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:	CS/SB 1334
INTRODUCER:	Criminal Justice Committee and Senators Brandes and Bracy
SUBJECT:	Criminal Justice
DATE:	March 19, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	**Fav/CS**
2.			JU	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1334 makes changes to a number of provisions related to the criminal justice system, including:

- Authorizing counties to establish a supervised bond program, which allows eligible defendants to be released on active electronic monitoring, continuous alcohol monitoring, or both, subsequent to the administration of a risk assessment instrument (RAI) by the county's chief correctional officer (sheriff) and acceptance into the program;
- Authorizing each judicial circuit to enter an administrative order, in concurrence with specified entities, to administer a RAI in preparation for first appearance or within 72 hours after arrest for use in pretrial release determinations;
- Increasing the threshold amounts of various theft offenses;
- Limiting the reclassification of specified theft offenses to adult convictions that have occurred a certain number of times within specified time frames;
- Requiring that the value of a theft be based on the fair market value of the property taken;
- Requiring the Office of Program Policy Analysis and Government Accountability to review the threshold amounts periodically and report its findings to the Governor, President of the Senate, and Speaker of the House of Representatives;
- Reducing the range of specified drug-free zones (DFZ) from 1,000 feet to 250 feet;
- Limiting the enhancement of a drug offense based on DFZs to the sale or manufacture of a controlled substance in any DFZ;

- Creating a new drug trafficking offense called "trafficking in pharmaceuticals," prohibiting the unlawful possession, sale, etc., of 120 or more dosage units containing a controlled substance described in s. 893.135, F.S.;
- Requiring the prosecution of a specified controlled substance in a dosage unit form of 120 or more to be prosecuted under the new offense of trafficking of pharmaceuticals;
- Authorizing a court to depart from the imposition of a mandatory minimum sentence in drug trafficking cases if certain circumstances are met;
- Providing immunity from arrest, charge, prosecution, or penalty for certain alcohol- or drug-related offenses to specified persons who seek medical assistance for an individual, including himself or herself, experiencing, or believed to be experiencing, an overdose;
- Authorizing the Department of Corrections (DOC) to consider an inmate to participate in a supervised community release program up to 180 days before the inmate's tentative release date as an extension of the inmate's confinement;
- Defines the term "conditional medical release";
- Creates a new conditional medical release designation entitled "inmate with a debilitating illness"; and
- Modifies the current designation of "terminally ill inmate" to apply to inmates whose death is expected within 12 months, rather than imminent.

The bill will likely result in a "negative significant" prison bed impact (i.e., a decrease of more than 25 prison beds) as a result of a number of provisions. See Section V. Fiscal Impact Statement.

Unless otherwise stated, the bill is effective October 1, 2019. The provisions related to alcohol- or drug-related overdose immunity and the mandatory minimum sentence departure provisions are effective July 1, 2019.

II. Present Situation:

Refer to Section III. Effect of Proposed Changes for discussion of the relevant portions of current law.

III. Effect of Proposed Changes:

Bond Programs (Sections 8 and 9)

Pretrial Release Subsequent to an Arrest

The Florida Constitution provides that every person charged with a crime is entitled to pretrial release with reasonable conditions.[1] There are three types of pretrial release for a person who is awaiting trial: the posting of a bail or surety bond, pretrial release conditions, or the release on his or her own recognizance.[2]

[1] Article I, s. 14, FLA CONST. This right does not apply to persons charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. *Id.*
[2] *See* art. I, s. 14., FLA CONST.; *See also* ss. 903.046 and 907.041. F.S.

Bail and Surety Bond

The purpose of a bail determination in criminal proceedings is to ensure the appearance of a defendant at subsequent proceedings and to protect the community against unreasonable danger from the defendant.[3] Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S. [4] For the defendant to be released from jail, a court may require bail by a defendant to provide security, such as cash or a bond to ensure that he or she will return for trial and any other required court appearances.[5]

As an alternative to posting the entire bail amount, a defendant may provide a criminal surety bail bond[6] executed by a bail bond agent. Generally, the defendant or another person on the defendant's behalf, pays the bail bond agent a nonrefundable fee equal to 10 percent of the bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond.[7]

Pretrial Release Conditions

A judge can release a defendant with any combination of the following pretrial release conditions:

- Release on the defendant's own recognizance;[8]
- Execute an unsecured appearance bond in an amount specified by the judge;
- Comply with any court-imposed restrictions on travel, association, or place of abode during the period of release;
- Be placed in the custody of a designated person or organization agreeing to supervise the defendant;
- Have a designate execute a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or
- Comply with any other condition deemed reasonably necessary to assure required appearance, including a condition requiring the defendant to return to custody after specified hours.[9]

A judge also can release a defendant to a pretrial release program. Generally, judges allow a defendant to be released to a pretrial release program without posting a bond; however, a judge can require a defendant to post a bond and participate in the program.[10] Specifically, s. 907.041,

[3] Section 903.046(1), F.S.
[4] "Bail," BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006). The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges.
[5] *Universal Bail Bonds v. State*, 929 So.2d 697, 699 (Fla. 3d DCA 2006).
[6] Sections 903.011 and 903.105, F.S.
[7] Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2017*, Report No. 18-06, at 2., November 2018, available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1806rpt.pdf (last visited March 12, 2019)(hereinafter cited as "OPPAGA Pretrial Report").
[8] A defendant released on his or her own recognizance (ROR) is released without a monetary requirement and without any conditions of release or supervision of any type. ROR is defined to mean the pretrial release of an arrested person who promises, usually in writing, but without supplying a surety of posting bond, to appear for trial at a later date. BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006).
[9] Rule 3.131(b)(1), Fla. R. Crim. Pro.
[10] *Id.* If a monetary bail is required, the judge must determine a separate amount for each charge or offense. Rule 3.131(b)(2), Fla. R. Crim. Pro.

F.S., provides a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime.[11] These programs supervise defendants with various methods, including electronic monitoring (EM)[12] or phone contact.[13]

A Court's Determination of Pretrial Release

The judge must consider all available relevant factors during the first appearance hearing to determine what form of release is necessary to assure the defendant's appearance and the community's safety, including factors such as:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.
- The nature and probability of danger to the community if the defendant is released.[14]

Section 903.047, F.S., provides additional conditions that a defendant must comply with upon release from custody pending trial, including:

- Refraining from criminal activity of any kind;
- Refraining from contact of any type with the victim, if so ordered by the court; and
- Complying with all conditions of pretrial release.

Standard Bond Schedule

Florida does not have a statewide bond schedule, but each circuit has developed a standard bond schedule. Courts create uniform bail bond schedules to ensure that alleged offenders are provided equal treatment when charged with similar crimes. The amounts generally apply to all felonies, misdemeanors, and county or municipal ordinance violations as the presumptive bond to be set unless ordered differently by a judge.[15] Even though a county may have an established standard

[11] *See* s. 907.041, F.S., for a list of enumerated felonies that are included in the definition of a dangerous crime.
[12] An 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 ratio 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 March 12, 2019).
[13] *See* OPPAGA Pretrial Report, at 9.
[14] Section 903.046(2), F.S. *See also* Rule 3.131(b)(3), Fla. R. Crim. Pro.
[15] Some common ways to address the bond schedules are to either have a standard based on the degree of the offense (for example a $5,000 bond for all second degree felonies, as seen in the Tenth Judicial Circuit) or a specific amount agreed upon for a specific offense, as seen in the Sixth Judicial Circuit. *See* Tenth Judicial Circuit, In and For Hardee, Highlands, and Polk Counties, *Administrative Order No. 2-49.8, IN RE: Uniform Bond Schedule*, available at http://www.jud10.flcourts.org/sites/default/files/adminOrders/2-49.8.pdf; Sixth Judicial Circuit, In and For Pasco and Pinellas Counties, *Administrative Order NO. 2009-021 PA-CIR, RE: Uniform Bond Schedule – Pasco County*, available at http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2009/2009-021.htm (all sites last visited March 12, 2019).

bond schedule, a judge has the discretion to impose a bond that is above or below such schedule if he or she deems it is necessary based upon the circumstances of the case.[16]

Violation of Pretrial Release Conditions

A defendant who does not comply with the terms of the pretrial release can have his or her bond forfeited if certain factors are proven.[17] Under s. 903.0471, F.S., the court may revoke, on its own motion, pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.[18]

Supervised Bond Programs in Florida

There is a movement towards bail reform in the United States, with some circuits, including Pinellas County in Florida, implementing a new model for releasing defendants while awaiting trial. The new programs typically require the administration of a risk assessment instrument (RAI), which is then utilized to determine the release conditions for the defendant.

Pinellas County created a supervised bond program (Bond Program) which has been operating since 2014.[19] Sheriff Gualtieri, the chief correctional officer for Pinellas County, testified in the Senate Criminal Justice Committee on January 8, 2018, that this program was created in an effort to reduce the jail population in Pinellas County and avoid the need to build a larger facility.[20] Sheriff Gualtieri reported that while the bond amounts imposed by the court were proper to ensure public safety and compliance the judges could not lower the bail while still ensuring public safety and compliance without more oversight. As a result, a number of defendants remained in custody for months unable to meet the bail amount imposed.[21]

Upon agreement from the judiciary and in partnership with the bail bond industry, the Pinellas County Sheriff's Office established the Bond Program that requires active EM, continuous alcohol monitoring,[22] or both.[23]

The Pinellas County Sheriff's Office averages approximately 200 people per day on active supervision through the Bond Program.[24] Sheriff Gualtieri reported that of all the defendants that have been released on the Bond program, 99.5 percent have appeared for court hearings as

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[16] *Mehaffie v. Rutherford*, 143 So.3d 432, 434 (Fla. 1st DCA 2014).
[17] *See* s. 903.26, F.S.
[18] This discretion is provided regardless of the conditions for granting pretrial release provided for in s. 907.041, F.S.
[19] Presentation by Sheriff Bob Gualtieri, Pinellas County Sheriff's Office, in the Senate Criminal Justice Committee, January 8, 2018 (hereinafter cited as "Committee Presentation"); *See also* Sheriff Bob Gualtieri, PowerPoint Presentation, *ROR and Supervised Bond Presentation* (on file with the Criminal Justice Committee)(hereinafter cited as "Supervised Bond PowerPoint").
[20] Sheriff Gualtieri testified that the Pinellas County jail was crowded in 2014 with approximately 70 percent of the inmates being pretrial detainees. Supervised Bond PowerPoint, p. 3.
[21] Supervised Bond PowerPoint, p. 2-4.
[22] Continuous Alcohol Monitoring systems are tamper-resistant automated alcohol-monitoring devices that use transdermal testing to measure the amount of alcohol in a person's body, known as transdermal alcohol content (TAC). When alcohol is consumed, ethanol migrates through the skin and is excreted through perspiration. *See* National Institute of Justice, *Secure Continuous Remote Alcohol Monitoring (SCRAM) Technology Evaluability Assessment*, available at https://www.ncjrs.gov/pdffiles1/nij/secure-continuous-remote-alcohol.pdf (last visited March 12, 2019).
[23] Supervised Bond PowerPoint, p. 4-5.
[24] Supervised Bond PowerPoint, p. 7.

required and 94.9 percent did not commit a new crime while in the program.[25] Of the total cases supervised on the Bond Program, 45 percent were felonies, 30 percent were misdemeanors, and 25 percent were for the offense of driving under the influence (both felonies and misdemeanors).[26] Sheriff Gualtieri reported that these programs have resulted in a savings of $38.9 million annually.[27]

Evidence-Based Risk Assessment Tools

RAIs measure a defendant's criminal risk factors and specific needs that, if addressed, will reduce the likelihood of future criminal activity.[28] RAIs consist of a set of questions that guide face-to-face interviews with a defendant, intended to evaluate behaviors and attitudes that research shows are related to criminals reoffending. The questioner typically supplements the interview with an official records check. The RAI then calculates an overall score that classifies a defendant as being at high, moderate, or low risk for reoffending.[29]

Research has identified both static and dynamic risk factors that are related to criminal behavior. Static risk factors[30] do not change, while dynamic risk factors[31] either can change on their own or change through an intervention. The Risk-Needs-Responsivity (RNR) model has become the dominant paradigm in risk and needs assessment.[32] The RNR principle refers to predicting which inmates have a higher probability of recidivating, and treating the criminogenic needs of those higher risk inmates with appropriate programming and services based on their level of need. In general, research suggests that the most commonly used assessment instruments can, with a moderate level of accuracy, predict who is at risk for violent recidivism. It also suggests that no single instrument is superior to any other when it comes to predictive validity.[33]

Use of Risk Assessment Instruments by the Department of Corrections

The DOC has created a RAI, known as Spectrum, which is administered to an inmate at reception through motivational interviewing techniques.[34] Spectrum, as well as its predecessor,

[25] *Id*. at p. 9.
[26] *Id*. at p. 10.
[27] *Id*. at p. 16. This savings takes into account the cost it would require to house an additional 900 inmates per day with the per diem rate in effect at the time of the presentation and the cost to run the program.
[28] Congressional Research Service, *Risk and Needs Assessment in the Federal Prison System*, Nathan James, p. 3 (July 10, 2018), available at https://fas.org/sgp/crs/misc/R44087.pdf (last visited March 12, 2019)(hereinafter cited at CRS Report).
[29] *Id*. 2-4.
[30] Some examples of static factors considered include age at first arrest, gender, past problems with substance or alcohol abuse, prior mental health problems, or a past history of violating terms of supervision. CRS Report, Summary Page.
[31] Dynamic risk factors, also called "criminogenic needs," can be affected through interventions and include factors such as current age, education level, or marital status; being currently employed or in substance or alcohol abuse treatment; and having a stable residence. "Criminogenic" is commonly understood to mean factors that can contribute to criminal behavior. *Id*.
[32] The risk principle states that high-risk offenders need to be placed in programs that provide more intensive treatment and services while low-risk offenders should receive minimal or even no intervention. The need principle states that effective treatment should focus on addressing needs that contribute to criminal behavior. The responsivity principle states that rehabilitative programming should be delivered in a style and mode that is consistent with the ability and learning style of the offender. *Id*.
[33] *Id*.
[34] DOC, Spectrum Video, available at https://www.youtube.com/watch?v=F1sQsOE6BgM (last visited March 12, 2019) (hereinafter cited as "Spectrum Video"); DOC, *Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED* (on file with the Senate Criminal Justice Committee)(hereinafter cited as "DOC Program Information").

the Corrections Integrated Needs Assessment System, is based on the RNR model and contains responsivity elements.[35] Spectrum has been independently verified through the School of Criminology at the Florida State University.[36]

Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, and academic and workforce education.[37] Spectrum calculates an individual's overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains[38] and three core program areas.[39]

Effect of the Bill

Supervised Bond Program (Section 8)

The bill creates s. 907.042, F.S., authorizing each county to create a Bond Program. The terms of each county's Bond Program must be developed with the concurrence of the chief judge of the circuit, the sheriff, the state attorney (SA), and the public defender (PD). However, a county that has already established and implemented a Bond Program on or before October 1, 2019, may continue to operate without such concurrence if the program complies with the specified program and RAI requirements discussed below.

A Bond Program established pursuant to this bill must, at a minimum:

- Require the sheriff to administer the Bond Program.
- Use the results of a validated pretrial RAI that has been administered to the defendant for the purposes of pretrial release or supervision determinations.
- Assess the defendant's behavioral characteristics and needs that increase the likelihood of criminal activity and that are able to be addressed through the placement of services.
- Coordinate necessary services and supervision through the Bond Program to reduce the likelihood of criminal activity and to increase the likelihood of compliance with pretrial release conditions.
- Require the appropriate court to make a final determination regarding whether a defendant will be placed into the Bond Program. If such a determination is made, the court must also:
    - Determine the conditions of the individualized supervision plan with which the defendant must comply, including, but not limited to, the requirement that the defendant must:
        - Be placed on active EM or active continuous alcohol monitoring, or both, dependent upon the level of risk indicated by the RAI; and
        - Communicate weekly, via telephone or in-person contact, as determined by the court, with the Sheriff's office.

[35] Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018)(on file with Senate Criminal Justice Committee).
[36] Letter from Dr. William D. Bales and Jennifer M. Brown, to Former Secretary Julie Jones, January 19, 2018 (on file with the Senate Criminal Justice Committee). Dr. Bales provides that Spectrum "produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States."
[37] DOC Program Information.
[38] The criminogenic domains include social awareness (antisocial personality); criminal associates; substance abuse history; family and marital relationships; wellness; criminal thinking or attitude; and employment and education history. Spectrum Video.
[39] The three core program areas include GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors. *Supra* n. 35

    - Review the bond of a defendant who is being accepted into the Bond Program to determine if a reduction of the court-ordered bond, up to and including its entirety, is appropriate.
- Establish procedures for reassessing or terminating defendants from the Bond Program who do not comply with the terms of the individualized supervision plan.

Each county that establishes a Bond Program must use a RAI that is validated by the DOC. A RAI that is used for other pretrial release determinations in accordance with s. 907.0421, F.S., discussed below, and that has previously been validated by the DOC does not need to be validated for use in the Bond Program. Additionally, the bill provides that a Bond Program may continue to operate while the DOC validates the RAI used by such program if the Bond Program is in operation on October 1, 2019.

The bill requires each county that establishes a Bond Program under the bill, or that has an existing Bond Program that operates in compliance with the bill, to provide an annual report to the OPPAGA. The bill requires the reports beginning in 2020 and then by October 1 of each year thereafter. The reports must include:
- The results of the administration of the RAI;
- The programming used for defendants who received the assessment and were accepted into the Bond Program;
- The success rate of the Bond Program; and
- Any savings realized by the county as a result of such defendants being released from custody pending trial.

The bill also requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to compile the results of such county reports and include this data in an independent section of its annual pretrial release report developed and submitted to the President of the Senate and the Speaker of the House of Representatives in accordance with s. 907.044, F.S.

Lastly, the bill provides legislative findings in support of the need for the creation of Bond Programs throughout the state, including the finding that:
- Using evidence-based methods to identify defendants who can successfully comply with specified pretrial release conditions provides a more consistent and accurate assessment of a defendant's risk of noncompliance.
- Both the community and a low-risk defendant are better served when he or she is provided the opportunity to maintain employment and familial responsibilities in the community under a pretrial release plan that ensures the best chance of complying with all pretrial conditions.
- Providing pretrial release to certain defendants who may not otherwise be eligible for pretrial release on unsupervised nonmonetary conditions and who do not have the ability to satisfy the bond imposed by the court is beneficial.
- The creation of Bond Programs will reduce the likelihood that defendants will remain unnecessarily in custody pending trial.

The bill provides the necessary rulemaking authority to the DOC to implement the bill.

This section of the bill is effective October 1, 2019.

Risk Assessment Instruments in Pretrial Decisions (Section 9)

The bill also creates s. 907.0421, F.S., authorizing the chief judge of each judicial circuit, with the concurrence of the sheriff, the SA, and the PD, to administer a RAI in preparation for first appearance or within 72 hours after arrest for use in pretrial release determinations. To utilize the provisions of the bill, the circuit must enter an administrative order to authorize the use of RAIs.

The bill further provides that the RAI must be objective, standardized, and based on analysis of empirical data and risk factors relevant to failure of pretrial release conditions. The bill further provides that the risk factors considered must be those that:

- Evaluate the likelihood of failure to appear in court and the likelihood of rearrest during the pretrial release period; and
- Have been validated through data based on the pretrial population.

For circuits that enter into an administrative order in accordance with s. 907.0421, F.S., the bill requires that the RAI results be used as supplemental factors for the court to consider when determining the appropriateness of first appearance pretrial release. Further, the RAI results must be used to determine the conditions of release which are appropriate based on predicted level of risk and failure of pretrial release conditions. The bill requires the court to impose the least restrictive conditions necessary to reasonably ensure that the defendant will be present at subsequent hearings.

The bill retains the court's sole discretion to impose any pretrial conditions.

The bill requires that the DOC independently validate any RAI used by a circuit in pretrial release determinations. A circuit may begin to use the specified RAI in pretrial release determinations immediately after validation and implementation of training all local staff who will administer the RAI to defendants.

As is required of circuits that establish the above mentioned Bond Program, the bill requires each circuit that establishes an administrative order for the use of a RAI in first appearance pretrial release determinations, beginning in 2020 and every October 1 thereafter, to provide an annual report to the OPPAGA which details:

- The RAI used;
- The results of the administration of the RAI, including the results of defendants who were detained in custody awaiting trial and those who were released from custody awaiting trial;
- The frequency that released defendants failed to appear at one or more subsequent court hearings; and
- The level of risk determined in the RAI associated with a defendant that failed to appear for any court hearings.

The OPPAGA must compile the results of such reports and include the data in an independent section of its annual report developed and submitted to the President of the Senate and the Speaker of the House of Representatives in accordance with s. 907.044, F.S.

The bill also provides findings to support the use of RAIs in considering pretrial release decisions, including the finding that:

- There is a need to use evidence-based methods to identify defendants who can successfully comply with specified pretrial release conditions.
- The use of actuarial instruments that classify defendants according to the likelihood of failure to appear at subsequent hearings or to engage in criminal conduct while awaiting trial provides a more consistent and accurate assessment of a defendant's risk of noncompliance while on pretrial release pending trial.
- Research indicates that using RAIs ensures successful compliance with pretrial release conditions imposed on a defendant and reduces the likelihood of a defendant remaining unnecessarily in custody pending trial.

The bill provides the necessary rulemaking authority to the DOC to implement the bill.

This section of the bill is effective October 1, 2019.

Theft (Sections 2, 3, 14-37, and 64)

There are approximately 3,000 people currently incarcerated in the DOC for felony theft convictions and just over 24,000 people on state community supervision for a felony theft crime in Florida.[40] Since 2000, 37 states have increased the threshold dollar amounts for felony theft crimes.[41] Such increases ensure that associated "criminal sentences don't become more severe over time simply because of natural increases in the prices of consumer goods."[42]

The majority of states (30 states) and the District of Columbia set a $1,000-or-greater property value threshold for felony grand theft. Fifteen states have thresholds between $500 and $950, and five states, including Florida, have thresholds below $500. Between 2003 and 2015, nine states, including Alabama, Louisiana, Mississippi, and Texas, raised their felony thresholds twice.[43]

Property Theft

Section 812.014, F.S., provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.[44]

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[40] Email from Scotti Vaughan, Department of Corrections, Deputy Legislative Affairs Director, February 6, 2019 (on file with Senate Criminal Justice Committee).
[41] Pew Charitable Trusts, *The Effects of Changing State Theft Penalties*, (February 2016), available at http://www.pewtrusts.org/~/media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en; *See also* Alison Lawrence, *Making Sense of Sentencing: State Systems and Policies*, National Conference of State Legislatures, (June 2015), available at http://www.ncsl.org/documents/cj/sentencing.pdf (all sites last visited March 12, 2019).
[42] John Gramlich and Katie Zafft, *Updating State Theft Laws Can Bring Less Incarceration – and Less*, Stateline, Pew Charitable Trusts, (March 1, 2016), available at http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/03/31/updating-state-theft-laws-can-bring-less-incarceration-and-less-crime (last visited March 12, 2019).
[43] *Id.*
[44] Section 812.014(1), F.S.

Second degree petit theft, a second degree misdemeanor, is theft of property valued at less than $100.[45] First degree petit theft, a first degree misdemeanor, is theft of property valued at $100 or more but less than $300.[46]

Third degree grand theft, a third degree felony,[47] is theft of:
- Property valued at $300 or more, but less than $20,000.
- Specified property including, but not limited to:
  - A will, codicil, or testamentary instrument;
  - A firearm;
  - Any fire extinguisher;
  - Any stop sign; or
  - Property taken from a designated, posted construction site;[48] and
- Property from a dwelling or its unenclosed curtilage if the property is valued at $100 or more, but less than $300.[49]

The last time the Legislature increased the minimum threshold property value for third degree grand theft was in 1986.[50] The third degree grand theft provisions related to property taken from a dwelling or its unenclosed curtilage were added in 1996. The petit theft provisions were also amended, including the thresholds, in 1996.[51]

Retail Theft

Section 812.015(1)(d), F.S., defines retail theft as:
- The taking possession of or carrying away of merchandise, property, money, or negotiable documents;
- Altering or removing a label, universal product code, or price tag;
- Transferring merchandise from one container to another; or
- Removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

[45] Section 812.014(3)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to $500. Sections 775.082 and 775.083, F.S.
[46] Section 812.014(2)(e), F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to $1,000. Sections 775.082 and 775.083, F.S.
[47] A third degree felony is punishable by up to 5 years' incarceration and a fine of up to $5,000. Sections 775.082 and 775.083, F.S.
[48] Section 812.014(2)(c), F.S.
[49] Section 812.014(2)(d), F.S.
[50] Chapter 86-161, s. 1, L.O.F. In July 1986, according to the Consumer Price Index Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, $300 dollars had the same buying power as $692.54 dollars did in February 2019. In October 1996, $300 dollars had the same buying power as $479.04 dollars did in February 2019. Consumer Price Index Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, available at https://www.bls.gov/data/inflation_calculator.htm (last visited March 11, 2019).
[51] Chapter 96-388, s. 49, L.O.F.

Retail theft is a third degree felony if the theft involves property valued at $300 or more and the person:

- Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense;
- Commits theft from more than one location within a 48-hour period;[52]
- Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or
- Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.[53]

Retail theft is a second degree felony[54] if the person has previously been convicted of third degree felony retail theft or individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of $3,000.[55] The statute also requires a fine of not less than $50 and no more than $1,000 for a second or subsequent conviction for petit theft from a merchant, farmer, or transit agency.[56]

The threshold for a third degree felony retail theft was created by the Legislature in 2001.[57]

Reclassification of Theft Offenses

Certain theft offenses are reclassified to the next higher degree offense if the person committing the offense has previous theft convictions. A petit theft offense is reclassified to a third degree felony, if the person has two previous convictions of any theft.[58] A third degree felony retail theft offense is reclassified to a second degree felony if the person has a previous retail theft in violation of s. 812.015(8), F.S.[59]

There are no time limits between theft convictions related to theft crime level and penalty enhancements.

Juveniles who are adjudicated delinquent for theft offenses are considered to have been "convicted" of theft and are treated the same as adults for purposes of these penalty enhancements.[60]

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[52] In the first two instances, the amount of each individual theft is aggregated to determine the value of the property stolen. Section 812.015(8)(a) and (b), F.S.
[53] Section 812.015(8), F.S.
[54] A second degree felony is punishable by up to 15 years in state prison, a fine of up to $10,000, or both. Sections 775.082 and 775.083, F.S.
[55] Section 812.015(9), F.S.
[56] Section 812.015(2), F.S.
[57] Chapter 01-115, s. 3, L.O.F. In July 2001, $300 dollars had the same buying power as $426.03 dollars did in February 2019. *Supra* n. 50.
[58] Section 812.014(3)(c), F.S.
[59] Section 812.015(9)(a), F.S.
[60] *T.S.W. v. State*, 489 So. 2d 1146 (Fla. 2d DCA 1986); *R.D.D. v. State*, 493 So. 2d 534 (Fla. 5th DCA 1986).

Effect of the Bill

Property Theft (Section 2)

The bill amends s. 812.014(2)(c), F.S., increasing the minimum threshold amounts for a third degree felony grand theft from $300 to $1,500. For property taken from a dwelling or enclosed curtilage, the theft threshold amounts are modified from $100 or more, but less than $300, to $1,500 or more, but less than $5,000. The first degree misdemeanor petit theft threshold amount is modified from $100 or more, but less than $300, to $500 or more, but less than $1,500.

The bill also deletes a will, codicil, or other testamentary document and a fire extinguisher from the list of property that constitute a third degree grand theft, regardless of the value of the property taken.[61]

Lastly, the bill modifies the enhancement statute providing that a first degree petit theft becomes a third degree felony only if:

- The offender has previously been convicted two or more times *as an adult* for any theft; and
- The most recent subsequent petit theft offense occurred within three years of the expiration of the offender's sentence for the most recent theft conviction.

Retail Theft (Section 3)

The bill amends s. 812.015, F.S., to increase the property value of third degree felony retail theft from $300 or more, to $1,500 or more. The bill enhances retail theft to a second degree felony only if:

- The offender has previously been convicted of retail theft *as an adult*; and
- The subsequent retail theft offense occurred within three years of the expiration of the offender's sentence for the most recent retail theft conviction.

Value and Periodic Threshold Adjustment (Sections 2 and 3)

The bill amends ss. 812.014 and 812.015, F.S., providing that the determination of the value of property taken in violation of these sections must be based on the fair market value of the property at the time the taking occurred.

The bill also amends ss. 812.014 and 812.015, F.S., requiring the OPPAGA to do a study of the theft thresholds every fifth year and make recommendations regarding whether changes to the theft thresholds are appropriate. The OPPAGA is required to provide a report of the findings to the Governor, President of the Senate, and Speaker of the House of Representatives.

The bill amends s. 921.0022, F.S., to conform the Criminal Punishment Code offense severity ranking chart to changes made by the bill. The bill reenacts a number of sections to incorporate changes made by the act.

These sections of the bill are effective October 1, 2019.

[61] These offenses will now be classified by the property value rather than automatically qualifying as a third degree grand theft.

Drug Offenses (Sections 4-6, 13, 14, 38-50, and 64-66)

Punishment of Prohibited Drug Acts

Drug Possession - General

Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, and delivery of a controlled substance.[62] The penalty for violating s. 893.13, F.S., can depend on the act committed, the substance and quantity of the substance involved, and the location in which the violation occurred. For example, selling a controlled substance listed in s. 893.03(1)(c), F.S., which includes many synthetic controlled substances, is a third degree felony.[63]

Drug Offenses in a Drug Free Zone

Florida law enhances the penalty for certain controlled substances offenses when those offenses are committed within 1,000 feet of certain places or facilities.[64] These protected areas are sometimes referred to as "drug-free zones" (DFZ).[65] The DFZ provisions do not require either intent to commit a drug offense in a DFZ[66] or knowledge that the offense is being committed within a DFZ.[67] Florida's current DFZs are created in, on, or within 1,000 feet of:

- The real property comprising a child care facility[68] between the hours of 6 a.m. and midnight, if the owner or operator of the facility posts a sign according to specifications set forth in s. 893.13, F.S.;[69]
- The real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight;[70]
- The real property comprising a state, county, or municipal park;[71]
- The real property comprising a community center;[72]
- The real property comprising a publicly owned recreational facility;[73]

[62] *See* s. 893.03(1)-(5), F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the schedules. The most important factors in determining the schedule classification of a substance are the "potential for abuse" of the substance and whether there is a currently accepted medical use for the substance in the United States.
[63] *See e.g.*, s. 893.13(1)(a) and (b), F.S.
[64] Section 893.13(1), F.S.
[65] The DFZ provisions discussed in this analysis differ from similarly-named provisions enacted by local ordinance that punish with trespassing penalties those who engage in drug activity in designated zones.
[66] *Spry v. State*, 912 So. 2d 384, 386 (Fla. 2d DCA 2005).
[67] *Dickerson v. State*, 783 So. 2d 1144, 1148 (Fla. 5th DCA 2001), *review denied*, 819 So. 2d 134 (Fla. 2002).
[68] Section 402.302(2), F.S., provides that a "child care facility" includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. "Child care facility" does not include: public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025, F.S.; summer camps having children in full-time residence; summer day camps; bible schools normally conducted during vacation periods; and operators of transient establishments, as defined in ch. 509, F.S., which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel of the establishment are screened according to the level 2 screening requirements of ch. 435, F.S. *Id*.
[69] Section 893.13(1)(c), F.S.
[70] *Id*.
[71] *Id.* There is not a time restriction with this provision.
[72] *Id.* "Community center" means a facility operated by a nonprofit community-based organization for the provision of recreational, social, or educational services to the public. *Id.* There is not a time restriction with this provision.
[73] *Id*. There is not a time restriction with this provision.

- The real property comprising a public or private college, university, or other postsecondary educational institution;[74]
- A physical place of worship at which a church or religious organization regularly conducts religious services;[75]
- A convenience business in operation between the hours of 11 p.m. and 5 a.m.;[76]
- The real property comprising a public housing facility; [77] and
- The real property comprising an assisted living facility.[78]

Section 893.13(1)(a), F.S., punishes the sale, manufacture, or delivery, or possession with intent to sell, manufacture, or deliver, a controlled substance as a first degree misdemeanor, third degree felony, or second degree felony, depending upon the type of controlled substance involved in the drug activity.[79] However, when this drug activity is committed in, on, or within 1,000 feet[80] of certain places and facilities, the degree of the offense is increased by one degree and the penalty is enhanced.

Drug Trafficking

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain controlled substances in a statutorily-specified quantity. Drug trafficking offenses are first degree felonies[81] and are subject to a mandatory minimum term of imprisonment and a mandatory fine, which is determined by the weight or quantity of the substance.[82] For example, trafficking in 28 grams or more, but less than 200 grams, of cocaine, a first degree felony, is punishable by a 3-year mandatory minimum term

[74] Section 893.13(1)(d), F.S. There is not a time restriction with this provision.
[75] Section 893.13(1)(e), F.S.
[76] *Id.* Section 812.171, F.S., defines a "convenience business" as any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, and that is open for business at any time between the hours of 11 p.m. and 5 a.m. The term "convenience business" does not include: a business that is solely or primarily a restaurant; a business that always has at least five employees on the premises after 11 p.m. and before 5 a.m.; and a business that has at least 10,000 square feet of retail floor space.
[77] Section 893.13(1)(f), F.S. "Real property comprising a public housing facility" means real property, as defined in s. 421.03(12), F.S., of a public corporation created as a housing authority pursuant to part I of ch. 421, F.S. *Id.* There is not a time restriction with this provision.
[78] Section 893.13(1)(h), F.S. There is not a time restriction with this provision. Section 429.02(5), F.S., defines an "assisted living facility" as any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.
[79] For example, s. 893.13(1)(a)1., F.S., provides that selling cocaine is a second degree felony, but s. 893.13(1)(a)2., F.S., provides that selling cannabis is a third degree felony. Penalties are generally greatest for drug activity (like drug sales) that involve Schedule 1 and 2 controlled substances.
[80] Distance is measured "as the crow flies, not as the car drives." *Howard v. State*, 591 So. 2d 1067, 1068 (Fla. 4th DCA 1991). For example, with the K-12 school DFZ, distance is measured in a straight line from the boundary of the school's real property.
[81] A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to $10,000. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Sections 775.082 and 775.083, F.S. Section 893.135, F.S., prescribes specific mandatory fines which are greater than the $10,000 fine prescribed in s. 775.083, F.S., for a first degree felony. However, s. 772.083, F.S., authorizes any higher amount if specifically authorized by statute.
[82] *See* s. 893.135, F.S.

of imprisonment and a mandatory fine of $50,000.[83] Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 7-year mandatory minimum term of imprisonment and a mandatory fine of $100,000.[84]

Drug Trafficking Exception

Pharmaceutical drugs are approved by the Food and Drug Administration for many medical uses. Some of these drugs contain a controlled substance described in s. 893.135, F.S. However, s. 893.135, F.S., does not apply to possession, sale, etc., of a pharmaceutical drug when that possession, sale, etc., is authorized by ch. 893, F.S. (Controlled Substance Act), or ch. 499, F.S. (Florida Drug and Cosmetic Act).[85]

In the case that a pharmaceutical drug described above is unlawfully possessed, sold, etc., in dosage units (pills, tablets, etc.), the dosage units must be weighed to determine if it meets the threshold gram weight for charging drug trafficking. A pharmaceutical drug is considered a mixture when the dosage unit contains a controlled substance described in s. 893.135, F.S., and other ingredients that are not a controlled substance and the weight for purposes of determining the threshold amount is the total weight of the pill, including both controlled and non-controlled substance ingredients.[86]

Criminal Punishment Code

The Criminal Punishment Code[87] (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10).[88] Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates and points may also be added or multiplied for other enumerated factors. The lowest permissible sentence is when the total sentence points are equal to or less than 44 points is any nonstate prison sanction, unless the court determines that a prison sentence is appropriate. If the total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by a specified formula.[89] Absent mitigation,[90] the permissible sentencing range under

[83] Section 893.135(1)(b)1.a., F.S.
[84] Section 893.135(1)(b)1.b., F.S.
[85] *See* s. 893.135(1), F.S.; *See also O'Hara v. State*, 964 So.2d 839, 841 (Fla. 2d. DCA 2007).
[86] Section 893.02(16), F.S., defines a "mixture" as "any physical combination of two or more substances, including, but not limited to, a blend, an aggregation, a suspension, an emulsion, a solution, or a dosage unit, whether or not such combination can be separated into its components by physical means, whether mechanical or thermal." Section 893.135(6), F.S., provides that "[a] mixture, as defined in s. 893.02, containing any controlled substance described in this section includes, but is not limited to, a solution or a dosage unit, including but not limited to, a gelatin capsule, pill, or tablet, containing a controlled substance. For the purpose of clarifying legislative intent regarding the weighing of a mixture containing a controlled substance described in this section, the weight of the controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture. If there is more than one mixture containing the same controlled substance, the weight of the controlled substance is calculated by aggregating the total weight of each mixture."
[87] 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.
[88] 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.
[89] Section 921.0024, F.S., provides the formula is the total sentence points minus 28 times 0.75.
[90] 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.

the Code is generally the lowest permissible sentence up to and including the maximum penalty provided under s. 775.082, F.S.[91]

Mandatory Minimum Sentences

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the Criminal Punishment Code and any mandatory minimum penalties apply."[92] However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

Effect of the Bill

Drug Free Zones (Section 4)

The bill reduces the DFZ around parks, community centers, publicly owned recreational facilities, colleges and universities, public housing facilities, and convenience businesses from 1,000 feet to 250 feet. The bill does not reduce the distance for DFZs around K-12 schools, child care facilities, places of worship, or assisted living facilities.

The bill also provides that only the sale or manufacture of a controlled substance in a DFZ is subject to an enhanced penalty under s. 893.13, F.S. Currently, controlled substance acts applicable to DFZ violations include controlled substance sales, manufacture, delivery, and possession with intent to sell, manufacture, or deliver.

The bill also amends s. 921.0024, F.S., amending the descriptions of DFZ violations ranked in the chart to reflect the changes made by the bill, but does not change the ranking level.

Trafficking in Pharmaceuticals (Section 5)

The bill creates a new drug trafficking offense entitled "trafficking in pharmaceuticals," which prohibits a person from knowingly selling, purchasing, delivering, or bringing into this state, or knowingly being in actual or constructive possession of, 120 or more dosage units containing a controlled substance described in s. 893.135, F.S.

The new "trafficking in pharmaceuticals" offense contains 3, 7, 15, and 25-year mandatory minimum terms of imprisonment and mandatory fines. The mandatory minimum term and mandatory fine are determined by the specified dosage unit range applicable to dosage units trafficked. Specifically, the bill provides for the following penalties:

- If the quantity involved is 120 or more dosage units, but less than 500 dosage units, a person is sentenced to a mandatory minimum term of imprisonment of 3 years and is ordered to pay a fine of up to $25,000;

[91] 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. Section 921.0024(2), F.S.
[92] Fla. R. Crim. P. 3.704(d)(26).

- If the quantity involved is 500 or more dosage units, but less than 1,000 dosage units, a person is sentenced to a mandatory minimum term of imprisonment of 7 years and is ordered to pay a fine of up to $50,000;
- If the quantity involved is 1,000 or more dosage units, but less than 5,000 dosage units, a person is sentenced to a mandatory minimum term of imprisonment of 15 years and is ordered to pay a fine of up to $100,000; and
- If the quantity involved is 5,000 or more dosage units, a person is sentenced to a mandatory minimum term of imprisonment of 25 years and is ordered to pay a fine of up to $250,000.

A person who unlawfully possesses, sells, etc., 120 or more *dosage units* in violation of this new offense must be prosecuted under the new provision rather than any other drug trafficking offense. The bill does not affect prosecution of any current drug trafficking offense provided the controlled substance is not contained in a dosage unit.

If there are fewer than 120 dosage units involved in the trafficking, the person may not be charged under any drug trafficking provision, but can be charged under s. 893.13, F.S.[93]

Some drug offenders could receive a mandatory minimum term and/or mandatory fine under the bill that is substantially less than he or she could receive under current law. [94] Another difference between the new trafficking offense and current trafficking offense results from the lack of an escalation in the severity level ranking chart based on the dosage unit tiers and the fact that the bill does not rank the new offense.[95] This could impact the scored lowest permissible sentence (in prison months), but would not preclude the court from imposing a sentence up to and including the maximum of 30 years.[96]

Mandatory Minimum Drug Trafficking Departure (Sections 6 and 13)

The bill also amends s. 893.135, F.S., authorizing a court to impose a sentence other than the mandatory minimum term of imprisonment and mandatory fine for a violation of drug trafficking if the court finds on the record that the person did not:

- Engage in a continuing criminal enterprise as defined in s. 893.20(1), F.S.
- Use or threaten violence or use a weapon during the commission of the crime.
- Cause a death or serious bodily injury.

The bill also amends s. 893.03, F.S., conforming a cross-reference to changes made by the bill, and reenacts a number of provisions to incorporate changes made by the act.

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[93] *See* s. 893.13, F.S. Penalties in s. 893.13, F.S., generally do not involve a mandatory minimum term of imprisonment.
[94] Gram weight of a dosage unit will vary depending on the pharmaceutical drug and its constituents and gram weight thresholds for trafficking will vary depending on the controlled substance in the dosage units. For example, the OPPAGA determined that 215 oxycodone pills, each weighing 0.13 grams, equals 28 grams. Under current law, trafficking in 28 grams of these pills would require a 15-year mandatory minimum term, but under the bill, 215 dosage units (pills) would require a 3-year mandatory term. The new trafficking in pharmaceuticals offense requires that a fine be imposed up to a specified cap (e.g., "fine of up to $100,000"). Current trafficking offenses require a specified fine be imposed (e.g., "fine of 100,000"); there is no mandatory fine range. *See also Opinions Are Mixed About Sentencing Laws for Painkiller Trafficking*, Report No. 12-02 (January 2012), at p. 5 (Exhibit 6), OPPAGA, available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1202rpt.pdf (last visited on March 12, 2019).
[95] Section 921.0023(3), F.S., provides that a first degree felony that is not ranked in the chart defaults to a level 7 ranking.
[96] Section 775.082, F.S.

This provision, including the cross-reference made to s. 893.03, F.S., is effective July 1, 2019.

Alcohol and Drug Overdoses (Sections 1 and 7)

The Legislature enacted Florida's "911 Good Samaritan Act" (Act) in 2012 to encourage people to seek medical assistance for persons having a drug overdose.[97] The Act provides that a person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance under ch. 893, F.S.[98] Similar immunity is provided for a person who experiences a drug-related overdose and is in need of medical assistance.[99] Most other states have similar immunity laws, but one notable common component in other states' laws which Florida's statute lacks is a prohibition on the arrest of a person covered by the immunity.[100]

Data on Drug-Overdose Deaths in Florida

A recent report by the Florida Medical Examiners Commission (FMEC) cited statistics that 206,168 deaths occurred in Florida during 2017.[101] Of the cases seen by medical examiners, toxicology results determined that ethanol (ethyl alcohol) and/or various controlled substances were present at the time of death in 12,439 cases.[102]

Some of the general statewide trends[103] noted by the FMEC in its report when comparing statewide trends for 2017 to 2016 include:

- Total drug-related deaths increased by 4.0 percent (529 more);
- 6,932 individuals (4.0 percent more) died with one or more prescription drug in their system;[104]
- 3,684 individuals (4.0 percent more) died with at least one prescription drug in their system that was identified as the cause of death;[105]
- The seven most frequent drugs found in decedents were ethyl alcohol (5,258), benzodiazepines (5,064, including 1,889 alprazolam), cocaine (3,129), cannabinoids (2,367), fentanyl (2,088), morphine (1,992), and fentanyl analogs (1,685);[106] and

[97] Ch. 2012-36, L.O.F.
[98] Section 893.21(1), F.S.
[99] Section 893.21(2), F.S.
[100] *See* National Conference of State Legislatures, *Drug Overdose Immunity and Good Samaritan Laws*, available at http://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx (last visited on March 14, 2019).
[101] Florida Medical Examiners Commission, FDLE, *Drugs Identified in Deceased Persons by Florida Medical Examiners – 2017 Annual Report*, November 2018, p. i, available at http://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2017-Annual-Drug-Report.aspx (last visited on March 13, 2019).
[102] *Id.*
[103] *Id.* at p. ii.
[104] The drugs were identified as both the cause of death and present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. *Id.*
[105] These drugs may have been mixed with other prescription drugs, illicit drugs, and/or alcohol. *Id.*
[106] Since heroin is rapidly metabolized to morphine, this may lead to a substantial over-reporting of morphine-related deaths as well as significant under-reporting of heroin-related deaths. *Id.*

- The drugs that caused the most deaths were cocaine (2,012), fentanyl (1,743), fentanyl analogs (1,588), benzodiazepines (1,374, including 791 alprazolam deaths), morphine (1,285), ethyl alcohol (975), and heroin (944).[107]

Effect of the Bill

Alcohol Overdose Immunity (Section 1)

The bill creates s. 562.112, F.S., which does the following:

- Grants immunity from *arrest*, charge, prosecution, or penalty for:
  - Certain alcohol-related offenses[108] to a person who gives alcohol to an individual under 21 years of years of age and who, acting in good faith, seeks medical assistance for the individual experiencing, or believed to be experiencing, an alcohol-related overdose, if the evidence for such offense was obtained as a result of the person's seeking medical assistance; and
  - Underage alcohol possession[109] to a person who experiences, or has a good faith belief that he or she is experiencing, an alcohol-related overdose and is in need of medical assistance, if the evidence for such offense was obtained as a result of the person's seeking medical assistance;
- Requires the person who gives alcohol to an individual under 21 years of age and seeks medical assistance for this individual to remain at the scene until emergency medical services personnel arrive and cooperate with such personnel and law enforcement officers at the scene; and
- Provides that the immunity protection under s. 562.112, F.S., may not be grounds for suppression of evidence in other criminal prosecutions.

This section of the bill is effective July 1, 2019.

Drug Overdose Immunity (Section 7)

The bill also amends s. 893.21, F.S., to:

- Grant immunity from *arrest*, charge, prosecution, or penalty for:
  - Homicide resulting from unlawful distribution of a specified controlled substance,[110] various controlled substance offenses,[111] drug trafficking, or various drug paraphernalia offenses[112] to a person acting in good faith who seeks medical assistance for an individual experiencing, *or believed to be experiencing*, a drug-related overdose, if the evidence for such offense was obtained as a result of the person's seeking medical assistance; and
  - Various controlled substance offenses, drug trafficking, or various drug paraphernalia offenses, to a person who experiences, *or has a good faith belief that he or she is experiencing*, a drug-related overdose and is in need of medical assistance, if the

[107] Fentanyl analogs (94 percent), heroin (89 percent), fentanyl (84 percent), morphine (65 percent), and cocaine (64 percent) were listed as causing death in more than 50 percent of the deaths in which these drugs were found. *Id.*
[108] Sections 562.11, F.S. (selling alcohol to a person under 21 years of age) and 562.111, F.S. (underage possession of alcohol).
[109] Section 562.111, F.S.
[110] Section 782.04(1)(a)3., F.S.
[111] Section 893.13, F.S.
[112] Section 893.147, F.S.

evidence for such offense was obtained as a result of the person's seeking medical assistance;

- Remove reference to immunity from charge, etc., for possession of a controlled substance;
- Prohibit both persons previously described from being penalized for a violation of a condition of probation, parole, or pretrial release, if the evidence of such violation was obtained as a result of seeking medical assistance; and
- Provide that the immunity protection under s. 893.21, F.S., may not be grounds for suppression of evidence in other criminal prosecutions.

This section of the bill is effective July 1, 2019.

Extension on Confinement (Sections 10 and 51-53)

A sentence imposed by the sentencing judge reflects the length of actual time to be served, lessened only by the application of gain-time, 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.[113]

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. 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 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;[114]
- Work at paid employment;[115]
- Participate in an educational or training program;[116]
- Voluntarily serve a public or nonprofit agency or faith-based service group in the community;[117] or
- Participate in a residential or nonresidential rehabilitative program.[118]

[113] Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.
[114] 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.
[115] 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.
[116] Section 945.091(1)(b), F.S.
[117] *Id*.
[118] 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.

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.[119]

Prior to July 1, 1996, a fourth provision, known as the Supervised Community Release Program, existed that allowed inmates to be released on an extension of confinement to participate in a rehabilitative community reentry program on conditional release.[120] 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.[121]

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.[122] 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.[123] The only forms of gain-time that can currently[124] be earned are incentive gain-time,[125] meritorious gain-time,[126] and educational achievement gain-time.[127]

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.[128] The maximum sentence expiration date represents the date when the sentence or combined sentences imposed

[119] Section 945.091(1), F.S.
[120] Section 945.091(1)(d), F.S. (1995). This paragraph was repealed in ch. 96-312, L.O.F.
[121] *Id*.
[122] 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 is not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits an inmate committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.
[123] Section 944.275(4)(f), F.S.
[124] 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. Chapter 93-406, L.O.F.
[125] Section 944.275(4)(b), F.S, provides incentive gain-time 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. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.
[126] Section 944.275(4)(c), F.S., provides that meritorious gain-time 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. 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.
[127] Section 944.275(4)(d), F.S., provides that educational gain-time 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.
[128] Section 944.275(3)(c), F.S.

on a prisoner will expire. To calculate the maximum sentence expiration date, the DOC reduces the total time to be served by any time lawfully credited.[129]

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.[130] 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.[131]

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.[132] 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.[133]

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

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[129] Section 944.275(2)(a), F.S.
[130] Section 944.275(3)(a), F.S.
[131] *Id*. *See also* s. 944.275(4)(b), F.S.
[132] Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.
[133] Section 948.10(1), F.S. *See also* DOC, *Succeeding on Community Control*, available at http://www.dc.state.fl.us/cc/ccforms/Succeeding-on-Community-Control.pdf (last visited on March 12, 2019). A Community Control Offender Schedule and Daily Activity Log must be submitted weekly with a proposed schedule for the week and the controllee'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.

for a person who has "absconded from a rehabilitative community reentry program before the offender has satisfied his or her sentence or combined sentences."

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.

Effect of the Bill

The bill amends s. 945.091, F.S., to allow an inmate to participate in a supervised community release program (Program) as an extension of the inmate's confinement, similar to the former Supervised Community Release Program discussed above. The Program release term may begin 180 days before the inmate's provisional or tentative release date and must include active EM and community control as defined in s. 948.001, F.S. The bill requires the DOC to administer a RAI to determine an inmate's eligibility for this program. The bill provides that participation in and conditions of the Program will be as proscribed in department rule.

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 Program 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.

The bill allows a law enforcement officer or probation officer to arrest an inmate without a warrant in accordance with s. 948.06(1), F.S., if there are reasonable grounds to believe the inmate violated the terms of the Program. A law enforcement officer that arrests an inmate for a violation of the conditions of the Program is required to report the inmate's alleged violations to the supervising probation office or the DOC's emergency action center for disposition of disciplinary charges as proscribed in the DOC rules.

The bill provides that an inmate released on the Program in accordance with this provision is eligible to earn and lose gain-time as proscribed in law and rule, which includes the prohibition on an inmate earning or receiving gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.[134] However, the bill provides the inmate is not counted as part of the inmate population and the approved community-based housing in which the inmate lives is not counted in capacity figures for the prison system.

The bill reenacts ss. 944.516, 945.092, and 946.503, F.S., incorporating changes made by the act.

This section of the bill is effective October 1, 2019.

[134] *See* s. 944.275(4)(f), F.S.

Conditional Medical Release (Sections 11, 12, 54-63, and 65-66)

An inmate may be released from imprisonment prior to serving 85 percent of his or her sentence if released on conditional medical release (CMR).[135] CMR, which was created by the Florida Legislature in 1992,[136] is a discretionary release of inmates who are "terminally ill" or "permanently incapacitated" and who are not a danger to themselves or others.[137] The Florida Commission on Offender Review (FCOR) reviews eligible inmates for release under the CMR program.[138]

Eligible inmates include inmates 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 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.[139]

The release of an inmate on CMR is for the remainder of the inmate's sentence and requires periodic medical evaluations at intervals determined by the FCOR at the time of release.[140] Supervision can be revoked and the offender returned to prison if the FCOR determines:

- That a violation of any condition of the release has occurred; or
- His or her medical or physical condition improves to the point that the offender no longer meets the CMR criteria.[141]

Section 947.141, F.S., provides a hearing process for determining whether a CMR releasee must be recommitted to the DOC for a violation of release conditions or a change in medical status.

The FCOR has approved and released 62 inmates for CMR in the last three fiscal years, including 21 in FY 2017-18, 14 in FY 2016-17, and 27 in FY 2015-16.[142] The DOC has recommended 124 inmates for release in the past three fiscal years, including 39 in FY 2017-18, 34 in FY 2016-17, and 51 in FY 2015-16.[143]

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[135] Section 947.149, F.S.
[136] Chapter 92-310, L.O.F.
[137] Florida Commission on Offender Review, *Release Types, Post Release*, available at https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease (last visited March 12, 2019).
[138] Section 947.149(3), F.S.
[139] Section 947.149(1), F.S. Section 947.149(2), F.S., further provides that inmates sentenced to death are ineligible for CMR
[140] Section 947.149(4), F.S.
[141] Section 947.149(5), F.S.
[142] Email from Alexander Yarger, Legislative Affairs Director, Florida Commission on Offender Review, RE: Conditional Medical Release Data (attachment on file with the Senate Committee on Criminal Justice)(December 15, 2017). *See also* FCOR Annual Report FY 2017-18, p. 8, available at https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf (last visited March 12, 2019).
[143] *Id*.

Effect of the Bill

The bill amends s. 947.149, F.S., creating a new CMR designation entitled "inmate with a debilitating illness." The designation "inmate with a debilitating illness" applies to an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or others.

Additionally, the current designation of "terminally ill inmate" is amended to apply to inmates whose death is expected within 12 months, rather than imminent. The current designation of permanently incapacitated inmate is not altered.

The bill also amends s. 947.005, F.S., defining a new term, "conditional medical release," to mean the release from a state correctional institution or facility as provided in this chapter for a medical or physical condition pursuant to s. 947.149, F.S.

The bill reenacts a number of sections incorporating changes made by these provisions of the act.

This section of the bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Drug and Alcohol Related Overdose Immunity (Sections 1 and 7)

To the extent that the bill encourages people to seek medical assistance for drug and alcohol overdoses, the bill will increase medical costs. These additional costs will likely be borne by the person receiving treatment, insurers, health care providers, and the state.

Extension on Confinement (Section 10)

The bill authorizes the DOC to release a specified inmate into the community on supervised release up to 180 days before the end of his or her sentence. This will provide private companies the opportunity to hire an inmate earlier than without the act.

C. Government Sector Impact:

The Office of Economic and Demographic Research (EDR) has provided a preliminary estimate for the fiscal impact of this bill and estimates it will have a negative significant impact (i.e., a decrease of more than 25 prison beds).[144]

Bond Programs (Sections 8 and 9)

The bill requires the DOC to validate the RAI used in both of the programs created in the bill. The DOC reports in its analysis of SB 534, which has identical provisions to this bill, that there is no direct impact on it.[145] Additionally, the OPPAGA reports that the bill does not have an impact.[146]

A county may implement a Bond Program, which allows an eligible defendant to be released on active supervision and some form of bond or ROR while awaiting trial. As a result, the county's costs to supervise the defendants may be decreased from the full daily county jail per diem to the much lower per diem rates for active EM or continuous alcohol monitoring technologies, or both.

Theft (Sections 2 and 3)

Property Theft (Section 2)

The EDR provides that this portion of the bill relating to specified property theft offenses will likely have a negative significant prison bed impact.[147]

[144] The EDR, *SB 1334 – Criminal Justice, Preliminary Estimate*, p. 6 (on file with the Senate Criminal Justice Committee)(hereinafter cited as "SB 1334 Preliminary Estimate").
[145] The DOC, *SB 534 Agency Analysis*, January 31, 2019 (on file with the Senate Committee on Criminal Justice).
[146] The OPPAGA, *SB 534 Agency Analysis*, February 11, 2019 (on file with the Senate Committee on Criminal Justice).
[147] SB 1334 Preliminary Estimate, p. 2-3.

Retail Theft (Section 3)

The EDR provides that this provision of the bill relating to specified retail theft offenses will likely have a negative significant prison bed impact.[148]

Drug Offenses

DFZs (Section 4)

The EDR provides that this provision of the bill relating to modifying the distances for specified DFZs will likely have a negative significant impact.[149]

Trafficking in Pharmaceuticals (Section 5)

The EDR provides that this provision of the bill relating to the new trafficking offense will likely have a negative indeterminate prison bed impact (i.e., an unquantifiable decrease of prison beds).[150]

Mandatory Minimum Departure (Section 6)

The EDR provides that this provision of the bill relating to departure from drug trafficking mandatory minimum sentences will likely have a negative significant prison bed impact.[151]

Alcohol and Drug Related Overdose Immunity (Sections 1 and 7)

The EDR provides that these provisions of the bill related to alcohol- or drug-related overdose immunity will likely have a negative indeterminate prison bed impact.[152]

Extension on Confinement (Section 10)

The EDR provides that this provision of the bill relating to the supervised community release will likely have a negative indeterminate prison bed impact.[153]

The DOC further reports that the fiscal impact of the bill will vary based on the number of released inmates placed on active EM, the rate at which such inmates pay the EM costs, and the type of facility[154] from which Program participants are released. The current per diem rate for inmates placed on EM who are assigned to community release centers is $3.90 per day for contracted facilities and $5.29 for facilities operated by the DOC. The variable per diem rate is $20.04, which is associated with the individual

[148] SB 1334 Preliminary Estimate, p. 3.
[149] SB 1334 Preliminary Estimate, p. 3-4.
[150] SB 1334 Preliminary Estimate, p. 4-5.
[151] SB 1334 Preliminary Estimate, p. 5.
[152] SB 1334 Preliminary Estimate, p. 1-2.
[153] SB 1334 Preliminary Estimate, p. 5-6.
[154] The DOC, SB 338 Agency Analysis, p. 4, January 31, 2019 (on file with the Senate Criminal Justice Committee) (hereinafter cited as "The DOC SB 338 Analysis"). There are different per diems for each type of facility, including community release facilities, major institutions, and work camps, based upon the level of security and services provided at the facility.

inmate care costs such as medical, food, inmate clothing, and personal care items. The DOC reports that the average per diem for community supervision in FY 2017-18 was $5.47. Therefore, the DOC will likely pay the EM per diem rate, rather than the variable per diem rate, for the inmates released to this Program on EM.[155] The EM per diem rate would be paid for the designated number of days with which the inmate was out in the community instead of housed in an institution, which could result in a cost savings to the DOC.[156]

The DOC requests the creation of one full-time equivalent position, entitled "Correctional Programs Consultant," to oversee, provide guidance, and coordinate the statewide implementation and administration of the Program.[157] The DOC projects the funding for the position to be $69,949 recurring General Revenue funds and $4,429 nonrecurring General Revenue funds.[158] Finally, the DOC states that there could be a need for additional correctional probation officer positions depending upon the number of participants in the program.[159]

Conditional Medical Release (Sections 11 and 12)

The EDR provides that this provision of the bill relating to conditional medical release will likely have a negative significant prison bed impact.[160]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Most of the changes proposed by the overdose immunity provisions are laws of at least one other state,[161] and the inclusion of arrests in s. 893.21, F.S., was a recommendation of Florida's Statewide Drug Policy Advisory Council in 2016.[162] However, it appears that there are no other states that provide overdose immunity from criminal arrest, charge, prosecution, or penalty for a law comparable to s. 782.04(1)(a)3., F.S., which punishes first degree murder involving unlawful distribution of a specified controlled substance,[163] or for a law comparable to s. 893.135, F.S.,

[155] *Id*.
[156] *Id*.
[157] The DOC SB 338 Analysis, p. 4.
[158] *Id*., p. 6.
[159] *Id*., p. 4.
[160] SB 1334 Preliminary Estimate, p. 6.
[161] Provided are a few examples: Georgia law (Ga. Code Ann. s. 16-13-5) includes arrests; Colorado law (Colo. Rev. Stat. s. 18-1-711) includes alcohol overdose; New York law (N.Y. Penal Law s. 220.78) provides immunity for possession of alcohol by a person under 21 years of age; Mississippi law (Miss. Code. Ann. s. 41-29-149.1) provides immunity for drug paraphernalia offenses; and Tennessee law (Tenn. Code Ann. s. 63-1-156) provides immunity for pretrial, probation, or parole violations.
[162] *Statewide Drug Policy Advisory Council – 2016 Annual Report* (December 1, 2016), p. 15, Florida Department of Health, available at http://www.floridahealth.gov/provider-and-partner-resources/dpac/DPAC-Annual-Report-2016-FINAL.pdf (last visited on March 14, 2019).
[163] *See e.g.* 720 Ill. Comp. Stat. Ann. 570/414, which states its overdose immunity law is not intended to prevent arrest or prosecution for drug-induced homicide.

which punishes drug trafficking.[164] Overdose immunity laws generally provide such immunity for certain controlled substance possession and paraphernalia offenses.[165]

The bill appears to effectively bar arrest or prosecution of a person who distributed a controlled substance to a user that was the proximate cause of the user's death, but who also provided medical assistance to the user in accordance the bill.

Additionally, the bill is silent on law enforcement's protection from a cause of action resulting from an arrest related to an alcohol or drug overdose that is made in good faith.[166]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 812.014, 812.015, 893.13, 893.135, 893.21, 945.091, 947.005, 947.149, 893.03, and 921.0022.

This bill creates the following sections of the Florida Statutes: 562.112, 907.042, and 907.0421.

This bill reenacts the following sections of the Florida Statutes: 95.18, 316.1935, 373.6055, 397.4073, 400.9935, 409.910, 414.095, 489.126, 538.09, 538.23, 550.6305, 627.743, 634.319, 634.421, 636.238, 642.038, 705.102, 718.111, 772.12, 775.084, 775.087, 782.04, 784.07, 790.235, 794.0115, 810.02, 812.014, 812.015, 812.0155, 812.14, 893.13, 893.135, 893.1351, 893.138, 900.05, 903.133, 907.041, 921.0024, 932.701, 943.051, 944.516, 944.605, 944.70, 945.092, 946.503, 947.13, 947.141, 985.11, and 985.557.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on March 18, 2019:
The Committee Substitute:

- Corrects the term "offender" to "defendant" in the legislative findings associated with the provision authorizing the use of risk assessment instruments in pretrial determinations; and
- Modifies the supervised community release program to allow an inmate to be released up 180 days prior to release, rather than 90 days.

B. Amendments:

None.

[164] The act of "trafficking" can include possession, purchase, sale, manufacture, delivery, or importation. *See generally* s. 893.135, F.S.
[165] *Drug Overdose Immunity and Good Samaritan Laws* (June 5, 2017), National Conference of State Legislatures, available at http://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx (last visited on February 11, 2019).
[166] The FDLE, *SB 1334 Agency Analysis*, March 11, 2019, p. 4 (on file with Senate Criminal Justice Committee).