmate per day for the county. As shown below, the statewide average occupancy rate in the counties responding to the survey was 81.5% in 2014, and the average inmate per diem was \$64.38. It is unknown to what extent county jails currently have available capacity to house additional inmates. It is also unknown how many counties will elect to contract with the state to house inmates that have sentences greater than 366 days. To the extent county jails have available capacity and counties elect to contract with the state, the counties will receive funds to house the inmates, potentially resulting in some savings for the counties.

County	County Population	Facility Population	Facility Capacity	Occupancy Rate	Avg. Inmate Per Diem
Alachua	248,002	861	976	88.2%	\$ 85.75
Baker	26,881	507	512	99.0%	\$ 84.75
Bay	169,866	938	1,098	85.4%	\$ 46.00
Bradford	27,217	197	240	82.1%	
Brevard	548,424	1,521	1,701	89.4%	\$ 74.95
Broward	1,784,715	4,528	5,144	88.0%	\$ 122.03
Calhoun	14,621	46	60	76.7%	\$ 26.25

Charlotte	163,679	735	880	83.5%	\$ 84.61
*Citrus	140,519				
Clay	192,843	408	478	85.4%	\$ 67.84
Collier	333,663	862	1,306	66.0%	\$ 98.22
Columbia	67,489	270	250	108.0%	\$ 49.32
*Desoto	34,367				
*Dixie	16,263				
Duval	876,075	6,574	5,626	116.9%	\$ 60.13
*Escambia	301,120				
Flagler	97,843	170	132	128.8%	\$ 97.32
Franklin	11,562	65	100	65.0%	\$ 50.00
Gadsden	47,588	208	157	132.5%	\$ 52.50
Gilchrist	16,880	32	48	66.7%	\$ 37.50
Glades	12,658	310	546	56.8%	\$ 88.00
*Gulf	16,106				
*Hamilton	14,507				
*Hardee	27,682				
Hendry	37,808	141	266	53.0%	\$ 44.57
Hernando	173,808	472	746	63.3%	\$ 58.90
Highlands	99,092	401	512	78.3%	\$ 63.51
Hillsborough	1,276,410	2,600	5,343	48.7%	
Holmes	20,022	124	126	98.4%	\$ 20.76
Indian River	139,586	456	714	63.9%	\$ 75.00
*Jackson	50,166				
*Jefferson	14,554				
Lafayette	8,618	13	37	35.1%	
Lake	303,317	773	960	80.5%	\$ 55.00
Lee	643,367	1,742	2,009	86.7%	\$ 76.78
Leon	278,377	1,068	1,207	88.5%	\$ 69.00
*Levy	40,304				
Liberty	8,483	47	90	52.2%	\$ 39.00
Madison	19,395	46	120	38.3%	\$ 46.00
Manatee	333,880	1,016	1,468	69.2%	\$ 74.04
*Marion	335,008				
Martin	148,077	648	696	93.1%	\$ 72.56
Miami-Dade	2,582,375	4,745	5,842	81.2%	\$ 155.00
Monroe	73,560	571	700	81.6%	\$ 97.16
Nassau	74,661	202	315	64.1%	\$ 42.10
Okaloosa	188,349	597	594	100.5%	\$ 49.94
*Okeechobee	39,762				
Orange	1,202,978	3,084	4,107	75.1%	\$ 103.00
Osceola	288,361	899	873	103.0%	\$ 103.00

Palm Beach	1,345,652	2,204	3,164	69.7%	
Pasco	473,566	1,375	1,432	96.0%	\$ 58.00
Pinellas	926,610	2,987	4,017	74.4%	\$ 106.09
Polk	613,950	2,495	2,576	96.9%	\$ 54.24
*Putnam	72,605				
St. Johns	201,541	405	761	53.2%	\$ 103.00
St. Lucie	281,151	1,243	1,370	90.7%	\$ 85.00
Santa Rosa	157,317	695	723	96.1%	\$ 57.00
Sarasota	385,292	1,009	1,026	98.3%	\$ 93.00
Seminole	431,074	868	1,396	62.2%	\$ 78.52
Sumter	105,104	245	521	47.0%	\$ 67.87
Suwannee	43,873	158	235	67.2%	\$ 47.00
*Taylor	23,018				
*Union	15,483				
Volusia	498,978	1,483	1,494	99.3%	\$ 64.47
Wakulla	30,869	200	350	57.1%	\$ 50.00
Walton	57,779	300	584	51.4%	\$ 48.50
*Washington	24,793				
STATE TOTAL	19,259,543	53,542	65,634	-	-
STATE AVG.	287,445	1,049	1,286	81.5%	\$ 64.38

Source: 2014 Annual Jail Capacity Survey, Department of Corrections and the Florida Legislature's Office of Economic and Demographic Research.

Note: County population figures are estimates of the April 1, 2013 population.

*The following counties did not respond to the survey, therefore they are not represented in the statistics: Citrus, Desoto, Dixie, Escambia, Gulf, Hamilton, Hardee, Jackson, Jefferson, Levy, Marion, Okeechobee, Putnam, Taylor, Union and Washington.

State Government Expenditures

To the extent counties contract with the state to provide housing for state inmates and the costs paid under such contracts exceed the DOC per diem rate, the costs incurred by the DOC to incarcerate new inmates will increase due to the higher per diem for community placements. In addition, upon execution of a contract, it is anticipated the funds will be transferred from other appropriation categories within the Adult Male and Adult and Youthful Female budget entities to cover the departmental per diem for these inmates and the difference would be provided through a new appropriation in the, "State Inmates Housed in County Jail" category.

The Criminal Justice Impact Conference (CJIC) met on March 2, 2017 and reviewed SB 1068 (2017), which is similar to this bill, and found that the bill will result in an

unquantifiable decrease in prison beds operated by the DOC.³⁰ The CJIC further commented that given the specific provisions of the bill, the budgetary impact (increased costs to house offenders in county jails) will potentially exceed the capital and operating impact costs for the DOC (decreased number of prison beds needed) adopted by the CJIC.³¹

State Government Revenues

The bill authorizes a county jail to contract with a privately operated community release and transition center to provide the required services to transferred inmates. Currently, the Department of Corrections contracts with community release and transition centers for their inmates and this bill will not affect the local jails ability to contract separately for these types of facilities and services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the contract between a county and the DOC to establish a per diem rate not to exceed \$60 per inmate. The DOC's average adult male custody per diem is \$48.17 and the average female custody per diem is \$58.37.³² This "full" per diem includes expenditures for security and other support staff, utilities, maintenance, insurance, medical, and education. However, when changes that impact the inmate population do not require the opening or closure of an additional housing unit, the "variable" per diem rate of \$15.91 more accurately reflects the cost associated with housing an inmate.³³ The variable per diem rate includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, and personal care items.³⁴

The bill does not provide for the use of these different per diem rates and only allows for a contracted per diem rate that does not exceed \$60. Therefore, if the number of inmates housed in a county jail has a minimal impact on state inmate populations, the DOC will be responsible for paying the county jails the contracted per diem rate rather than the "variable" per diem rate of \$15.91 it would pay for the inmate to be housed in a state facility. Additionally, the bill requires the DOC to transfer funds to the State Inmates Housed in County Jail appropriation category from other appropriation categories in an amount up to the full per diem rate. If the bill's prison bed impact does not cause the closure of a dorm or facility, the DOC could be required to

³⁰ See Office of Economic and Demographic Research, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm> (last visited November 8, 2017). The Criminal Justice Impact Conference defines a "negative indeterminate bed impact" to mean an unquantifiable decrease in prison beds.

³¹ *Id.*

³² *Id.*

³³ *Id.* at p. 6.

³⁴ *Id.* at p. 7.

transfer the full per diem rate even though the DOC would only be expending the variable or dorm per diem rate with the inmate remaining in a DOC facility.

The DOC found, based on FY 2016-17 inmate admissions, that approximately 4,200 inmates would be eligible to be sentenced to a county jail. Of that 4,200 inmates, seven percent are work release inmates. The per diem rate for the DOC-operated community release centers for FY 2015-16 was \$34.35.³⁵

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 921.188 and 947.149.

This bill creates section 944.172 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on December 7, 2017:

The committee substitute:

- Creates s. 944.172, F.S., authorizing an inmate with less than 24 months left on his or her sentence or an terminally ill inmate to be transferred a county jail;
- Requires an inmate eligible for the transfer to a county jail be transferred if he or she is also eligible under the terms of the contract;
- Specifies that an inmate may only be housed in a county jail if there is a contractual agreement between the DOC and the county;
- Defines the terms “terminally ill inmate” and “maximum appropriation allowable;”
- Excludes terminally ill inmates transferred to a county jail from the requirements of s. 947.149, F.S.;
- Specifies that an inmate transferred to a county jail remains under the jurisdiction of the DOC;
- Provides an inmate housed in a county jail is eligible to substantially similar opportunities to earn gain time or other sentence credit as an inmate in a state facility;
- Permits an inmate housed in a county jail to request to be transferred to a DOC facility if he or she is not receiving substantially similar services as an inmate in a state facility;
- Requires an inmate housed in a county jail be transferred to a DOC facility if the contract between the DOC and the county is terminated for any reason;
- Specifies that a felony offense for which an offender is sentenced to county jail is considered a prior felony commitment at a state or federal correctional institution for the purposes of ss. 944.291, 947.1405, and 948.12, F.S.;
- Requires specific terms in a contract to house inmates in a county jail;

³⁵ *Id.*

- Provides contracts to house inmates in a county jail are contingent upon an appropriation by the legislature;
- Requires the DOC to transfer funds, consistent with the requirements of ch. 216, F.S., each time a contract to house inmates in a county jail is executed or ends;
- Specifies, prior to any transfers, the DOC must estimate the obligations of the contracted county beds to house inmates in a county jail to estimate that amount in which these obligations exceed the DOC per diems; and
- Requires the DOC to assume the maximum annual value of all contracts to house inmates when determining the full use of funds.

CS by Criminal Justice on November 13, 2017:

For offenses committed on or after July 1, 2018, the committee substitute amends s. 921.188, F.S.:

- Authorizing a court to sentence an offender to a county jail for up to 24 months if the offender's:
 - Total sentence points score is more than 44 points, but less than or equal to 60 points;
 - Primary offense is not a forcible felony, unless the primary offense is a third degree felony burglary or trespass; and
 - Primary offense is not subject to a mandatory minimum sentence of more than 24 months.
- Providing that a court may only sentence an offender to a county jail if the DOC and the county have a contractual agreement;
- Requiring an offender to be under the jurisdiction of the DOC as a condition of the sentence;
- Requiring an offender to be transferred to a DOC facility if the contract between the DOC and the county is terminated for any reason prior to the completion of the sentence;
- Requiring the DOC to enter into a contract with the county if the county requests a contract;
- Specifying that the contract must establish the maximum number of beds and the validated per diem rate;
- Creating a new appropriation category and requires funds to be appropriated in or transferred to the category to cover the costs of the contract; and
- Requiring that per diem rates be validated by the Auditor General prior to payments being made.

B. Amendments:

None.