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:	PCS/CS/SB 1308 (695928)
INTRODUCER:	Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee; and Senators Brandes, Bracy and Powell
SUBJECT:	Criminal Justice
DATE:	February 27, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	**Fav/CS**
2.	Forbes	Jameson	ACJ	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1308 makes a number of changes to the criminal justice system, including:

- Providing for the retroactive application of the changes made by CS/HB 7125 (2019) to section 322.34, Florida Statutes, related to the offense of driving while license suspended or revoked (DWLSR).
- Requiring offenders convicted of DWLSR who have not been sentenced as of October 1, 2020, to be sentenced in accordance with the new penalties outlined in CS/HB 7125 (2019).
- Authorizing offenders convicted of DWLSR who have been sentenced and are still serving such sentence to be resentenced in accordance with the penalties in CS/HB 7125 (2019).
- Providing procedures for the resentencing of eligible persons previously convicted of DWLSR and requires the court of original jurisdiction, upon receiving an application for sentence review from the eligible person, to hold a sentence review hearing to determine if the eligible person meets the criteria for resentencing.
- Providing that a person is eligible to expunge a criminal history record of a conviction that resulted from former section 322.34, Florida Statutes, in specified circumstances.
- Renaming of the Criminal Punishment Code to the "Public Safety Code" and changing the primary purpose from punishing the offender to public safety.
- Removing various mandatory minimum terms of imprisonment for specified offenses.
- Reducing the mandatory minimum penalties imposed upon a prison releasee reoffender (PRR), a category of repeat offenders, under section 775.082(9), Florida Statutes, and expressly applying such changes retroactively.

- Providing a process for resentencing certain prison releasee reoffenders and removing a provision of law that prohibits a prison releasee reoffender from any form of early release.
- Authorizing a court to depart from the imposition of a mandatory minimum sentence in drug trafficking cases if certain circumstances are met.
- Clarifying that a court is only required to modify or continue an offender's probationary term if *all* of the enumerated specified factors apply.
- Modifying the list of prior offenses that exclude juvenile offenders convicted of capital murder from a sentence review hearing in accordance with section 921.1402, Florida Statutes, enacted subsequent to the *Graham v. Florida* and *Miller v. Alabama* cases, to only murder and applying this modification retroactively.
- Providing that juvenile offenders who are no longer barred from a sentence review hearing due to the modified list of enumerated prior offenses and who have served 25 years of the imprisonment imposed on the effective date of the bill must have a sentence review hearing conducted immediately.
- Providing all other juvenile offenders who are no longer barred from a sentence review hearing due to the modified list of enumerated prior offenses must be given a sentence review hearing when 25 years of the imprisonment imposed have been served.
- Establishing a sentence review process similar to that created for juvenile offenders pursuant to section 921.1402, Florida Statutes, for "young adult offenders."
- Defining the term "young adult offender."
- Allowing certain young adult offenders to request a sentence review hearing with the original sentencing court if specified conditions are met, specifically:
    - A young adult offender convicted of a life felony offense, or an offense reclassified as such, who was sentenced to 20 years imprisonment may request a sentence review after 20 years; and
    - A young adult offender convicted of a first degree felony offense, or an offense reclassified as such, who was sentenced to 15 years imprisonment may request a sentence review after 15 years.
- Expanding the types of forensic analysis available to a petitioner beyond DNA testing.
- Requiring a petitioner to show that forensic analysis may result in evidence material to the identity of the perpetrator of, or an accomplice to, the crime that resulted in the person's conviction, rather than having to show the evidence would exonerate the person or mitigate his or her sentence.
- Authorizing a private laboratory to perform forensic analysis under specified circumstances at the petitioner's expense.
- Requiring the Florida Department of Law Enforcement (FDLE) to conduct a search of the statewide DNA database and request the National DNA Index System (NDIS) to search the federal database if forensic analysis produces a DNA profile.
- Authorizing a court to order a governmental entity that is in possession of physical evidence claimed to be lost or destroyed to search for the physical evidence and produce a report to the court, the petitioner, and the prosecuting authority regarding such lost evidence.
- Repealing section 947.149, Florida Statutes, which establishes the conditional medical release (CMR) program within the Florida Commission on Offender Review (FCOR) and creates section 945.0911, Florida Statutes, to establish a CMR program within the Department of Corrections (DOC).
- Providing definitions and eligibility criteria for the CMR program.

- Providing a process for the referral, determination of release, and revocation of release for the CMR program.
- Establishing a conditional aging inmate release (CAIR) program within the DOC.
- Providing eligibility criteria for the CAIR program.
- Providing a process for the referral, determination of release, and revocation of release for the CAIR program.
- Deleting and modifying terms related to the "Victims of Wrongful Incarceration Compensation Act."
- Eliminating specified factors barring from consideration for certain persons from compensation for wrongful incarceration.
- Extending the time for a person who was wrongfully incarcerated to file a petition with the court to determine eligibility for compensation from 90 days to two years.
- Authorizing certain persons who were previously barred from filing a petition for wrongful compensation to file a petition with the court by July 1, 2021.
- Requiring the DOC and county detention facilities to provide documentation to inmates upon release specifying the total length of the term of imprisonment at the time of release.
- Allowing the time spent incarcerated in a county detention facility or state correctional facility to apply towards satisfaction of residing for a specified amount of time in Florida for designation as a resident for tuition purposes.
- Requiring the time spent incarcerated in a county detention facility or state correctional facility to be credited toward the residency requirement, with any combination of documented time living in Florida before or after incarceration.
- Requiring the Office of Program Policy and Governmental Accountability (OPPAGA) to conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment and submit a report by November 1, 2020.

The bill will likely have a fiscal impact to various agencies and a prison bed impact to the DOC. See Section V.

Unless otherwise expressly stated, the bill is effective October 1, 2020.

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:

Retroactive Application of Certain Offenses Related to Driver Licenses (Sections 1 and 15)

Driver Licenses - Generally

Florida law requires a person to hold a driver license[1] or be exempted from licensure to operate a motor vehicle on the state's roadways.[2] Exemptions to the licensure requirement include nonresidents who possess a valid driver license issued by their home states, federal government, employees operating a government vehicle for official business, and people operating a road machine, tractor, or golf cart.[3]

The Department of Highway Safety and Motor Vehicles (DHSMV) can suspend or revoke a driver license or driving privilege for both driving-related and non-driving related reasons. Suspension means the temporary withdrawal of the privilege to drive[4] and revocation means a termination of the privilege to drive.[5]

Among the driving-related reasons that a person may have had his or her license suspended or revoked are convictions for fleeing or attempting to elude a law enforcement officer,[6] driving under the influence (DUI),[7] and refusal to submit to a lawful breath, blood, or urine test in a DUI investigation.[8] Alternatively, some of the non-driving related convictions a person may have his or her license suspended or revoked for are graffiti by a minor[9] and certain drug offenses.[10]

Additionally, the clerk of the court can direct the DHSMV to suspend a license for several reasons, including failure to comply with civil penalties.[11] Such a suspension lasts until the individual is compliant with the court's requirements for reinstatement[12] or if the court grants relief from the suspension.[13] A person with a suspended or revoked license cannot drive, which can inhibit his or her ability to work and can further impede the process of resolving outstanding financial obligations.[14]

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[1] "Driver license" is a certificate that, subject to all other requirements of law, authorizes an individual to drive a motor vehicle and denotes an operator's license as defined in 49 U.S.C. s. 30301. Section 322.01(17), F.S.
[2] Section 322.03(1), F.S.
[3] Section 322.04, F.S.
[4] Section 322.01(40), F.S.
[5] Section 322.01(36), F.S.
[6] Section 316.1935(5), F.S.
[7] *See* ss. 316.193, 322.26, 322.271, and 322.28, F.S.
[8] *See* ss. 316.193 and 322.2615(1)(b), F.S.
[9] Section 806.13, F.S.
[10] Section 322.055, F.S.
[11] Section 322.245, F.S.
[12] *See* ss. 318.15(2) and 322.245(5), F.S.
[13] Section 322.245(5), F.S.
[14] Section 322.271, F.S., allows a person to have his or her driving privilege reinstated on a restricted basis solely for business or employment purposes under certain circumstances.

Section 322.34, F.S. (2018)

Prior to October 1, 2019, a person committed the offense of DWLSR if his or her driver license or driving privilege had been canceled, suspended, or revoked and he or she, knowing of such cancellation, suspension, revocation, or suspension,[15] drove any motor vehicle. The penalties for DWLSR ranged from a moving traffic violation to a third degree felony.[16]

Under the former provisions, a person could be charged with a third-degree felony[17] for the offense of DWLSR if:

- He or she knew of the suspension or revocation and had at least two prior convictions for DWLSR;
- He or she qualified as a habitual traffic offender;[18] or
- His or her license had been permanently revoked.[19]

Section 322.34, F.S. (2019) and CS/HB 7125 (2019)

The 2019 Legislature passed and the Governor signed into law CS/HB 7125, which, in part, amended the provisions related to DWLSR.[20] Subsequent to the effective date of CS/HB 7125 (2019), the offense of DWLSR is classified as a:

- Misdemeanor of the second degree, upon a first conviction.[21]
- Misdemeanor of the first degree, upon a second or subsequent conviction, unless the suspension is related to an enumerated offense discussed below.[22]
- A felony of the third degree, upon a third or subsequent conviction if the current violation of DWLSR or the most recent prior violation of DWLSR is resulting from a violation of:
  - DUI;
  - Refusal to submit to a urine, breath-alcohol, or blood alcohol test;
  - A traffic offense causing death or serious bodily injury; or
  - Fleeing or eluding.[23]

CS/HB 7125 (2019) also added the term "suspension or revocation equivalent status" to ch. 322, F.S., and defined it to mean a designation for a person who does not have a driver license or

[15] The element of knowledge is satisfied in several ways, including: if the person has been previously cited as provided in s. 322.34(1), F.S., the person admits to knowledge of the cancellation, suspension, or revocation, or the person received notice of such status. There is a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order appears in the DHSMV's records for any case except for one involving a suspension by the DHSMV for failure to pay a traffic fine or for a financial responsibility violation. *See* s. 322.34(2), F.S.

[16] *See* s. 322.34(2), F.S.

[17] A third degree felony is punishable by up to 5 years' imprisonment and a fine of up to $5,000. Sections 775.082 and 775.083, F.S.

[18] *See* s. 322.264, F.S.

[19] *See* ss. 322.34 and 322.341, F.S. (2018).

[20] Chapter 2019-167, L.O.F.

[21] Section 322.34(2)(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.

[22] Additionally, a person convicted under this paragraph for a third or subsequent conviction must serve a minimum of ten days in jail. Section 322.34(2)(b), 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.

[23] The penalties amended in CS/HB 7125 (2019) do not apply to all persons who commit the offense of DWLSR. Section 322.34(5)-(7) and (10), F.S., provide different penalties for certain offenders who violate these provisions.

driving privilege but would qualify for suspension or revocation of his or her driver license or driving privilege if licensed.[24] This term was added to s. 322.34(2), F.S., therefore expanding the criminal penalties for DWLSR to apply to a person who does not have a driver license or driving privilege, but is under suspension or revocation equivalent status.

Collateral Consequences of Felony Convictions

A collateral consequence is any adverse legal effect of a conviction that is not a part of a sentence.[25] If the consequence does not affect the range of punishment, it is said to be collateral to the plea.[26] Such consequences are legal and regulatory restrictions that limit or prohibit people convicted of crimes from accessing employment, business and occupational licensing, housing, voting, education, and other rights, benefits, and opportunities.[27] Some examples of collateral consequences that occur upon any felony conviction in Florida include the loss of the right to vote,[28] hold public office,[29] serve on a jury,[30] obtain certain professional licenses,[31] and owning or possessing a firearm.[32] There are additional collateral consequences that can occur as a result of a felony conviction of specified offenses, such as the loss of driving privileges related to drug and theft offenses.[33] Conviction of a crime may also result in disqualification to hold a government job and other limits on employment opportunities or even loss of employment.[34]

Constitutional and Statutory Savings Clauses

Until recently, Article X, Section 9 of the State Constitution (Florida's constitutional savings clause) expressly prohibited any repeal or amendment of a criminal statute that affected prosecution or punishment for any crime previously committed, and therefore, the Florida Legislature was "powerless to lessen penalties for past transgressions; to do so would require constitutional revision."[35]

In 2018, Florida voters adopted the following amendment to Article X, Section 9 of the State Constitution:

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[24] The DHSMV is authorized to designate a person as having suspension or revocation equivalent status in the same manner as it is authorized to suspend or revoke a driver license or driving privilege by law. *See* s. 322.34(41), F.S.
[25] The Miami-Dade Florida Public Defender's Office, *What You Don't Know Can Hurt You: The Collateral Consequences of a Conviction in Florida*, Updated April 2019, p. 7, available at http://www.pdmiami.com/ConsequencesManual.pdf (last visited February 21January 29, 2020).
[26] *See Bolware v. State*, 995 So.2d 268 (Fla. 2008).
[27] U.S. Commission on Civil Rights, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, Executive Summary, June 2019, p. 1, available at https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf (last visited February 21January 29, 2020).
[28] Art. VI, s. 4, FLA. CONST.; s. 97.041, F.S.
[29] *Id*.
[30] Section 40.013(1), F.S.
[31] For example, s*ee* chs. 455, 489, and 626, F.S.
[32] Section 790.23, F.S.
[33] *See* ss. 322.055 and 812.0155, F.S.
[34] 16 Fla. Prac., Sentencing, s. 6:120 (2019-2020 ed.).
[35] Comment, *Today's Law and Yesterday's Crime: Retroactive Application of Ameliorative Criminal Legislation*, 121 U. Pa. L. Rev. 120, 129 (1972).

> Repeal ~~or amendment~~ of a criminal statute shall not affect prosecution ~~or punishment~~ for any crime ~~previously~~ committed before such repeal.

Revised Article X, Section 9 of the State Constitution only prohibits applying the repeal of a criminal statute to any crime committed before such repeal if this retroactive application "affects prosecution." The revised constitutional savings clause does not expressly prohibit retroactive application of a repeal that does not affect prosecution, a repeal that affects punishment, or an amendment of a criminal statute that affects prosecution or punishment.

The elimination of the expressed prohibition on certain retroactive applications is not a directive to the Legislature to retroactively apply what was formerly prohibited. As the Florida Supreme Court recently stated: "… [T]here will no longer be any provision in the Florida Constitution that would prohibit the Legislature from applying an amended criminal statute retroactively to pending prosecutions or sentences. However, nothing in our constitution does or will require the Legislature to do so, and the repeal of the prohibition will not require that they do so."[36]

In 2019, the Legislature created s. 775.022, F.S., a general savings statute for criminal statutes. The statute defines a "criminal statute" as a statute, whether substantive or procedural, dealing in any way with a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime.[37]

The statute specifies legislative intent to preclude:
- Application of the common law doctrine of abatement to a reenactment or an amendment of a criminal statute; and
- Construction of a reenactment or amendment as a repeal or an implied repeal[38] of a criminal statute for purposes of Article X, Section 9 of the State Constitution (Florida's constitutional savings clause).[39]

The statute also states that, except as expressly provided in an act of the Legislature or as provided in two specified exceptions, the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate any of the following:
- The prior operation of the statute or a prosecution or enforcement under the criminal statute;
- A violation of the criminal statute based on any act or omission occurring before the effective date of the act; and
- A prior penalty, prior forfeiture, or prior punishment incurred or imposed under the statute.[40]

The first exception is a retroactive amelioration exception that provides that if a penalty, forfeiture, or punishment for a violation of a criminal statute is reduced by a reenactment or an amendment of a criminal statute, the penalty, forfeiture, or punishment, if not already imposed,

[36] *Jimenez v. Jones*, 261 So.3d 502, 504 (Fla. 2018).
[37] Section 775.022(2), F.S.
[38] The Florida Supreme Court previously indicated that the "standard [is] that implied repeals are disfavored and should only be found in cases where there is a 'positive repugnancy' between the two statutes or 'clear legislative intent' indicating that the Legislature intended the repeal[.]" *Flo-Sun, Inc. v. Kirk*, 783 So.2d 1029, 1036 (Fla. 2001).
[39] Section 775.022(1), F.S.
[40] Section 775.022(3), F.S.

must be imposed according to the statute as amended.[41] This means the penalty, forfeiture, or punishment reduction must be imposed retroactively *if the sentence has not been imposed*, including the situation in which the sentence is imposed after the effective date of the amendment. However, nothing in the general savings statute precludes the Legislature from providing for a more extensive retroactive application either to legislation in the future or legislation that was enacted prior to the effective date of the general savings statute. This is because the general savings statute specifically provides for a legislative exception to the default position of prospectivity. The Legislature only has to "expressly provide" for this retroactive application.[42]

Expunction of Criminal History Records

Overview

Another consequence of a felony conviction in Florida is the prohibition of obtaining a court-ordered expunction. Florida law makes adult criminal history records accessible to the public unless the record has been sealed or expunged.[43] Criminal history records related to certain offenses are barred from being expunged through the court-order process.[44] Section 943.0585, F.S., sets forth procedures for expunging criminal history records through court-order.

Persons who have had their criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,[45] petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.[46]

Process for Obtaining a Court-Ordered Expunction

To qualify for a court-ordered expunction, a person must first obtain a certificate of eligibility (COE) from the FDLE.[47] To obtain the COE from the FDLE, a person must comply with a number of requirements, including, in part, that he or she has never been adjudicated guilty or delinquent of a:

- Criminal offense;
- Comparable ordinance violation; or
- Specified felony or misdemeanor prior to the COE application date.[48]

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[41] Section 775.022(4), F.S.
[42] Section 775.022(3), F.S.
[43] Florida Department of Law Enforcement, *Seal and Expunge Process*, available at http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Seal-and-Expunge-Home.aspx (last visited February 21, 2020). *See also* s. 943.053, F.S.
[44] *See* 943.0584, F.S., for a complete list of offenses that are ineligible for court-ordered expunction.
[45] These include candidates for employment with a criminal justice agency; applicants for admission to the Florida Bar; those seeking a sensitive position involving direct contact with children, the developmentally disabled, or the elderly with the Department of Children and Family Services, Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; persons seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or a Florida seaport.
[46] Section 943.0585(6)(a), F.S.
[47] *See* s. 943.0585(2), F.S.
[48] *See* s. 943.0585(1) and (2), F.S., for full requirements for obtaining a COE.

Further, a person may seek a court-ordered expunction immediately, provided the person is no longer subject to court supervision, if none of the charges related to the arrest or alleged criminal activity resulted in a trial or relate to an offense enumerated in s. 943.0584, F.S., and:

- An indictment, information, or other charging document was not filed or issued in the case (no-information); or
- An indictment, information, or other charging document was filed or issued in the case, but it was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction (dismissal).[49]

Upon receipt of a COE, the person must then petition the court to expunge the criminal history record. The petition must include the COE and a sworn statement from the petitioner that he or she is eligible for expunction to the best of his or her knowledge.[50] A copy of the completed petition is then served upon the appropriate state attorney or statewide prosecutor and the arresting agency, any of which may respond to the court regarding the petition.[51]

There is no statutory right to a court-ordered expunction and any request for such an expunction of a criminal history record may be denied at the sole discretion of the court.[52] The court is only authorized to order the expunction of a record that pertains to one arrest or one incident of alleged criminal activity.[53] However, the court may order the expunction of a record pertaining to more than one arrest if such additional arrests directly relate to the original arrest.[54]

Effect of an Expunction

Any record that the court grants the expunction of must be physically destroyed or obliterated by any criminal justice agency having such record. The FDLE, however, is required to maintain the record. Records that have been expunged are confidential and exempt[55] from the public records law.[56] Only a court order would make the record available to a person or entity that is otherwise excluded.[57]

[49] *See* s. 943.0585(1), F.S.
[50] *See* s. 943.0585(3)(b), F.S.
[51] Section 943.0585(5)(a), F.S.
[52] Section 943.0585(4)(e), F.S.
[53] Section 943.0585(4)(c), F.S.
[54] *Id*. The court must articulate in writing its intention to expunge or seal a record pertaining to multiple arrests and a criminal justice agency may not expunge or seal multiple records without such written documentation. The court is also permitted to expunge or seal only a portion of a record.
[55] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* 85-62 Fla. Op. Att'y Gen. (1985).
[56] Section 943.0585(6)(d), F.S.
[57] *See* s. 943.0585(6), F.S.

Effect of the Bill

Retroactive Application of the New DWLSR Offense

The bill creates s. 322.3401, F.S., expressly providing for the retroactive application of the changes made by CS/HB 7125 (2019) to s. 322.34, F.S., related to the offense of DWLSR.

The bill provides legislative intent language, which states:

> It is the intent of the Legislature to retroactively apply section 12 of chapter 2019-167, Laws of Florida, only as provided in this section, to persons who committed the offense of driving while license suspended, revoked, canceled, or disqualified before October 1, 2019, the effective date of section 12 of chapter 2019-167, Laws of Florida, which amended s. 322.34 to modify criminal penalties and collateral consequences for offenses under that section.

The bill defines two terms for purposes of s. 322.3401, F.S.:
- "Former s. 322.34", which means a reference to s. 322.34, F.S., as it existed at any time before its amendment by ch. 2019-167, L.O.F.
- "New s. 322.34", which means a reference to s. 322.34, F.S., as it exists after the amendments made by ch. 2019-167, L.O.F., became effective.

The bill requires a person who committed the offense of DWLSR before October 1, 2019, but who was not sentenced under former s. 322.34, F.S., before October 1, 2020, to be sentenced for the degree of offense as provided for in the new s. 322.34, F.S.

Further, the bill authorizes a person who committed the offense of DWLSR before October 1, 2019, who was sentenced before October 1, 2019, to a term of imprisonment or supervision pursuant to former s. 322.34, F.S., and who is serving such penalty on or after October 1, 2020, to be resentenced to the degree of offense that is consistent with the degree provided for in the new s. 322.34, F.S.

The bill provides procedures for the resentencing of eligible persons. Specifically:
- A person who is eligible for resentencing must be given notification of such eligibility by the facility in which the person is imprisoned or the entity who is supervising the person.
- A person seeking a sentence review must submit an application to the court of original jurisdiction requesting that a sentence review hearing be conducted. This request serves to initiate the review procedures provided for under the bill.
- The sentencing court must retain original jurisdiction for the duration of the sentence for the purpose of conducting sentence review hearings.
- A person who is eligible for a sentence review hearing may be represented by counsel and the court is required to appoint a public defender to represent the person if he or she cannot afford an attorney.

Upon receiving an application for sentence review from the eligible person, the court must hold a sentence review hearing to determine if the person meets the criteria for resentencing.

If the court determines at the sentence review hearing that the person meets the criteria for resentencing, the court may resentence the person for the degree of offense that is consistent with the degree provided for in the new s. 322.34, F.S. If the court does not resentence the person, the court must provide written findings why resentencing is not appropriate.

In addition to the retroactive application of sentencing provisions of the new s. 322.34, F.S., the bill provides that a person who has been convicted of a felony under former s. 322.34, F.S., and whose offense would not be classified as a felony under the new s. 322.34, F.S., must have all outstanding fines, fees, and costs related to such felony conviction waived.

Further, he or she must be treated as if he or she had been convicted of a misdemeanor for purposes of any right, privilege, benefit, remedy, or collateral consequence that the person might be entitled to but for such felony conviction. However, the bill provides that this provision does not serve to remove the designation of the person as a convicted felon, but the statutory consequences of such felony conviction no longer apply.

Because the bill expressly provides for retroactive application of the changes the bill makes, the bill has provided a legislative exception to the default position of prospectively.

Expunction Related to DWLSR Offenses

The bill also creates s. 943.0587, F.S., authorizing a person to petition a court to expunge a criminal history record for a conviction under former s. 322.34, F.S., if the person:

- Received a withholding of adjudication or adjudication of guilt for a violation of DWLSR under former s. 322.34, F.S., and whose conviction would not be classified as a felony under the new s. 322.34, F.S.; and
- Only has felony convictions for the offense of DWLSR pursuant to the former s. 322.34, F.S.

The bill defines the terms of "former s. 322.34" and "new s. 322.34" in the same manner as described above.

Unlike other expunctions, an expunction granted in accordance with the bill does not prevent the person who receives such relief from petitioning for the expunction or sealing of a later criminal history record as provided for in ss. 943.0583, 943.0585, and 943.059, F.S., if the person is otherwise eligible under those sections.

The bill provides that a person seeking to expunge a criminal history record must apply to the FDLE for a COE prior to petitioning a court to expunge a criminal history record for eligible DWLSR offenses. The FDLE is required to adopt rules to establish procedures for applying for and issuing a COE for expunction. The FDLE is required to issue the COE to a person who is the subject of a criminal history record eligible under the bill if that person satisfies the eligibility criteria listed below:

- Has submitted to the FDLE a written certified statement from the appropriate state attorney or statewide prosecutor which confirms the criminal history record complies with the criteria;
- Has submitted to the FDLE a certified copy of the disposition of the charge or charges to which the petition to expunge pertains; and

- Remits a $75 processing fee to the FDLE for placement in the Department of Law Enforcement Operating Trust Fund, unless the executive director waives such fee.

As with COE certificates for other court-ordered expunctions, the bill provides that the COE is valid for 12 months after the date stamped on the certificate when issued by the FDLE. After that time, the petitioner must reapply for a new COE. The petitioner's status and the law in effect at the time of the renewal application determine the petitioner's eligibility.

The bill provides that a petition to expunge a criminal history record must be accompanied by:
- A valid COE issued by the FDLE.
- The petitioner's sworn statement that he or she:
  - Satisfies the eligibility requirements for expunction; and
  - Is eligible for expunction to the best of his or her knowledge.

Further, the bill provides that it is a third degree felony for a person to knowingly provide false information on a sworn statement for expunction pursuant to the bill.

The bill requires a copy of the completed petition to expunge to be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency, which entity is then able to respond to the court regarding the completed petition to expunge.

If relief is granted by the court, the following actions must be taken:
- The clerk of the court must certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency.
- The arresting agency is required to forward the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains.
- The FDLE must forward the order to expunge to the Federal Bureau of Investigation.
- The clerk of the court must certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

The FDLE or any other criminal justice agency is not required to act on an order to expunge entered by a court when such order does not comply with the requirements of the bill. Upon receipt of such an order, the FDLE must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor must take action within 60 days to correct the record and petition the court to void the order. The bill provides that a cause of action, including contempt of court, does not arise against any criminal justice agency for failure to comply with an order to expunge when the petitioner for such order failed to obtain the COE as required or when the order does not otherwise comply with the requirements.

The bill provides that the effect of the expunction order is identical to the effect of court-ordered expunction orders that have been issued pursuant to s. 943.0585, F.S. The bill provides:

- The person who is the subject of a criminal history record that is expunged may lawfully deny or fail to acknowledge the arrests and convictions covered by the expunged record, except when the subject of the record:
  - Is a candidate for employment with a criminal justice agency;
  - Is a defendant in a criminal prosecution;
  - Concurrently or subsequently petitions for relief under this section, s. 943.0583, F.S., s. 943.059, F.S., or s. 943.0585, F.S.;
  - Is a candidate for admission to The Florida Bar;
  - Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation of the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;
  - Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;
  - Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services; or
  - Is seeking to be appointed as a guardian pursuant to s. 744.3125, F.S.
- Except as mentioned above, a person who has been granted an expunction may not be held to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge an expunged criminal history record.

Section 1 of the bill, which relates to the retroactive application of the changes to the DWLSR offense, is effective October 1, 2020. Section 15, which relates to the expunction of certain DWLSR offenses is effective on the same date as SB 1506 or similar legislation, which is tied to this bill, goes into effect if such legislation is adopted during this session.

Criminal Punishment Code (Sections 6, 9, 33, 34, 38, 40-51, and 56-62)

In 1997, the Legislature enacted the Criminal Punishment Code[58] (Code) as Florida's "primary sentencing policy."[59] The primary purpose of the Code is to "punish the offender."[60] Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).[61] Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a Level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points,

[58] Sections 921.002-921.0027, F.S. The Code is effective for offenses committed on or after October 1, 1998.
[59] *See* chs. 97-194 and 98-204, L.O.F.
[60] Section 921.002(1)(b), F.S.
[61] 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.

unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.[62]

Absent mitigation,[63] the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S. Except as otherwise provided by law, the statutory maximum sentence for an offense committed, which is classified as a:

- Capital felony is:
  - Death, if the proceeding held according to the procedure set forth in s. 921.141, F.S., results in a determination that it is appropriate for the person to be punished by death; or
  - Life imprisonment without the possibility of parole.
- Life felony is a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.
- First-degree felony is:
  - 30 years; or
  - Imprisonment for a term of years not exceeding life imprisonment when specifically provided by statute.
- Second-degree felony is 15 years.
- Third degree felony is 5 years.[64]

Effect of the Bill

The bill amends s. 921.002, F.S., to revise the name and primary purpose of the Criminal Punishment Code, Florida's primary sentencing policy for noncapital felonies. Under current law, the primary purpose of the Criminal Punishment Code is to punish the offender. The bill renames the Criminal Punishment Code as the Public Safety Code and provides that the primary purpose of the Public Safety Code is public safety.

Conforming changes are made to numerous other statutes consistent with these changes.

These provisions of the bill are effective October 1, 2020.

Mandatory Minimum Sentencing (Sections 2-5, 7, 8, and 39)

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."[65] As previously noted, the sentencing range under the Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the

[62] Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.
[63] 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.
[64] *See* s. 775.082, F.S.
[65] Fla. R. Crim. P. 3.704(d)(26).

scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

Prosecutors have "complete discretion" in the charging decision.[66] The exercise of this discretion may determine whether a defendant is subject to a mandatory minimum term or a reduced mandatory minimum term. Further, a prosecutor could move the court to reduce or suspend a sentence if the defendant renders substantial assistance.

There are few circumstances in which a court of its own accord can depart from a mandatory minimum term. A court may depart from a mandatory minimum term if the defendant is a youthful offender.[67] A court may also depart from a mandatory minimum term for a violation of s. 316.027(2)(c), F.S., (driver involved in a fatal crash fails to stop and remain at the scene of a crash), if the court "finds that a factor, consideration or circumstance clearly demonstrates that imposing a mandatory minimum term of imprisonment would constitute or result in an injustice."[68]

Possession of Certain Spiny Lobsters and Saltwater Products

Section 379.407(5), F.S., prohibits a person, firm, or corporation to be in possession of spiny lobster during the closed season or, while on the water, to be in possession of spiny lobster tails that have been wrung or separated from the body, unless such possession is allowed by commission rule.[69] Certain repeat violations of this provision are punishable by mandatory minimum terms of imprisonment, including:

- A third violation is a first degree misdemeanor with, in part, a mandatory minimum term of imprisonment of 6 months.[70]
- A third violation within 1 year after a second violation is a third degree felony with, in part, a mandatory minimum term of imprisonment of 1 year.
- A fourth or subsequent violation is a third degree felony with, in part, a mandatory minimum term of imprisonment of 1 year.

Additionally, s. 379.407(7), F.S., prohibits any unlicensed person, firm, or corporation who is required to be licensed under ch. 379, F.S., as a commercial harvester or a wholesale or retail dealer to sell or purchase any saltwater product or to harvest or attempt to harvest any saltwater product with intent to sell the saltwater product. Certain repeat violations of this provision are punishable by mandatory minimum terms of imprisonment, including:

- A third violation is a first degree misdemeanor with, in part, a mandatory minimum term of imprisonment of 6 months.

[66] "Under Florida's constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute." *State v. Bloom*, 497 So.2d 2, 3 (Fla. 1986).
[67] Section 958.04, F.S.
[68] Section 316.027(2)(g), F.S.
[69] *See* the Florida Fish and Wildlife Conservation Commission, *Spiny Lobster*, available at https://myfwc.com/fishing/saltwater/recreational/lobster/ (last visited February 12, 2020).
[70] A second degree misdemeanor is punishable by up to 60 days in county jail and up to a $500 fine and a first degree misdemeanor is punishable by up to one year in jail and up to a $1,000 fine. Sections 775.082 and 775.083, F.S.

- A third violation within 1 year after a second violation is a third degree felony with, in part, a mandatory minimum term of imprisonment of 1 year.
- A fourth or subsequent violation is a third degree felony with, in part, a mandatory minimum term of imprisonment of 1 year.[71]

It is also a third degree felony for any person whose license privileges have been permanently revoked to thereafter sell or purchase, or attempt to sell or purchase, any saltwater product. This violation is punishable with a mandatory minimum term of imprisonment of 1 year.[72]

Any commercial harvester or wholesale or retail dealer whose license privileges are under suspension is also prohibited from selling or purchasing during such period of suspension, or attempting to sell or purchase, any saltwater product. Certain violations of such provision includes mandatory minimum penalties, including:

- A second violation occurring within 12 months of a first violation is a third degree felony with, in part, a mandatory minimum term of imprisonment of 1 year.
- A third violation within 24 months of the second violation or subsequent violation is a third degree felony with, in part, a mandatory minimum term of imprisonment of 1 year.[73]

Any commercial harvester is prohibited from harvesting or attempting to harvest any saltwater product with intent to sell the saltwater product without having purchased a saltwater products license with the requisite endorsements. Certain violations of such provision includes mandatory minimum penalties, including:

- A third violation is a first degree misdemeanor with, in part, a mandatory minimum term of imprisonment of 6 months.
- A third violation within 1 year after a second violation is a third degree felony with, in part, a mandatory minimum term of imprisonment of 1 year.
- A fourth or subsequent violation is a third degree felony with, in part, a mandatory minimum term of imprisonment of 1 year.[74]

Effect of the Bill

The bill amends s. 379.407(5) and (7), F.S., removing any mandatory minimum terms of imprisonment from the sentencing provisions for these offenses.

This provision of the bill is effective October 1, 2020.

Phosphogypsum Stack Offenses

According to the Florida Department of Environmental Protection (DEP) Geospatial Open Data, Phosphogypsum is calcium sulfate (gypsum) that is formed as a byproduct from the chemical reaction of sulfuric acid with phosphate rock in the production of phosphoric acid. The Phosphogypsum Stack System layer contains the approximate boundaries of the phosphogypsum stacks in Florida and phosphogypsum stacks are formed as a means to store the phosphogypsum

[71] Section 379.401(7)(a), F.S.
[72] Section 379.401(7)(b), F.S.
[73] Section 379.407(7)(c), F.S.
[74] Section 379.407(7)(d), F.S.

and associated process water resulting from the chemical manufacturing of phosphoric acid and related fertilizer products. Phosphogypsum stacks are located in Polk, Hillsborough, Manatee, and Hamilton counties. This layer was designed to provide the Bureau of Mining and Mineral Regulation and other interested parties with a graphical representation of the phosphogypsum stack systems and their relative locations in the state. The layer is maintained by the Bureau of Mining and Mineral Regulation in the Division of Water Resource Management at the DEP.[75]

Section 403.4154, F.S., creates a regulatory program for the management of such stacks and imposes criminal penalties, including mandatory minimum terms of imprisonment, for certain actions related to the management of such stacks. Specifically, it is a third degree felony for a person to willfully, knowingly, or with reckless indifference or gross carelessness:

- Misstate or misrepresent the financial condition or closure costs of an entity engaged in managing, owning, or operating a phosphogypsum stack or stack system.
- Make a distribution which would be prohibited under s. 607.06401(3), F.S., after failing to comply with the DEP rules requiring demonstration of closure financial responsibility, until the noncompliance is corrected.

Both of these provisions are punishable by, in part, imprisonment for 5 years for each offense.

Effect of the Bill

The bill amends s. 403.4154(2), F.S., removing the specific language related to imprisonment of five years for each offense.

This provision of the bill is effective October 1, 2020.

Health Care Practitioners Operating Without a Valid License

Section 456.065, F.S., prohibits the unlicensed practice of a health care profession or the performance or delivery of medical or health care services to patients in this state without a valid, active license to practice that profession, regardless of the means of the performance or delivery of such services. Further, the unlicensed practice of a health care profession is a:

- Third degree felony, with, in part, a minimum mandatory period of incarceration of one year, to:
  - Practice, attempt to practice, or offer to practice a health care profession without an active, valid Florida license to practice that profession, which includes practicing on a suspended, revoked, or void license, but does not include practicing, etc., with an inactive or delinquent license for a period of up to 12 months.
  - Apply for employment for a position that requires a license without notifying the employer that the person does not currently possess a valid, active license to practice that profession.
  - Hold oneself out, regardless of the means of communication, as able to practice a health care profession or as able to provide services that require a health care license.

[75] The FDEP, *Florida Gypsumstacks*, available at https://geodata.dep.state.fl.us/datasets/6277c3b1eeae4a818f8683fc29e6b35b_0 (last visited February 12, 2020). *See also* ch. 62-673.200, F.A.C.

- Second degree felony, with in part, a minimum mandatory period of incarceration of one year, to:
  - Practice a health care profession without an active, valid Florida license to practice that profession when such practice results in serious bodily injury.[76]
- First degree misdemeanor with, in part, a term of imprisonment of 30 days, to:
  - Practice, attempt to practice, or offer to practice a health care profession with an inactive or delinquent license for any period of time up to 12 months.[77]

Effect of the Bill

The bill amends s. 456.065(2)(d), F.S., removing the requirement that the person must serve a minimum term of imprisonment as described above. Further, the bill amends s. 456.065(2)(d)2., F.S., requiring that a person must *knowingly* apply for employment for a position that requires a license without notifying the employer that the person does not currently possess a valid, active license to practice that profession to violate this provision.

This provision of the bill is effective October 1, 2020.

Insurers Operating Without a Certificate of Authority

Section 624.401, F.S., prohibits a person to act as an insurer, transact insurance, or otherwise engage in insurance activities in Florida without a certificate of authority. The degree of offense and specific penalties applicable for the violation are determined by the amount of any insurance premium collected with respect to any violation, including when the premium:

- Is less than $20,000, the offender commits a third degree felony and must be sentenced to a minimum term of imprisonment of 1 year.
- Is $20,000 or more, but less than $100,000, the offender commits a second degree felony and must be sentenced to a minimum term of imprisonment of 18 months.
- Is $100,000 or more, the offender commits a first degree felony and the offender must be sentenced to a minimum term of imprisonment of two years.[78]

Effect of the Bill

The bill amends s. 624.401(4)(b), F.S., to remove the mandatory minimum terms of imprisonment mentioned above for specified violations of engaging in insurance activities.

This provision of the bill is effective October 1, 2020.

False and Fraudulent Insurance Claims

In part, s. 817.234, F.S., provides it is a second degree felony for any person to intend to defraud any other person to solicit or cause to be solicited any business from a person involved in a motor vehicle accident for the purpose of making, adjusting, or settling motor vehicle tort claims

[76] Section 465.065(2)(d)2., F.S., defines "serious bodily injury" to mean death; brain or spinal damage; disfigurement; fracture or dislocation of bones or joints; limitation of neurological, physical, or sensory function; or any condition that required subsequent surgical repair.
[77] However, practicing, attempting to practice, or offering to practice a health care profession when that person's license has been inactive or delinquent for a period of time of 12 months or more is a third degree felony.
[78] Section 624.401(4), F.S.

or claims for personal injury protection benefits required by s. 627.736, F.S., related to the requirement to carry personal injury protection benefits.

Any person convicted of a violation of s. 817.234(8), F.S., must be sentenced to a minimum term of imprisonment of two years.

Effect of the Bill

The bill amends s. 817.234(8)(a), F.S., deleting the mandatory minimum term of imprisonment required in this provision.

This provision of the bill is effective October 1, 2020.

Drug Trafficking

Section 893.135, F.S., requires mandatory minimum prison sentences for certain drug trafficking offenses. That section provides that possession of more than certain specified amounts of cannabis, cocaine, certain narcotic opioids, sedatives, stimulants, hallucinogens, and other illicit substances constitutes "trafficking," with increasing mandatory prison terms and fines for possession of amounts beyond certain thresholds.

Effect of the Bill

This bill allows a sentencing court to impose a sentence other than the mandatory minimum on drug trafficking offenders if the court finds on the record that the offender did not:

- Engage in a continuing criminal enterprise as defined in s. 893.20, F.S.;[79]
- Use or threaten violence or use a weapon during the commission of the offense; and
- Cause a death or serious bodily injury.

The bill authorizes a sentencing court to impose a sentence other than the mandatory minimum on an offender convicted of trafficking in the following substances:

- Cannabis or cannabis plants;[80]
- Cocaine;[81]
- Morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin;[82]
- Hydrocodone, Oxycodone, Alfentanil, Carfentanil, Fentanyl, Sufentanil, or a fentanyl derivative;[83]

[79] Under s. 893.20, F.S., a person is guilty of engaging in a continuing criminal enterprise if he or she "commits three or more felonies under [chapter 893] in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts … ."
[80] Section 893.135(1)(a), F.S.
[81] Section 893.135(1)(b), F.S.
[82] Section 893.135(1)(c), F.S.
[83] *Id.*

- Phencyclinide;[84]
- Methaqualone;[85]
- Amphetamine or methamphetamine;[86]
- Flunitrazepam;[87]
- Gamma-butyrolactone (GBL);[88]
- 1,4-Butanediol;[89]
- Substituted phenycyclohexylamine, substituted cathinone, substituted phenethylamine[90]
- Lysergic acid diethylamide (LSD);[91]
- Synthetic cannabinoids;[92] and
- N-benzyl phenethylamines.[93]

Because the lowest permissible sentence under the Code Scoresheet is distinct from a "mandatory minimum sentence,"[94] the bill does not grant a court any additional authority to deviate from the lowest permissible Code Scoresheet sentence.[95]

Section 775.084, F.S., which is not amended by the bill, requires "mandatory minimum" prison terms for "habitual felony offenders."[96] An offender convicted of drug trafficking in violation of s. 893.135, F.S., would still be subject to certain mandatory minimum sentences if he or she meets the definition of a "habitual felony offender."

This provision of the bill is effective October 1, 2020.

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[84] Section 893.135(1)(d), F.S.; Phencylidine is a "hallucinogen formerly used as a veterinary anesthetic, and briefly as a general anesthetic for humans." Phencyclidine, PubChem, U.S. National Library of Medicine, available at https://pubchem.ncbi.nlm.nih.gov/compound/Phencyclidine (last visited February 21, 2020).
[85] Section 893.135(1)(e), F.S.; "Methaqualone is a sedative, hypnotic agent that was used for insomnia, but was taken off of the market, in the U.S., in 1983 due to its high risk of abuse." Methaqualone, PubChem, U.S. National Library of Medicine, available at https://pubchem.ncbi.nlm.nih.gov/compound/6292 (last visited February 21, 2020).
[86] Section 893.135(1)(f), F.S.
[87] Section 893.135(1)(g), F.S.; "Some reports indicate that it is used as a date rape drug and suggest that it may precipitate violent behavior. The United States Government has banned the importation of this drug." Flunitrazepam, PubChem, U.S. National Library of Medicine, available at https://pubchem.ncbi.nlm.nih.gov/compound/3380 (last visited February 21, 2020).
[88] Section 893.135(1)(h), F.S.; GBL is commercial solvent.
[89] Section 893.135(1)(j), F.S.
[90] Section 893.135(1)(k)1., F.S.
[91] Section 893.135(1)(l)1., F.S.
[92] Section 893.135(1)(m), F.S., synthetic cannabinoids do not derive their psychoactive effects through THC, but rather are "cannabinoid receptor agonists" that act on various brain receptors in a similar manner to cannabinoids.
[93] Section 893.135(1)(n), F.S.
[94] *See* Fla. R. Crim. P. 3.704(d)(26) (differentiating between a mandatory minimum sentence and the lowest permissible sentence under the Code).
[95] Section 921.0026, F.S., authorizes a court to depart downward from the lowest permissible sentence under the Code Scoresheet based on a non-exhaustive list of mitigating factors described in that section.
[96] Habitual felony offenders are defendants who have been convicted of two or more prior felonies, or whose conduct meets certain criteria: the offense was committed while the offender was serving a prison sentence or within 5 years after release from a prison sentence, the felony is not simple possession under s. 893.13, F.S., and any of the qualifying felonies were not pardoned or set aside in a postconviction proceeding. Section 775.084(1)(a), F.S.

Prison Releasee Reoffenders (Section 6)

A prison releasee reoffender is a person who is being sentenced for committing or attempting to commit a qualifying offense, such as murder, manslaughter, sexual battery, or robbery,[97] within three years of being released from a:

- State correctional facility operated by the DOC or a private vendor;
- Correctional institution of another jurisdiction following incarceration for which the sentence is punishable by more than one year in Florida; or
- County detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence,[98] if the person is otherwise eligible.[99]

A prison releasee reoffender also includes a person who commits or attempts to commit a qualifying offense while serving a prison sentence or while on escape status from a state correctional facility operated by the DOC or a private vendor or from a correctional institution of another jurisdiction.[100]

A judge must also sentence a defendant as a prison releasee reoffender if the defendant committed or attempted to commit any of the previously-described offenses while the defendant was serving a prison sentence or on escape status from a Florida state or private correctional facility or while the defendant was on escape status from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.[101]

A person who qualifies as a prison releasee reoffender is subject to a mandatory minimum sentence. Specifically, a court must sentence a prison releasee reoffender to:

- A 5-year mandatory minimum term for a third degree felony;
- A 15-year mandatory minimum term for a second degree felony;
- A 30-year mandatory minimum term for a first degree felony; and
- Life imprisonment for a first degree felony punishable by life or a life felony.[102]

A person sentenced as a prison releasee reoffender can be released only by expiration of sentence and is not eligible for parole, control release, or any form of early release. A prison releasee reoffender must also serve 100 percent of the court-imposed sentence.[103]

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[97] *See* s. 775.082(9)(a)3., F.S., for a complete list of qualifying offenses.
[98] In December of 2018, the Florida Supreme Court held that a defendant released from a county jail after having been committed to the legal custody of the DOC was not a prison releasee reoffender within the current meaning of that term as provided in s. 775.082, F.S. CS/HB 7125 (2019), codified in ch. 2019-167, L.O.F., amended s. 775.082(9), F.S., to include language to cure this issue. *See State v. Lewars*, 259 So.3d 793 (Fla. 2018).
[99] Section 775.082(9)(a)1., F.S.
[100] Section 775.082(9)(a)2., F.S.
[101] Section 775.082(9)(a)2., F.S.
[102] Section 775.082(9)(a)3., F.S.
[103] Section 775.082(9)(b), F.S. Section 775.082(9), F.S., does not prevent a court from imposing a greater sentence of incarceration as authorized by law, pursuant to s. 775.084, F.S., or any other provision of law. Section 775.082(9)(c), F.S.

The prison releasee reoffender provisions provide legislative intent that prison releasee reoffenders "be punished to the fullest extent of the law" unless the prosecuting attorney does not have sufficient evidence to prove the highest charge available, the testimony of material witness cannot be obtained, the victim provides a written statement that he or she does not want the offender to receive a mandatory sentence, or other extenuating circumstances exist which preclude the just prosecution of the offender.[104]

For every case in which the offender meets the prison releasee reoffender criteria and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney.[105]

Effect of the Bill

The bill amends s. 775.082(9), F.S., to reduce mandatory minimum penalties applicable to a prison releasee reoffender. A prison releasee reoffender must be sentenced to a term of imprisonment of at least:

- 25 years for a felony punishable by life (current law requires life imprisonment);
- 20 years for a first degree felony (current law requires 30 years);
- 10 years for a second degree felony (current law requires 15 years); and
- 3 years for a third degree felony (current law requires 5 years).

The bill provides for retroactive application of the previously-described penalty changes to:

- A person who qualified as a prison releasee reoffender before July 1, 2020 (referred to in the bill as "former 775.082(9)"), and who was not sentenced as a prison releasee reoffender before July 1, 2020; and
- A person who qualified as a prison releasee reoffender before July 1, 2020, who was sentenced as such before July 1, 2020, to a mandatory minimum term of imprisonment pursuant to former s. 775.082(9), F.S., and who is serving such mandatory minimum term of imprisonment on or after July 1, 2020.

A person who qualified as a prison releasee reoffender before July 1, 2020, and who was not sentenced as a prison releasee reoffender before July 1, 2020, must be sentenced as provided in the bill (see previous description of changes to penalties).

A person who qualified as a prison releasee reoffender before July 1, 2020, who was sentenced as such before July 1, 2020, to a mandatory minimum term of imprisonment pursuant to former s. 775.082(9), F.S., and who is serving such mandatory minimum term of imprisonment on or after July 1, 2020, may be resentenced in the following manner:

- The DOC must notify this person of his or her eligibility to request a sentence review hearing.
- The person seeking sentence review must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The sentencing court retains original jurisdiction for the duration of the sentence for this purpose.

[104] Section 775.082(9)(d)1., F.S.
[105] Section 775.082(9)(d)2., F.S.

- A person who is eligible for this sentence review hearing is entitled to representation by counsel and the court may appoint a public defender to represent the person if he or she cannot afford an attorney.
- Upon receiving an application from an eligible person, the court of original jurisdiction must hold a sentence review hearing to determine if the eligible person meets the criteria for resentencing. If the court determines at the sentence review hearing that the eligible person meets such criteria, the court may resentence the person as provided in the bill (see previous description of changes to penalties); however, the new sentence may not exceed the person's original sentence with credit for time served. If the court does not resentence the person, the court must provide written findings why resentencing is not appropriate.
- A person resentenced as previously described is eligible to receive any gain-time pursuant to s. 944.275, F.S., he or she was previously ineligible to receive under former s. 775.082(9), F.S.

Because the bill expressly provides for retroactive application of the changes the bill makes, the bill has provided a legislative exception to the default position of prospectivity.

The bill modifies s. 775.082(9)(a)3., F.S., which currently provides that "upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced" under the penalties specified in s. 775.082(9), F.S. The bill removes reference to the "preponderance of evidence" standard of proof and ineligibility for sentencing under the sentencing guidelines. Neither of these changes appear to be substantive. Whether stated in the statute or not "preponderance of the evidence" would likely be the standard of proof because s. 775.082(9), F.S., does not increase the penalty beyond the statutory maximum.[106] Further, it does not need to be in the statute that a prison releasee reoffender is ineligible to be sentenced under the sentencing guidelines because s. 775.082(9), F.S., specifies that a prison releasee reoffender must be sentenced under that subsection.

The bill also removes language from s. 775.082(9), F.S., that:
- Indicates legislative intent that offenders previously released from prison or a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence who meet the prison releasee reoffender criteria be punished to the fullest extent of the law.
- Requires a state attorney to explain in writing why he or she seeks prison releasee reoffender sanctions for an offender who meets prison releasee reoffender criteria.
- Prohibits a prison releasee reoffender from any form of early release.

This provision of the bill is effective October 1, 2020.

[106] "In [*Apprendi v. New Jersey*, 530 U.S. 466 (2000)], the United States Supreme Court held that other than the fact of a prior conviction, any fact that increases the punishment for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. *Apprendi* is inapplicable to the Prison Releasee Reoffender Act, because the Act merely limits the court's discretion in sentencing. It does not increase the penalty beyond the statutory maximum." *Stabile v. State*, 790 So.2d 1235, 238 (Fla. 5th DCA 2001) (citations omitted), approved, 838 So.2d 557 (Fla. 2003).

Probation Supervision through the Department of Corrections (Section 22)

At sentencing, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.[107] The DOC supervises more than 164,000 offenders on active community supervision. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control.[108]

Probation

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose to ensure the offender's compliance with the terms of the sentence and the safety to the community.[109] Section 948.03, F.S., provides that a court must determine the terms and conditions of probation. Standard conditions of probation that are enumerated in s. 948.03, F.S., are not required to be announced on the record, but the court must orally pronounce, and provide in writing, any special conditions of probation.

Violations of Probation

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.[110] A violation of probation (VOP) can be the result of a new violation of law or a technical violation of the conditions imposed. If reasonable grounds exist to believe that an offender has violated his or her terms of supervision in a material respect, an offender may be arrested without a warrant by a:

- Law enforcement officer who is aware of the inmate's supervised community release status;
- Probation officer; or
- County or municipal law enforcement officer upon request by a probation officer.[111]

The offender must be returned to the court granting such probation.[112] Additionally, the committing court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the offender.[113]

Upon a finding through a VOP hearing, a court may revoke, modify, or continue the supervision. If the court chooses to revoke the supervision, it may impose any sentence originally permissible before placing the offender on supervision.[114] In addition, if an offender qualifies as a violent felony offender of special concern (VFOSC), the court must revoke supervision, unless it makes

[107] Section 948.01, F.S.
[108] The DOC, *Probation Services*, available at http://www.dc.state.fl.us/cc/index.html (last visited February 21January 29, 2020).
[109] Section 948.001(8), F.S. Terms and conditions of probation are provided in s. 948.03, F.S.
[110] Section 948.10(3), F.S.
[111] Section 948.06(1)(a), F.S.
[112] *Id*.
[113] Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the probationer or controlee has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as enumerated in s. 948.06(8)(c), F.S.
[114] Section 948.06(2)(b), F.S.

written findings that the VFOSC does not pose a danger to the community.[115] The VFOSC status also accrues sentence points under the Code, which affects the scoring of the lowest permissible sentence.[116]

Prior to October 1, 2019, the effective date for section 63 of CS/HB 7125 (2019), the sentencing court had the complete discretion to determine whether to continue, modify, or revoke an offender's probation subsequent to a violation of probation.[117] However, in part, CS/HB 7125 (2019) amended s. 948.06, F.S., providing that the court must modify or continue a probationary term upon finding a probationer in violation when *any* of the following applies:

- The term of supervision is probation.
- The probationer does not qualify as a VFOSC.
- The violation is a low-risk technical violation, as defined in s. 948.06(9)(b), F.S.[118]
- The court has not previously found the probationer in violation of his or her probation pursuant to a filed violation of probation affidavit during the current term of supervision. A probationer who has successfully completed sanctions through the alternative sanctioning program is eligible for mandatory modification or continuation of his or her probation.

Further, if the court is required to modify or continue the probationary term, the court may include in the sentence a maximum of 90 days in county jail as a special condition of probation.

CS/HB 7125 (2019) also provided that if a probationer has less than 90 days of supervision remaining on his or her term of probation and meets the criteria for mandatory modification or continuation, the court may revoke probation and sentence the probationer to a maximum of 90 days in county jail.

Effect of the Bill

The bill amends s. 948.06(2)(f), F.S., clarifying that the court is only required to modify or continue an offender's probationary term if *all*, rather than any, of the enumerated factors applies.

This provision of the bill is effective upon becoming law.

[115] *See* s. 948.06(8)(a), F.S., for all VFOSC qualifications and enumerated list of felonies that are considered qualifying offenses. *See also* ch. 2007-2, L.O.F.
[116] Section 921.0024, F.S.
[117] *See* s. 948.06, F.S. (2018).
[118] Section 948.06(9)(b), F.S., defines a "low-risk violation" to mean any of the following: a positive drug or alcohol test result; failure to report to the probation office; failure to report a change in address or other required information; failure to attend a required class, treatment or counseling session, or meeting; failure to submit to a drug or alcohol test; a violation of curfew; failure to meet a monthly quota on any required probation condition, including, but not limited to, making restitution payments, paying court costs, or completing community service hours; leaving the county without permission; failure to report a change in employment; associating with a person engaged in criminal activity; or any other violation as determined by administrative order of the chief judge of the circuit.

Sentence Review Hearings for Specified Offenders (Sections 10-12)

Juvenile Offenders Convicted of Offenses Punishable by Life Without Parole

In recent years, the U.S. Supreme Court issued several decisions addressing the application of the Eighth Amendment's prohibition against cruel and unusual punishment as it relates to the punishment of juvenile offenders.[119] The first of these was *Roper v. Simmons*,[120] in which the Court held that juvenile offenders cannot be subject to the death penalty for any offense. More recently, the Court expanded juvenile sentencing doctrine in *Graham v. Florida*[121] and *Miller v. Alabama*.[122]

Graham v. Florida

In *Graham*, the U.S. Supreme Court held that a juvenile offender may not be sentenced to life in prison without the possibility of parole for a non-homicide offense. More specifically, the Court found that if a non-homicide juvenile offender is sentenced to life in prison, the state must "provide him or her with some realistic opportunity to obtain release before the end of that term."[123] Because Florida abolished parole[124] and the possibility of executive clemency was deemed to be remote,[125] the Court held that a juvenile offender in Florida could not be given a life sentence for a non-homicide offense without a meaningful opportunity to obtain release.[126]

Graham applies retroactively to previously sentenced offenders because it established a fundamental constitutional right.[127] Therefore, a juvenile offender who is serving a life sentence for a non-homicide offense that was committed after parole eligibility was eliminated is entitled to be resentenced to a term less than life.

The U.S. Supreme Court did not give any guidance as to the maximum permissible sentence for a non-homicide juvenile offender other than to exclude the possibility of life without parole. This led to different results among the District Courts in reviewing sentences for a lengthy term of years. Prior to the 2014 Legislative Session, there were conflicts in the case law regarding whether a term of years could be deemed to equate to a life without parole sentence. The Florida

[119] The term "juvenile offender" refers to an offender who was less than 18 years of age at the time the offense was committed for which he or she was sentenced. Most crimes committed by juveniles are dealt with through delinquency proceedings as set forth in ch. 985, F.S. However, the law provides a mechanism for juveniles to be tried and handled as adults. A juvenile who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned. A juvenile who is older than 13 years may be tried as an adult for certain felony offenses if a grand jury indictment is returned, if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S., or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Regardless of age, s. 985.58, F.S., requires a grand jury indictment to try a juvenile as an adult for an offense that is punishable by death or life imprisonment.
[120] 125 S.Ct. 1183 (2005).
[121] 130 S.Ct. 2011 (2010).
[122] 132 S.Ct. 2455 (2012).
[123] *Graham* at 82.
[124] Parole was abolished in 1983 for all non-capital felonies committed on or after October 1, 1983, and was completely abolished in 1995 for any offense committed on or after October 1, 1995.
[125] *Graham* at 70.
[126] *Graham* at 75.
[127] *See, e.g., St. Val v. State,* 107 So.3d 553 (Fla. 4th DCA 2013); *Manuel v. State,* 48 So.3d 94 (Fla. 2d DCA 2010).

First District Court of Appeal held that a lengthy term of years is a *de facto* life sentence if it exceeds the juvenile offender's life expectancy.[128] On the other hand, the Florida Fourth and Fifth District Courts of Appeal strictly construed *Graham* to apply only to life sentences and not to affect sentences for a lengthy term of years.[129]

On March 19, 2015, the Florida Supreme Court issued opinions on two cases that had been certified for it to resolve, *Gridine v. State*, 89 So.3d 909 (Fla. 1st DCA 2011) and *Henry v. State*, 82 So.3d 1084 (Fla. 5th DCA 2012). The Court held that a sentence proscribing a lengthy term of years imprisonment, such as a 70-year sentence as was pronounced in *Gridine* or the 90-year sentence pronounced in *Henry* that does not provide a meaningful opportunity for release is a de facto life sentence that violates the Eighth Amendment to the U.S. Constitution and the holding in *Graham*.[130]

Miller v. Alabama

In *Miller*, the U.S. Supreme Court held that juvenile offenders who commit homicide may not be sentenced to life in prison without the possibility of parole as the result of a mandatory sentencing scheme. The Court did not find that the Eighth Amendment prohibits sentencing a juvenile murderer to life without parole, but rather that individualized factors related to the offender's age must be considered before a life without parole sentence may be imposed. The Court also indicated that it expects few juvenile offenders will be found to merit life without parole sentences.

The majority opinion in *Miller* noted mandatory life without parole sentences "preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it."[131] Although the Court did not require consideration of specific factors, it highlighted the following concerns:

> Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or

[128] *Adams v. State*, 2012 WL 3193932 (Fla. 1st DCA 2012). The First District Court of Appeal has struck down sentences of 60 years (*Adams)* and 80 years (*Floyd v. State*, 87 So.3d 45 (Fla. 1st DCA 2012)), while approving sentences of 50 years (*Thomas v. State*, 78 So.3d 644 (Fla. 1st DCA 2011)) and 70 years (*Gridine v. State*, 89 So. 3d 909 (Fla. 1st DCA 2011)).
[129] *See Guzman v. State*, 110 So.3d 480 (Fla. 4th DCA 2013)*; Henry v. State*, 82 So.3d 1084 (Fla. 5th DCA 2012). It also appears that the Second District Court of Appeal may agree with this line of reasoning: *see Young v. State*, 110 So.3d 931 (Fla. 2d DCA 2013).
[130] *Gridine v. State*, 175 So.3d 672 (Fla. 2015) and *Henry v. State*, 175 So.3d 675 (Fla. 2015).
[131] *Miller* at 2467.

> his incapacity to assist his own attorneys….[A]nd finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.[132]

CS/HB 7035 (2014)

In response to the above-mentioned cases, the 2014 Legislature passed and the Governor signed into law CS/HB 7035 (2014)[133], ensuring Florida had a constitutional sentencing scheme for juvenile offenders who are convicted of offenses punishable by a sentence of life without parole.

CS/HB 7035 (2014) amended s. 775.082, F.S., *requiring* a court to sentence a juvenile offender who is convicted of a homicide offense[134] that is a capital felony or an offense that was reclassified as a capital felony (capital felony homicide) and where the person actually killed, intended to kill, or attempted to kill the victim to:

- Life imprisonment, if, after conducting a sentencing hearing in accordance with the newly created s. 921.1401, F.S., the court concluded that life imprisonment is an appropriate sentence; or
- A term of imprisonment of not less than 40 years, if the judge concluded at the sentencing hearing that life imprisonment is not an appropriate sentence.[135]

The court *may* sentence a juvenile offender to life imprisonment or a term of years equal to life imprisonment, if, after conducting a sentencing hearing in accordance with s. 921.1401, F.S., the court finds such sentence appropriate and the juvenile offender is convicted of a:

- Life or first degree felony homicide where the person actually killed, intended to kill, or attempted to kill the victim;[136]
- Capital, life, or first degree felony homicide offense where the person did not actually kill, intend to kill, or attempt to kill the victim;[137] or
- Nonhomicide offense.[138]

Section 775.082(1)(b)1., F.S., requires the court to impose a minimum sentence (40 years) only in instances where the court determines that life imprisonment is not appropriate for a juvenile offender convicted of a capital felony homicide where the person actually killed, intended to kill, or attempted to kill the victim.[139]

Section 775.082(1) and (3), F.S., also provides that all juvenile offenders are entitled to have their sentence reviewed by the court of original jurisdiction after specified periods of imprisonment. However, a juvenile offender convicted of a capital felony homicide, where the person actually killed, intended to kill, or attempted to kill the victim, is not entitled to review if

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[132] *Miller* at 2468.
[133] Chapter 201-220, L.O.F.
[134] Section 782.04, F.S., establishes homicide offenses.
[135] Section 775.082(1)(b)1., F.S.
[136] Section 775.082(3)(a)5. and (b), F.S.
[137] Section 775.082(1)(b)2., F.S.
[138] Section 775.082(3)(c), F.S.
[139] Section 775.082(1)(b)1., F.S.

he or she has previously been convicted of a list of enumerated offenses, or conspiracy to commit one of the enumerated offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence for the capital felony homicide.[140]

Sentencing Proceedings for Juvenile Offenders Sentenced to Life Imprisonment

CS/HB 7035 (2014) created s. 921.1401, F.S., which authorized the court to conduct a separate sentencing hearing to determine whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence for a juvenile offender convicted of one of the above-described homicide or nonhomicide offenses that was committed on or after July 1, 2014.[141] When determining whether such sentence is appropriate, the court is required to consider factors relevant to the offense and to the juvenile offender's youth and attendant circumstances, including, but not limited to the:

- Nature and circumstances of offense committed by the juvenile offender;
- Effect of crime on the victim's family and on the community;
- Juvenile offender's age, maturity, intellectual capacity, and mental and emotional health at time of offense;
- Juvenile offender's background, including his or her family, home, and community environment;
- Effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the juvenile offender's participation in the offense;
- Extent of the juvenile offender's participation in the offense;
- Effect, if any, of familial pressure or peer pressure on the juvenile offender's actions;
- Nature and extent of the juvenile offender's prior criminal history;
- Effect, if any, of characteristics attributable to the juvenile offender's youth on the juvenile offender's judgment; and
- Possibility of rehabilitating the juvenile offender.[142]

This sentencing hearing is mandatory when sentencing any juvenile offender for a capital felony homicide offense where the offender actually killed, intended to kill, or attempted to kill the victim. The hearing is not required in any of the other above-described offenses, but must be conducted before the court can impose a sentence of life imprisonment or a term of years equal to life imprisonment.

Sentence Review Proceedings

CS/HB 7035 (2014) also created s. 921.1402, F.S., which entitles certain juvenile offenders to a review of the sentence by the court of original jurisdiction after specified periods of time. The sentence review hearing is to determine whether the juvenile offender has been rehabilitated and is deemed fit to re-enter society.

[140] *See* s. 775.082(1) and (3), F.S., providing that reviews of sentences will be conducted in accordance with s. 921.1402, F.S.
[141] Section 921.1401(1), F.S.
[142] Section 921.1401(2), F.S.

Section 921.1402(1), F.S., defines "juvenile offender" to mean a person sentenced to imprisonment in the custody of the DOC for an offense committed on or after July 1, 2014, and committed *before* he or she was 18 years of age.

A juvenile offender convicted of a capital felony homicide offense where the person actually killed, intended to kill, or attempted to kill the victim is entitled to a sentence review hearing after 25 years.[143] However, a juvenile offender is not entitled to review if he or she has previously been convicted of one of the following offenses, or conspiracy to commit one of the following offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence for which he or she was sentenced to life:

- Murder;
- Manslaughter;
- Sexual battery;
- Armed burglary;
- Armed robbery;
- Armed carjacking;
- Home-invasion robbery;
- Human trafficking for commercial sexual activity with a child under 18 years of age;
- False imprisonment under s. 787.02(3)(a), F.S.; or
- Kidnapping.[144]

A juvenile offender convicted of a life felony or first degree felony homicide offense where the person actually killed, intended to kill, or attempted to kill the victim, is entitled to a sentence review hearing after 25 years, if he or she is sentenced to a term of imprisonment for more than 25 years.[145]

A juvenile offender convicted of a capital felony, life felony, or first degree felony homicide offense where the person did not actually kill, intend to kill, or attempt to kill the victim is entitled to have the court review the sentence after 15 years, if he or she is sentenced to a term of imprisonment of more than 15 years.[146]

A juvenile offender convicted of a nonhomicide offense is entitled to have the court review the sentence after 20 years if the juvenile is sentenced to a term of imprisonment of more than 20 years. The juvenile offender is eligible for one subsequent review hearing 10 years after the initial review hearing.[147]

The juvenile offender must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The DOC must notify a juvenile offender of his or her eligibility to request a sentencing review hearing 18 months before the juvenile offender

[143] Section 775.082(1)(b)1., F.S.
[144] Section 921.1402(2)(a), F.S.
[145] Section 921.1402(2)(b), F.S.
[146] Section 921.1402(2)(c), F.S.
[147] Section 921.1402(2)(d), F.S.

becomes entitled to such review. Additionally, an eligible juvenile offender is entitled to be represented by counsel at the sentence review hearing, including a court appointed public defender, if the juvenile offender cannot afford an attorney.[148]

Section 921.1402(6), F.S., requires the original sentencing court to consider any factor it deems appropriate during the sentence review hearing, including all of the following:

- Whether the offender demonstrates maturity and rehabilitation;
- Whether the offender remains at the same level of risk to society as he or she did at the time of the initial sentencing;
- The opinion of the victim or the victim's next of kin;[149]
- Whether the offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person;
- Whether the offender has shown sincere and sustained remorse for the criminal offense;
- Whether the offender's age, maturity, and psychological development at the time of the offense affected his or her behavior;
- Whether the offender has successfully obtained a general educational development certificate or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available;
- Whether the offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense; and
- The results of any mental health assessment, risk assessment, or evaluation of the offender as to rehabilitation.[150]

If a court, after conducting a sentence review hearing, finds that the juvenile offender has been rehabilitated and is reasonably fit to reenter society, the court must modify the offender's sentence and impose a term of probation of at least five years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court must issue an order in writing stating the reasons why the sentence is not being modified.[151]

These sentencing provisions are limited to the juvenile offenders that fall under the strict findings in *Graham* and *Miller*.[152] Thus, the sentence review hearings do not currently apply to persons who were convicted and sentenced to very similar offenses and who are close in age to the juvenile offenders who have received sentence review hearings because of *Graham* and *Miller*.

[148] Section 921.1402(3)-(5), F.S.
[149] Section 921.1402(6)(c), F.S., further states that the absence of the victim or the victim's next of kin from the resentencing hearing may not be a factor in the court's determination. The victim or victim's next of kin is authorized to appear in person, in writing, or by electronic means. Additionally, if the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentence review hearings.
[150] Section 921.1402(6), F.S.
[151] Section 921.1402(7), F.S.
[152] *See Graham v. Florida*, 130 S.Ct. 2011 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

Case Law Subsequent to CS/HB 7035 (2014)

Valid Sentence Options for *Miller* Offenders

Subsequent to the U.S. Supreme Court's holdings in *Roper* and *Miller*, the options for permissible sentences under Florida law for juveniles who were convicted of such capital and life offenses punishable by life imprisonment without the possibility of parole became unclear. The Florida Fifth District Court of Appeal in *Horsley v. State*,[153] held that the principal of statutory revival should be applied mandating that the last constitutional sentence, life with the possibility of parole after 25 years, should be imposed for convictions of such juveniles. However, in 2015, the Florida Supreme Court heard and overturned this decision in *Horsley*,[154] holding that the proper remedy for such juveniles convicted of offenses classified as capital offenses is to apply the sentencing provisions enacted by CS/HB 7035 (2014), which codified the above-mentioned ss. 775.082, 921.1401, and 921.1402, F.S., rather than utilize statutory revival principles and impose a sentence of life with the possibility of parole after 25 years.[155]

Retroactive Application of *Miller*

Another outstanding question at the time CS/HB 7035 (2014) was implemented was whether *Miller* applied retroactively in the same manner that *Graham* did. Other state and federal courts had issued differing opinions as to whether *Miller* applies retroactively. The question has turned on whether *Miller* is considered to be a procedural change in the law that does not apply retroactively to sentences that were final before the opinion was issued or an opinion of fundamental significance, similar to *Graham*.

The Florida Supreme Court decided this issue in *Falcon v. State*.[156] The Court held that *Miller* applied retroactively because the ruling is a development of fundamental significance. The Court held that given that *Miller* invalidated the only statutory means for imposing a sentence of life without the possibility of parole on juveniles convicted of a capital felony it dramatically impacted the ability of Florida to impose a nondiscretionary sentence of life without parole on a juvenile convicted of a capital felony. Therefore, *Falcon* ensured that juvenile offenders whose convictions and sentences were final prior to the *Miller* decision could seek collateral relief based on it.[157]

[153] 121 So.3d 1130 (Fla. 5th DCA 2013).
[154] 160 So.3d 393 (Fla. 2015).
[155] Life with the possibility of parole after 25 years is the penalty for capital murder under the 1993 version of s. 775.082(1), F.S., the most recent capital murder penalty statute that was constitutional under *Miller* when applied to a juvenile offender.
[156] 162 So.3d 954 (Fla. 2015).
[157] *Falcon v. State*, 162 So.3d 954, 961 (Fla. 2015).

Impact of Parole or Conditional Release Options for Juvenile Offenders

The U.S. Supreme Court further distinguished the *Graham* and *Miller* progeny of cases with *Virginia v. LeBlanc*, which denied habeas corpus relief for the juvenile offender holding that release programs for prisoners that consider factors in a similar manner as parole, such as Virginia's geriatric release program, did not violate *Graham* or *Miller* because it provides a juvenile offender a meaningful opportunity for release. In *LeBlanc*, the Court reasoned that Virginia's geriatric release program considered individualized factors of the offender, such as the individual's rehabilitation and maturity, history and conduct before and during incarceration, his or her inter-personal relationships with staff and inmates, and development and growth in attitude toward himself, herself, and others.[158]

The Florida Supreme Court has held that the *Graham* and *Miller* rules do not apply to juvenile offenders sentenced to life or lengthy terms of years equal to life, but who are eligible for parole.[159]

Victim Input

In 2018, the Florida voters approved Amendment 6 on the ballot, which provided certain rights to victims in the Florida Constitution. In part, Article I, s. 16 of the Florida Constitution, provides that a victim must have the following rights upon request:

- Reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary.
- To be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.
- To be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.
- To be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender.[160]

[158] *Virginia v. LeBlanc*, 137 S.Ct. 1726 (2017).
[159] *See Franklin v. State*, 258 So.3d 1329 (Fla. 2018); *Carter v. State*, 283 So.3d 409 (Fla. 3d DCA 2019); *Brown v. State*, 283 So.3d 424 (Fla. 3d DCA 2019).
[160] Art. 1, s. 16(b)(6)a., b., f., and g., FLA. CONST.

Effect of the Bill

Juvenile Offenders

As discussed above, a juvenile offender sentenced to a sentence of life without parole for a capital felony[161] where a finding was made that he or she actually killed, intended to kill, or attempted to kill the victim is entitled to a review of his or her sentence after 25 years if he or she has never previously been convicted of a specified enumerated felony.[162] The bill amends the list of enumerated offenses that bar such juvenile offenders from having a sentence review hearing to only include murder. Therefore, the bill provides such a juvenile offender is only prohibited from having a sentence review hearing if he or she has previously been convicted of committing or conspiracy to commit murder, if the murder for which the person was previously convicted was part of a separate criminal transaction or episode than the murder that resulted in the sentence.

The bill also creates s. 921.14021, F.S., providing for the retroactive application of the above mentioned amendment to remove certain prior convictions as a prohibition for a juvenile offender to have a sentence review hearing in accordance with s. 921.1402(2)(a), F.S. The bill requires that a juvenile offender is entitled to a review of his or her sentence after 25 years or, if 25 years on the term of imprisonment has already been served by October 1, 2020, the sentence review hearing must be conducted immediately. The bill provides legislative findings related to the retroactive application of such provisions.

Because the bill expressly provides for retroactive application of the changes the bill makes, the bill has provided a legislative exception to the default position of prospectively.

Young Adult Offenders

The bill creates s. 921.1403, F.S., expanding the sentence review hearing process created by CS/HB 7035 (2014) for juveniles in response to the *Graham* and *Miller* cases to persons convicted of similar offenses, but who were not entitled to a sentence review hearing.

The bill defines the term "young adult offender" to mean a person who committed an offense before he or she reached 25 years of age and for which he or she is sentenced to a term of years in the custody of the DOC, regardless of the date of sentencing. The bill also provides that the provisions allowing sentence review hearings of young adult offenders applies retroactively.

The sentence review procedures and hearing process are substantively identical to those in place for juvenile offenders in accordance with s. 921.1402, F.S., and discussed above. However, the eligibility criteria for a young adult offender to have a sentence review hearing is different.

[161] In violation of s. 782.04, F.S.
[162] *See* ss. 775.082(1)(b)1. and 921.1402, F.S.

Eligibility

The bill prohibits a young adult offender convicted of a violation of s. 782.04, F.S., related to homicide, which is punishable by death from being eligible for a sentence review hearing. The bill only permits young adult offenders convicted of offenses that are life or first degree felony offenses to be eligible for a sentence review hearing in accordance with s. 921.1403, F.S.

The bill excludes a young adult offender convicted and sentenced for certain life felony or first degree felony[163] offenses from a sentence review hearing if he or she has previously been convicted of committing, or of conspiring to commit murder, if such prior offense was part of a separate criminal transaction or episode than the offense that resulted in the sentence.

The bill provides that a young adult offender who is convicted of an offense that is a:
- Life felony, or that was reclassified as a life felony, and who is sentenced to a term of more than 20 years[164] is entitled to a review of his or her sentence after 20 years.[165]
- Felony of the first degree or that was reclassified as a felony of the first degree and who is sentenced to a term of more than 15 years[166] is entitled to a review of his or her sentence after 15 years.

Procedures for Initiating the Sentence Review Hearing Process

Similar to the process developed in s. 921.1402(3), F.S., applicable to a juvenile offender, the bill provides that the DOC must notify a young adult offender in writing of his or her eligibility to request a sentence review hearing:
- 18 months before the young adult offender is entitled to a sentence review hearing if such offender is not eligible when the bill becomes effective; or
- Immediately if the offender is eligible as of October 1, 2020.

A young adult offender seeking a sentence review must submit an application to the original sentencing court requesting that the court hold a sentence review hearing. The bill provides that such court retains jurisdiction for the duration of the sentence for this purpose. The bill also provides that a young adult offender who is eligible for a sentence review hearing may be represented by an attorney, who must be appointed by the court if the young adult offender cannot afford an attorney.

[163] *See* s. 775.082(3)(a)1., 2., 3., 4., or 6., or (b)1., F.S., which are the citations included in the bill. Each of these citations includes different sentence terms based upon the degree of offense or the date of commission of the offense.
[164] Pursuant to s. 775.082(3)(a)1., 2., 3., 4., or 6., F.S.
[165] The bill provides that this does not apply to a person who is eligible for sentencing under s. 775.082(3)(a)5., or s. 775.082(3)(c), F.S., which only applies to an offender who committed certain life offenses before attaining the age of 18.
[166] Pursuant to s. 775.082(3)(b)1., F.S.

Sentence Review Hearing

The bill requires the court to hold a sentence review hearing to determine whether to modify the young adult offender's sentence upon receiving an application for such hearing. The court is required to consider any factor it deems appropriate to determine the appropriateness of modifying the young adult offender's sentence, including, but not limited to, the following:

- Whether the young adult offender demonstrates maturity and rehabilitation.
- Whether the young adult offender remains at the same level of risk to society as he or she did at the time of the initial sentencing.
- The opinion of the victim or the victim's next of kin.[167]
- Whether the young adult offender was a relatively minor participant in the criminal offense or whether he or she acted under extreme duress or under the domination of another person.
- Whether the young adult offender has shown sincere and sustained remorse for the criminal offense.
- Whether the young adult offender's age, maturity, or psychological development at the time of the offense affected his or her behavior.
- Whether the young adult offender has successfully obtained a high school equivalency diploma or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available.
- Whether the young adult offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.
- The results of any mental health assessment, risk assessment, or evaluation of the young adult offender as to rehabilitation.[168]

Terms of Release for Young Adult Offenders Resentenced Pursuant to s. 921.1403, F.S.

The terms that a young adult offender must comply with if he or she is resentenced under the bill are similar to those that a juvenile offender must comply with if resentenced in accordance with s. 921.1402, F.S.

Upon conducting the sentence review hearing, the court may modify the young adult offender's sentence if the court makes a determination that the young adult offender is rehabilitated and is reasonably believed to be fit to reenter society. The court must modify the sentence to a term of probation for at least:

- Five years, if the young adult offender was originally sentenced for a life felony, or an offense reclassified as a life felony; or
- Three years, if the young adult offender was originally sentenced for a first degree felony, or an offense reclassified as a first degree felony.

[167] The bill states that the absence of the victim or the victim's next of kin from the hearing may not be a factor in the determination of the court. The court must allow the victim or victim's next of kin to be heard in person, in writing, or by electronic means. Finally, if the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or previous sentencing review hearings.

[168] These enumerated factors mirror the criteria used for the sentence review hearings conducted for juvenile offenders in accordance with s. 921.1402(6), F.S.

However, the bill prohibits the court from resentencing a young adult offender if the court determines that he or she has not demonstrated rehabilitation or is not fit to reenter society and requires the court to issue a written order stating the reasons why the sentence is not being modified.

Subsequent Reviews

The bill allows a young adult offender to have one subsequent sentence review hearing after five years if he or she is not resentenced at the initial sentence review hearing. The bill requires the young adult offender seeking a subsequent sentence review hearing to submit a new application to the original sentencing court to request a subsequent sentence review hearing.

These provisions of the bill are effective October 1, 2020.

Postconviction Forensic Analysis (Sections 13, 14, 16, and 17)

Deoxyribonucleic acid (DNA) is hereditary material existing in the cells of all living organisms. A DNA profile may be created by testing the DNA in a person's cells.[169] Similar to fingerprints, a person's DNA profile is a unique identifier, except for identical twins, who have the exact same DNA profile.[170] DNA is frequently collected at a crime scene and analyzed to assist in convicting or exonerating a suspect. DNA evidence may be collected from any biological material, such as hair, teeth, bones, skin cells, blood, semen, saliva, urine, feces, and other bodily substances.[171] A DNA sample may be used to solve a current crime or a crime that occurred before DNA-testing technology.[172]

According to the National Registry of Exonerations (Registry), which tracks both DNA and non-DNA based exonerations, the misapplication of forensic science has contributed to 45 percent of wrongful convictions in the United States that later resulted in an exoneration by DNA evidence.[173] Additionally, false or misleading forensic evidence was a contributing factor in 24 percent of all wrongful convictions nationally.[174] Data compiled through 2019 shows there have been 73 exonerations in Florida, and that false or misleading forensic evidence was a contributing factor to the person's wrongful conviction in 18 of those cases.[175] In some cases, science that was generally accepted at the time it was used in a criminal case has since been

[169] FindLaw, *How DNA Evidence works*, available at https://criminal.findlaw.com/criminal-procedure/how-dna-evidence-works.html (last visited February 13, 2020).
[170] *Id.*
[171] *Id.*
[172] *Id.*; Dr. Alec Jeffreys developed the DNA profiling technique in 1984.
[173] Innocence Project, *Overturning Wrongful Convictions Involving Misapplied Forensics*, available at https://www.innocenceproject.org/overturning-wrongful-convictions-involving-flawed-forensics/ (last visited February 13, 2020).
[174] *Id.*
[175] The National Registry of Exonerations, available at https://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View=%7bB8342AE7-6520-4A32-8A06-4B326208BAF8%7d&FilterField1=State&FilterValue1=Florida (last visited February 13, 2020).

undermined by subsequent scientific advancements. Examples of scientific disciplines that have been discredited in recent years include:

- Microscopic hair analysis;[176]
- Arson investigation techniques;
- Comparative bullet lead analysis;[177] and
- Bite mark matching.[178]

DNA Databases

Combined DNA Index System (CODIS) and National DNA Index System (NDIS)

The most common form of DNA analysis used to match samples and test for identification in forensic laboratories analyzes only certain parts of DNA, known as short tandem repeats or satellite tandem repeats (STRs).[179] In the early 1990s, the Federal Bureau of Investigation (FBI) chose 13 STRs as the basis for a DNA identification profile, and the 13 STRs became known as the Combined DNA Index System (CODIS).[180] The CODIS is now the general term used to describe the software maintained by the FBI and used to compare an existing DNA profile to a DNA sample found at a crime scene to identify the source of the crime scene sample.[181]

The DNA Identification Act of 1994 (DNA Act)[182] authorized the government to establish a National DNA Index, and in 1998 the National DNA Index System (NDIS) was established. The NDIS contains DNA profiles contributed by federal, state, and local participating forensic laboratories,[183] enabling law enforcement to exchange and compare DNA profiles electronically, thereby linking a crime or a series of crimes to each other or to a known offender. A state seeking to participate in the NDIS must sign a memorandum of understanding with the FBI agreeing to the DNA Act's requirements, including record-keeping requirements and other procedures. To submit a DNA record to the NDIS, a participating laboratory must adhere to federal law regarding expungement[184] procedures, and the DNA sample must:

- Be generated in compliance with the FBI Director's Quality Assurance Standards;
- Be generated by an accredited and approved laboratory;

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[176] Microscopic hair comparison involves comparing hair found at a crime scene with the hair of a defendant. *Id.*

[177] Comparative bullet lead analysis linked bullets found at a crime scene to bullets possessed by a suspect based on the belief that the bullet's lead composition was unique and limited to the originating batch. *Id*.

[178] Bite mark matching is the process of determining that a patterned injury left on a victim was made by human dentition and attempting to match the injury impression with the bite mark of the suspect. Liliana Segura and Jordan Smith, *Bad Evidence, Ten Years After a Landmark Study Blew the Whistle on Junk Science, the Fight Over Forensics Rages On*, The Intercept (May 5, 2019), available at https://theintercept.com/2019/05/05/forensic-evidence-aafs-junk-science/ (last visited February 13, 2020).

[179] Kelly Lowenberg, *Applying the Fourth Amendment when DNA Collected for One Purpose is Tested for Another*, 79 U. Cin. L. Rev. 1289, 1293 (2011), available at https://law.stanford.edu/wp-content/uploads/2011/11/APPLYING-THE-FOURTH-AMENDMENT-WHEN-DNA-COLLECTED-FOR-ONE-PURPOSE.pdf (last visited February 13, 2020).

[180] *Id.*

[181] *Id.* at 1294.

[182] 42 U.S.C. s. 14132.

[183] All 50 states, the District of Columbia, the federal government, the U.S. Army Criminal Investigation Laboratory, and Puerto Rico participate in NDIS. FBI Services, *Laboratory Services, Frequently Asked Questions on CODIS and NDIS*, available at https://www.fbi.gov/services/laboratory/biometric-analysis/codis/codis-and-ndis-fact-sheet (last visited February 13, 2020).

[184] *See* 42 U.S.C. s. 14132(d)(2)(A)(ii) (requiring states to expunge a DNA record when a charge is dismissed, results in an acquittal, or when no charge is filed).

- Be generated by a laboratory that undergoes an external audit every two years to demonstrate compliance with the FBI Director's Quality Assurance Standards;
- Be from an acceptable data category, such as:
  - Convicted offender;
  - Arrestee;
  - Detainee;
  - Forensic case;
  - Unidentified human remains;
  - Missing person; or
  - Relative of a missing person.
- Meet minimum the CODIS requirements for the specimen category; and
- Be generated using an approved kit.

Statewide DNA Database

In 1989, the Legislature established the Statewide DNA database (statewide database) to be administered by the FDLE, capable of classifying, matching, and storing analyses of DNA and other biological material and related data.[185] The statewide database contains DNA samples, including those:

- Submitted by persons convicted of or arrested for felony offenses and specified misdemeanor offenses; and
- Necessary for identifying missing persons and unidentified human remains, including samples voluntarily contributed by relatives of missing persons.[186]

All accredited local government crime laboratories in Florida have access to the statewide database in accordance with rules and agreements established by the FDLE.[187] Local laboratories can access the statewide database through the CODIS, allowing for the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories.[188]

The statewide database may contain DNA data obtained from the following types of biological samples:

- Crime scene samples.
- Samples required by law to be obtained from qualifying offenders.[189]
- Samples lawfully obtained during the course of a criminal investigation, including those from deceased victims or deceased suspects.
- Samples from unidentified human remains.
- Samples from persons reported missing.

[185] Chapter 89-335, L.O.F.
[186] Section 943.325(1), F.S.
[187] Section 943.325(4), F.S.
[188] Section 943.325(2), F.S.
[189] A "qualifying offender" is any person, convicted of a felony or attempted felony in Florida or a similar offense in another jurisdiction, or specified misdemeanors, who is: committed to a county jail; committed to or under the supervision of the ODc, including a private correctional institution; committed to or under the supervision of the Department of Juvenile Justice; transferred to Florida under the Interstate Compact on Juveniles or the Interstate Corrections Compact. Section 943.325(2)(g), F.S.

- Samples voluntarily contributed by relatives of missing persons.
- Other samples approved by the FDLE.[190]

A qualifying offender is required to submit a DNA sample for inclusion in the statewide database if he or she is:

- Arrested or incarcerated in Florida; or
- On probation, community control, parole, conditional release, control release, or any other type of court-ordered supervision.[191]

An arrested offender must submit a DNA sample at the time he or she is booked into a jail, correctional facility, or juvenile facility. An incarcerated person and a juvenile in the custody of the Department of Juvenile Justice must submit a DNA sample at least 45 days before his or her presumptive release date.[192] The FDLE must retain all DNA samples submitted to the statewide database and such samples may be used for any lawful purpose.[193]

The FDLE specifies database procedures to maintain compliance with national quality assurance standards to ensure that DNA records will be accepted into the NDIS. Results of any DNA analysis must be entered into the statewide database and may only be released to criminal justice agencies. Otherwise, the information is confidential and exempt from s. 119.07(1), F.S., and article I, s. 24(a), of the Florida Constitution.[194]

Postsentencing DNA Testing

Defendants Sentenced After Trial

Florida law authorizes a person, who has been tried and found guilty of committing a felony, to petition a court to examine physical evidence collected during the investigation of the crime for which he or she has been sentenced that may contain DNA which would exonerate the person or mitigate the sentence that he or she received.[195] A sentenced defendant can file a petition for postsentencing DNA testing any time after the judgment and sentence becomes final.[196]

A petition for postsentencing DNA testing must be made under oath, and include the following:

- A statement of the facts supporting the petition, including a description of the physical evidence containing DNA to be tested and, if known, the present location or last known location of the evidence and how it was originally obtained;
- A statement that the evidence was not previously tested for DNA or that the results of any previous DNA testing were inconclusive and that subsequent scientific developments in DNA testing techniques would likely produce a definitive result establishing that the petitioner is not the person who committed the crime;

[190] Section 943.325(6), F.S.
[191] Section 943.325(7), F.S.
[192] *Id.*
[193] *Id.*
[194] Section 943.325(14), F.S.
[195] Section 925.11(1)(a)1., F.S.
[196] Section 925.11(1)(a)2., F.S.

- A statement that the sentenced defendant is innocent and how the DNA testing requested by the petition will exonerate the defendant of the crime for which he or she was sentenced or will mitigate the sentence he or she received;
- A statement that identification is a genuinely disputed issue in the case, and why it is an issue;
- Any other facts relevant to the petition; and
- A certification that a copy of the petition has been served on the prosecuting authority.[197]

A court must review the petition and deny it if it is insufficient. If the petition is sufficient, the prosecuting authority must respond within 30 days.[198] After reviewing the prosecuting authority's response, the court must either issue an order on the merits or set the petition for a hearing. If the court sets the petition for a hearing, it may appoint counsel to assist an indigent defendant, upon finding such assistance necessary.[199]

The court must make the following findings when ruling[200] on the petition:
- Whether the sentenced defendant has shown that the physical evidence that may contain DNA still exists;
- Whether the results of DNA testing of that physical evidence would be admissible at trial and whether there exits reliable proof to establish that the evidence has not been materially altered and would be admissible at a future hearing; and
- Whether there is a reasonable probability that the sentenced defendant would have been acquitted or would have received a lesser sentence if the DNA evidence had been admitted at trial.[201]

Defendants Sentenced After Entering a Plea

A defendant who entered a plea of guilty or nolo contendere to a felony offense before July 1, 2006, are eligible to petition for DNA testing based on the general eligibility requirements under s. 925.11, F.S. However, a defendant who entered a plea of guilty or nolo contendere to a felony offense on or after July 1, 2006, may only petition for postsentencing DNA testing when:
- The facts on which the petition is based were unknown to the petitioner or his or her attorney at the time the plea was entered and could not have been ascertained through the exercise of due diligence; or
- The physical evidence for which DNA testing is sought was not disclosed to the defense prior to the entry of the petitioner's plea.[202]

[197] Section 925.11(2)(a), F.S.
[198] Section 925.11(2)(c), F.S.
[199] Section 925.11(2)(e), F.S.
[200] Any party adversely affected by the court's ruling on a petition for postsentencing DNA testing has the right to appeal. Section 925.11(3), F.S.
[201] Section 925.11(2)(f), F.S.
[202] Section 925.12(1), F.S.

Since July 1, 2006,[203] prior to the entry of a felony plea, the court must inquire of the defendant, the defense counsel, and the state regarding:

- The existence of known physical evidence that may contain DNA that could exonerate the defendant;
- Whether discovery in the case disclosed or described the existence of such physical evidence; and
- Whether the defense has reviewed the discovery.[204]

If no such evidence is known to exist, the court may accept the defendant's plea. If physical evidence containing DNA that could exonerate the defendant exists, the court may postpone the plea and order DNA testing to be conducted.[205]

Laboratory Testing

To preserve access to evidence, a governmental entity[206] must maintain any physical evidence collected in a case for which postsentencing DNA testing may be requested. In a death penalty case, the evidence must be maintained for 60 days after execution of the sentence. In any other case, a governmental entity can dispose of the evidence if the term of the sentence imposed in the case has expired and the physical evidence is not otherwise required to be preserved by any other law or rule.[207]

The FDLE or its designee must perform any DNA testing ordered under s. 925.11, F.S.[208] The sentenced defendant is responsible for the cost of testing, unless he or she is indigent, in which case, the state bears the cost. The FDLE must provide the results of DNA testing to the court, the sentenced defendant, and the prosecuting authority. Fla. R. Crim. P. Rule 3.853 authorizes a court to order DNA testing by a private laboratory upon a petitioner's showing of good cause, when he or she can bear the cost of testing.[209]

Effect of the Bill

The bill amends s. 925.11, F.S., to expand access to postsentencing testing of physical evidence. The bill expands the scope of current law to authorize postsentencing testing to include other scientific techniques, in addition to DNA testing. Under the bill, a petitioner found guilty of committing a felony after trial or by entering a plea of guilty or nolo contendere before July 1, 2020, may petition for forensic analysis of physical evidence, rather than only DNA testing. "Forensic analysis" is defined as the process by which a forensic or scientific technique is applied to evidence or biological material to identify the perpetrator of, or an accomplice to, a crime and includes, but is not limited to, DNA testing.

[203] Chapter 2006-292, L.O.F.
[204] Section 925.11(2) and (3), F.S.
[205] Section 925.11, F.S. Any postponement is attributable to the defendant for the purposes of speedy trial.
[206] A "governmental entity" includes, but is not limited to, any investigating law enforcement agency, the clerk of the court, the prosecuting authority, or the FDLE. Section 925.11(4)(a), F.S.
[207] Section 925.11(4), F.S.
[208] Section 943.3251(1), F.S.
[209] Fla. R. Crim. P. Rule 3.853(4)(a), F.S.

The bill lowers the initial standard a petitioner must meet to gain access to forensic analysis. Under the bill, the petitioner must show that forensic analysis may result in evidence material to the identity of the perpetrator of, or an accomplice to, the crime that resulted in the person's conviction, rather than having to show the evidence would exonerate the person or mitigate his or her sentence.

Additionally, the bill amends the relevant petition requirements under s. 925.11, F.S., to reflect the new standards a petitioner must meet including all the following:

- A statement that the evidence was not previously subjected to forensic analysis or that the results of any previous forensic analysis were inconclusive and that subsequent scientific developments in forensic analysis would likely produce evidence material to the identity of the perpetrator of, or an accomplice to, the crime;
- A statement that the petitioner is innocent and how the forensic analysis requested by the petitioner may result in evidence that is material to the identity of the perpetrator of, or an accomplice to, the crime; and
- A statement that the petitioner will comply with any court order to provide a biological sample for the purpose of conducting requested forensic analysis and acknowledging such analysis could produce exculpatory evidence or evidence confirming the petitioner's identity as the perpetrator of, or an accomplice to, the crime or a separate crime.

The bill specifies postsentencing forensic analysis eligibility criteria for defendants who entered a plea of guilty or nolo contendere to a felony, depending on the date the plea was entered. Defendants who entered a plea on or after July 1, 2006, but before July 1, 2020, may petition for DNA testing under the same standards currently required under s. 925.11, F.S. The bill maintains current criteria for these sentenced defendants because each had the benefit of the plea colloquy concerning the potential existence of exculpatory DNA evidence administered by the court since 2006.

Beginning July 1, 2020, the bill requires a court, prior to accepting a plea of guilty or nolo contendere to a felony, to perform a plea colloquy inquiring whether the defendant, defense counsel, or the state is aware of any physical evidence that, if subjected to forensic analysis, could produce evidence material to the identification of the perpetrator of, or an accomplice to, the crime. As such, beginning July 1, 2020, a defendant entering a plea of guilty or nolo contendere to a felony will only be authorized to petition for postsentencing forensic analysis when either:

- The facts on which the petition is predicated were unknown to the petitioner or the petitioner's attorney at the time the plea was entered and could not have been ascertained through the exercise of due diligence; or
- The physical evidence for which forensic analysis is sought was not disclosed to the defense by the state prior to the petitioner's plea.

When ruling on a petition for postsentencing forensic analysis the court must make all the following findings:

- Whether the petitioner has shown that the physical evidence, which may be subjected to forensic analysis, still exists;

- Whether the results of forensic analysis would be admissible at trial and whether reliable proof exists to establish that the evidence has not been materially altered and would be admissible at a future hearing; and
- Whether there is a reasonable probability the forensic analysis may result in evidence that is material to the identity of the perpetrator of, or an accomplice to, the crime.

The bill authorizes a court to order a private laboratory, certified by the petitioner to meet specified accreditation requirements, to perform forensic analysis when:

- The prosecuting authority and the petitioner mutually select a private laboratory to perform the testing; or
- The petitioner makes a sufficient showing that the forensic analysis:
  - Ordered by the court is of such a nature that the FDLE or its designee cannot perform the testing; or
  - Will be significantly delayed because of state laboratory backlog.

If the forensic analysis ordered by the court includes DNA testing, and the resulting DNA sample meets statewide database submission requirements, the FDLE must perform a DNA database search. A private laboratory ordered to conduct testing must cooperate with the prosecuting authority and the FDLE to carry out the database search. The FDLE must compare the submitted DNA profile to:

- DNA profiles of known offenders;
- DNA profiles from unsolved crimes; and
- Any local DNA databases maintained by a law enforcement agency in the judicial circuit where the petitioner was convicted.

The bill authorizes the FDLE to maintain DNA samples obtained from testing ordered under ss. 925.11 or 925.12, F.S., in the statewide database. If the testing conducted complies with FBI requirements and the data meets NDIS criteria, the FDLE must request NDIS to search its database of DNA profiles using any profiles obtained from the court ordered testing. The FDLE must provide the results of the forensic analysis and the results of any search of the national, statewide, and local DNA databases to the court, the petitioner, and the prosecuting authority. The petitioner and the state are authorized to use the information for any lawful purpose.

The bill authorizes a court to order a governmental entity, last known to possess evidence reported to be lost or destroyed in violation of law, to conduct a search and produce a report detailing:

- The nature of the search conducted;
- The date the search was conducted;
- The results of the search;
- Any records showing the physical evidence was lost or destroyed; and
- The signature of the person supervising the search, attesting to the report's accuracy.

The report must be provided to the court, the petitioner, and the prosecuting authority in the case.

These provisions of the bill are effective July 1, 2020.

Conditional Release for Specified Inmate Populations (Sections 8, 19, 20, 31-33, 35-37, 45, and 52-55)

Aging Population Statistics

In 2016, 49 million adults in the United States, or 15 percent of the population, were 65 or older.[210] It is estimated that the number will rise to approximately 98 million by 2060, which corresponds to approximately 25 percent of residents of the United States. The "baby boomers" generation[211] and post baby-boom generations will all be of advanced age by 2029, which is often defined as 55 years of age or older. A report published by the Institutes of Medicine in 2012 asserted that, by 2030, the population of adults over the age of 65 will reach 72.1 million. The report also estimated that approximately one in five persons in the elder population has a mental health or substance abuse disorder, such as depression, dementia, or related psychiatric and behavioral symptoms. Incarcerated men and women typically have physiological and mental health conditions that are associated with people at least a decade older, a phenomenon known as "accelerated aging." Therefore, an incarcerated person who is 50 or 55 years of age would exhibit health conditions comparable to a person who is 60 or 65 in the community. The occurrence of accelerated aging in the prison system is a result of many factors, including inadequate access to medical care before incarceration, substance abuse, the stress of incarceration, and a lack of appropriate health care during incarceration.[212]

Special Health Considerations for Inmates

Similarly to aging persons in the community, aging inmates are more likely to experience certain medical and health conditions, including, in part, dementia, impaired mobility, loss of hearing and vision, cardiovascular disease, cancer, osteoporosis, and other chronic conditions.[213] However, such ailments present special challenges within a prison environment and may result in the need for increased staffing levels and enhanced officer training.[214] Such aging or ill inmates can also require structural accessibility adaptions, such as special housing and wheelchair ramps.

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[210] The Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, *Promoting Health for Older Adults*, September 13, 2019, available at https://www.cdc.gov/chronicdisease/resources/publications/factsheets/promoting-health-for-older-adults.htm (last visited February 21, 2020).

[211] The "baby boomer" generation is generally defined as persons born from 1946 through 1964. *See* Senior Living, *The Baby Boomer Generation*, available at https://www.seniorliving.org/life/baby-boomers/ (last visited February 21, 2020).

[212] Yarnell, S., MD, PhD, Kirwin, P. MD, and Zonana, H. MD, *Geriatrics and the Legal System*, Journal of the American Academy of Psychiatry and the Law, November 2, 2017, p. 208-209, available at http://jaapl.org/content/jaapl/45/2/208.full.pdf (last visited February 21, 2020).

[213] McKillop, M. and McGaffey, F., The PEW Charitable Trusts, *Number of Older Prisoners Grows Rapidly, Threatening to Drive Up Prison Health Costs*, October 7, 2015, available at https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/10/07/number-of-older-prisoners-grows-rapidly-threatening-to-drive-up-prison-health-costs (hereinafter cited as "PEW Trusts Older Prisoners Report"); *See also* Jaul, E. and Barron, J., Frontiers in Public Health, *Age-Related Diseases and Clinical and Public Health Implications for the 85 Years Old and Over Population*, December 11, 2017, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5732407/; HealthinAging.org, *A Guide to Geriatric Syndromes: Common and Often Related Medical Conditions in Older Adults*, available at https://www.healthinaging.org/tools-and-tips/guide-geriatric-syndromes-common-and-often-related-medical-conditions-older-adults (all sites last visited February 21, 2020).

[214] The PEW Charitable Trusts Older Prisoners Report.

For example, in Florida, four facilities serve relatively large populations of older or ill inmates, which help meet special needs such as palliative and long-term care.[215]

Aging Inmate Statistics in Florida

The DOC reports that the elderly inmate[216] population has increased by 353 inmates or 1.5 percent from June 30, 2017 to June 30, 2018 and that this trend has been steadily increasing over the last five years for an overall increase of 2,585 inmates or 12.5 percent.[217]

The DOC further reports that during FY 2017-18, there were 3,594 aging inmates admitted to Florida prisons, which was a 2.8 percent decrease from FY 2017-18. The majority of such inmates were admitted for violent offenses, property crimes, and drug offenses. The oldest male inmate admitted was 92 years of age with a conviction of manslaughter and the oldest female inmate admitted was 77 years of age with a conviction of drug trafficking.[218]

As the population of aging inmates continues to increase, the cost to house and treat such inmates also substantially increases. The DOC reports that the episodes of outside care for aging inmates increased from 10,553 in FY 2008-09 to 21,469 in FY 2017-18 and further provided that outside care is generally more expensive than treatment provided within a prison facility.[219] The DOC reports that the cost of health care for the aging inmate population is very high compared to other inmates for many reasons, including, in part that aging inmates:

- Account for a majority of inpatient hospital days; and
- Have a longer length for an inpatient hospital stay than seen with younger inmate patients.[220]

Aging Inmate Discretionary Release

Many states, the District of Columbia, and the federal government authorize discretionary release programs for certain inmates that are based on an inmate's age without regard to the medical condition of the inmate.[221] The National Conference of State Legislatures (NCSL) reports such discretionary release based on age has been legislatively authorized in 17 states.[222] The NCSL also reports that such statutes typically require an inmate to be of a certain age and to have

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[215] *Id*.
[216] Section 944.02(4), F.S., defines "elderly offender" to mean prisoners age 50 or older in a state correctional institution or facility operated by the DOC or the Department of Management Services.
[217] The DOC, *2017-18 Annual Report*, p. 19, available at http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf (last visited February 21, 2020).
[218] *Id*. at p. 20.
[219] *Id*. at p. 21.
[220] *Id*.
[221] The National Conference of State Legislatures (NCSL), *State Medical and Geriatric Parole Laws*, August 27, 2018, available at http://www.ncsl.org/research/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws.aspx (hereinafter cited as "The NCSL Aging Inmate Statistics"); Code of the District of Columbia, *Section 24-465 Conditions for Geriatric Release*, available at https://code.dccouncil.us/dc/council/code/sections/24-465.html; Section 603(b) of the First Step Act, codified at 18 USC s. 3582. *See also* U.S. Department of Justice, Federal Bureau of Prisons, *Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. Section 3582 and 4205(g)*, January 17, 2019, p. 6-7, available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf (all sites last visited February 21, 2020).
[222] The NCSL Aging Inmate Statistics. Also, the NCSL states that at least 16 states have established both medical and aging inmate discretionary release programs legislatively and that Virginia is the only state that has aging inmate discretionary release but not medical discretionary release.

served either a specified number of years or a specified percentage of his or her sentence. The NCSL reports that Alabama has the lowest age for aging inmate discretionary release, which is 55 years of age, whereas most other states set the limit somewhere between 60 and 65. Additionally, some states do not set a specific age.[223]

Most states require a minimum of 10 years of an inmate's sentence to be served before being eligible for consideration for aging inmate discretionary release, but some states, such as California, set the minimum length of time served at 25 years.[224] Other states, such as Mississippi and Oklahoma, provide a term of years or a certain percentage of the sentence to be served.[225]

Inmates who are sentenced to death or serving a life sentence are typically ineligible for release. Some states specify that inmates must be sentenced for a non-violent offense or specify offenses which are not eligible for release consideration.

Florida does not currently address discretionary release based on an inmate's age alone, but as discussed below Florida has discretionary release based on an inmate's medical condition.

Conditional Medical Release

Conditional Medical Release (CMR), outlined in s. 947.149, F.S., was created by the Florida Legislature in 1992,[226] as a discretionary release of inmates who are "terminally ill" or "permanently incapacitated" and who are not a danger to themselves or others.[227] The Florida Commission on Offender Review (FCOR), which consists of three members, reviews eligible inmates for release under the CMR program pursuant to the powers established in s. 947.13, F.S.[228] In part, s. 947.149, F.S., authorizes the FCOR to determine what persons will be released on CMR, establish the conditions of CMR, and determine whether a person has violated the conditions of CMR and take actions with respect to such a violation.

Eligibility Criteria

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

[223] *Id*.
[224] *Id*.
[225] The NCSL Aging Inmate Statistics.
[226] Chapter 92-310, L.O.F.
[227] The FCOR, *Release Types, Post Release*, available at https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease (last visited February 21, 2020).
[228] Section 947.149(3), F.S. Section 947.01, F.S., provides that the membership of the FCOR is three-members.

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.[229]

Inmates sentenced to death are ineligible for CMR.[230]

Referral Process for Eligible Inmates

The DOC is required to identify inmates who may be eligible for CMR in accordance with the above-mentioned designations. The DOC uses available medical information as a basis for identifying eligible inmates and refers such inmates to the FCOR for consideration. In considering an inmate, the FCOR may require that additional medical evidence be produced or that additional medical examinations be conducted and may require other investigations to be made as it deems necessary.[231]

An inmate does not have a right to CMR or to a medical evaluation to determine eligibility for such release.[232] Additionally, the authority and whether or not to grant CMR and establish additional conditions of release rests solely within the discretion of the FCOR, together with the authority to approve the release plan to include necessary medical care and attention.[233]

Certain information must be provided to the FCOR from the DOC to be considered a referral, including:

- Clinical Report, including complete medical information justifying classification of the inmate as "permanently incapacitated" or "terminally ill"; and
- Verifiable release plan, to include necessary medical care and attention.[234]

The referral must be directed to the Office of the Commission Clerk who may docket the case before the FCOR. A decision will be made by a majority of the quorum present and voting.[235] The FCOR is required to approve or disapprove CMR based upon information submitted in support of the recommendation and review of the DOC file. If additional information is needed, the FCOR must continue the case for verification of the release plan, additional medical examinations, and other investigations as directed. The FCOR is required to instruct staff to conduct the appropriate investigation, which must include a written statement setting forth the specific information being requested.[236]

Victim Input for CMR

If a victim or his or her personal representative requests to be notified, the FCOR must provide victim notification of any hearing where the release of the inmate on CMR is considered prior to the inmate's release.[237] As discussed above, Art. I, s. 16 of the Florida Constitution, which was

[229] Section 947.149(1), F.S.
[230] Section 947.149(2), F.S.
[231] Section 947.149(3), F.S.
[232] Section 947.149(2), F.S.
[233] Section 947.149(3), F.S.
[234] Rule 23-24.020(1), F.A.C.
[235] Rule 23-24.020(2), F.A.C.
[236] Rule 23-24.020(3), F.A.C.
[237] Rule 23-24.020(4), F.A.C., further qualifies that this notification occurs when the name and address of such victim or representative of the victim is known by the FCOR.

adopted in 2018 by the Florida voters, provides certain rights to victims in the Florida Constitution. In part, Article I, s. 16 of the Florida Constitution, provides that a victim has the following rights upon request:

- To be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.
- To be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.
- To be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender.[238]

The requirement to notify victims was in place prior to the constitutional amendment passage through administrative rule. Rule 23-24.025, F.A.C., provides that a victim, relative of a minor who is a victim, relative of a homicide victim, or victim representative or victim advocate must receive advance notification any time a CMR case is placed on the docket for determination by the FCOR. Notification must be made to the address found in the police report or other criminal report or at a more current address if such has been provided to the FCOR.[239]

A victim of the crime committed by the inmate, or a victim's representative, must be permitted a reasonable time to make an oral statement or submit a written statement regarding whether the victim supports the granting, denying, or revoking of CMR.[240] Additionally, other interested parties may also speak on behalf of victims since the FCOR meetings are public meetings.[241] A victim can also request that the FCOR provide notification of the action taken if he or she does not choose to appear at meetings or make a written statement.[242]

Release Conditions

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.[243] An inmate who has been approved for release on CMR is considered a medical releasee when released.

[238] Art. 1, s. 16(b)(6)b., f., and g., FLA. CONST.
[239] Rule 23-24.025(1), F.A.C.
[240] Rule 23-24.025(2) and (3), F.A.C. *See* Rule 23-24.025(4), F.A.C., regarding specifics about what is allowed to be submitted or utilized during oral testimony. Rule 23-24.025(7), F.A.C., provides that victims who appear and speak must be advised that any information submitted at FCOR meetings becomes public record.
[241] Rule 23-24.025(3), F.A.C.
[242] Rule 23-24.025(5), F.A.C.
[243] Section 947.149(4), F.S.

Each medical releasee must be placed on CMR supervision and is subject to the standard conditions of CMR, which include:

- Promptly proceeding to the residence upon being released and immediately reporting by mail, telephone, or personal visit as instructed by the CMR officer or within 72 hours of release if no specific report date and time are given.
- Securing the permission of the CMR officer before:
  - Changing residences;
  - Leaving the county or the state; and
  - Posting bail or accepting pretrial release if arrested for a felony.
- Submitting a full and truthful report to the CMR officer each month in writing and as directed by the CMR supervisor.
- Refraining from:
  - Owning, carrying, possessing, or having in his or her constructive possession a firearm or ammunition;
  - Using or possessing alcohol or intoxicants of any kind;
  - Using or possessing narcotics, drugs, or marijuana unless prescribed by a physician;
  - Entering any business establishment whose primary purpose is the sale or consumption of alcoholic beverages; and
  - Knowingly associating with any person engaging in criminal activity, a criminal gang member, or person associated with criminal gang members.
- Securing the permission of the CMR officer before owning, carrying, or having in his or her constructive possession a knife or any other weapon.
- Obeying all laws, ordinances, and statutory conditions of CMR.
- Submitting to a reasonable search of the medical releasee's person, residence, or automobile by a CMR officer.
- Waiving extradition back to Florida if the medical releasee is alleged to have violated CMR.
- Permitting the CMR officer to visit the medical releasee's residence, employment, or elsewhere.
- Promptly and truthfully answering all questions and following all instructions asked or given by the CMR officer or the FCOR.
- Remaining on CMR for the remainder of the sentence without diminution of such sentence for good behavior.
- Agreeing to submit to random drug or alcohol testing, to be paid for and submitted by the medical releasee, as directed by the CMR officer or the professional staff of any treatment center where treatment is being received.
- Executing and providing authorizations to release records to the CMR supervisor and the FCOR for the purpose of monitoring and documenting the medical releasee's progress.
- Agreeing that, in the event there is an improvement in the medical releasee's medical condition to the extent that he or she is no longer "permanently incapacitated," or "terminally ill," that he or she will, if directed to do so, report for a CMR revocation hearing.[244]

Additionally, the FCOR can impose special conditions of CMR.[245]

[244] Rule 23-24.030(1), F.A.C.
[245] Rule 23-24.030(2), F.A.C.

Revocation and Recommitment

In part, s. 947.141, F.S., provides for the revocation and recommitment of a medical releasee who appears to be subject to CMR revocation proceedings, including establishing a hearing process and determining whether a medical releasee must be recommitted to the DOC. CMR 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.[246]

Revocation Due to Improved Medical or Physical Condition

If it is discovered during the CMR release that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for such release, the FCOR may order that the medical releasee be returned to the custody of the DOC for a revocation hearing, in accordance with s. 947.141, F.S. A medical releasee who has his or her CMR revoked due to improvement in medical or physical condition must serve the balance of the sentence with credit for the time served on CMR, but does not forfeit any gain-time accrued prior to release on CMR.[247]

Revocation Due to Violation of CMR Conditions

When there are reasonable grounds to believe that a medical releasee who is on CMR has violated the conditions of the release in a material respect the FCOR is authorized to have a warrant issued for the arrest of the medical releasee. A warrant must be issued if the medical releasee was found to be a sexual predator.[248] Further, if a law enforcement officer has probable cause to believe that a medical releasee who is on CMR supervision has violated the terms and conditions of his or her release by committing a felony offense then the officer must arrest the medical releasee without a warrant and a warrant need not be issued in the case.[249]

A medical releasee who is arrested for a felony must be detained without bond until the initial appearance of the medical releasee at which a judicial determination of probable cause is made. The medical releasee may be released if the trial court judge does not find probable cause existed for the arrest. However, if the court makes a finding of probable cause, such determination also constitutes reasonable grounds to believe that the medical releasee violated the conditions of the CMR release and the chief county correctional officer must notify the FCOR and the DOC of the finding within 24 hours.[250] The medical releasee must continue to be detained without bond for a period not more than 72 hours excluding weekends and holidays after the date of the probable cause determination, pending a decision by the FCOR whether to issue a warrant charging the

[246] Section 947.149(5), F.S.
[247] Section 947.149(5)(a), F.S. Additionally, if the person whose CMR is revoked due to an improvement in medical or physical condition would otherwise be eligible for parole or any other release program, the person may be considered for such release program pursuant to law.
[248] Section 947.141(1), F.S.
[249] Section 947.141(7), F.S.
[250] Section 947.141(2), F.S., further states that the chief county detention officer must transmit to the FCOR and the DOC a facsimile copy of the probable cause affidavit or the sworn offense report upon which the trial court judge's probable cause determination is based.

medical releasee with violation of the conditions of CMR. If the FCOR issues such warrant, the medical releasee must continue to be held in custody pending a revocation hearing.[251]

Revocation Hearing

The medical releasee must be afforded a hearing which is conducted by a commissioner or a duly authorized representative within 45 days after notice to the FCOR of the arrest of a medical releasee charged with a violation of the terms and conditions of CMR. If the medical releasee elects to proceed with a hearing, the medical releasee must be informed orally and in writing of certain rights, including the medical releasee's:

- Alleged violation; and
- Right to:
  - Be represented by counsel.
  - Be heard in person.
  - Secure, present, and compel the attendance of witnesses relevant to the proceeding.
  - Produce documents on his or her own behalf.
  - Access all evidence used against the releasee and confront and cross-examine adverse witnesses.
  - Waive the hearing.[252]

The commissioner, who conducts the hearing, is required to make findings of fact in regard to the alleged violation within a reasonable time following the hearing and at least two commissioners must enter an order determining whether the charge of violation of CMR has been sustained based upon the findings of fact presented by the hearing commissioner or authorized representative. The panel may revoke CMR, thereby returning the medical releasee to prison to serve the sentence imposed; reinstate the original order granting the release; or enter such other order as it considers proper.[253]

If CMR is revoked and the medical releasee is ordered to be returned to prison, the medical releasee is deemed to have forfeited all gain-time or commutation of time for good conduct earned up to the date of release. However, if CMR is revoked due to the improved medical or physical condition of the medical releasee, the medical releasee does not forfeit gain-time accrued before the date of CMR.[254] Gain-time or commutation of time for good conduct may be earned from the date of return to prison.

Statistics

The FCOR has approved and released 73 inmates for CMR in the last three fiscal years:

- 38 in FY 2018-19;
- 21 in FY 2017-2018; and
- 14 in FY 2016-2017.[255]

[251] *Id*.
[252] Section 947.141(3), F.S.
[253] Section 947.141(4), F.S.
[254] Section 947.141(6), F.S.
[255] Emails from Alexander Yarger, Legislative Affairs Director, FCOR, RE: Conditional Medical Release Data and RE: Updated Conditional Medical Release Numbers (attachments on file with the Appropriations Subcommittee on Criminal and

The DOC has recommended 149 inmates for release in the past three fiscal years:
- 76 in FY 2018-19;
- 39 in FY 2017-2018; and
- 34 in FY 2016-2017.[256]

Currently, the DOC's role in the CMR process is making the initial designation of medical eligibility, referring the inmate's case to the FCOR for an investigation and final decision, and supervising inmates who are granted CMR.[257]

Constitutional Requirement to Provide Healthcare to Inmates

The United States Supreme Court has established that prisoners have a constitutional right to adequate medical care. The Court determined that it is a violation of the Eighth Amendment prohibition against cruel and unusual punishment for the state to deny a prisoner necessary medical care, or to display "deliberate indifference" to an inmate's serious medical needs.[258]

Before the 1970s, prison health care operated without "standards of decency" and was frequently delivered by unqualified or overwhelmed providers, resulting in negligence and poor quality.[259] By January 1996, only three states had never been involved in major litigation challenging conditions in their prisons. A majority were under court order or consent decree to make improvements in some or all facilities.[260] The development of the correctional health care in Florida has been influenced by a class action lawsuit filed by inmates in 1972. The plaintiffs in *Costello v. Wainwright*[261] alleged that prison overcrowding and inadequate medical care were so severe that the resulting conditions amounted to cruel and unusual punishment. The overcrowding aspect of the case was settled in 1979, but the medical care issue continued to be litigated for years.[262]

The legal standard today for inmate medical care must be at "a level reasonably commensurate with modern medical science and of a quality acceptable within prudent professional standards" and "designed to meet routine and emergency medical, dental, and psychological or psychiatric

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Civil Justice) (December 15, 2017 and November 1, 2019, respectively). *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 February 21, 2020).

[256] *Id*.

[257] The FCOR, *Draft Agency Analysis for SB 556*, October 24, 2019, p. 2 (on file with the Appropriations Subcommittee on Civil and Criminal Justice).

[258] *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

[259] The PEW Charitable Trusts, Urahn, S. and Thompson, M., *Prison Health Care: Costs and Quality*, October 2017, p. 4, available at https://www.pewtrusts.org/-/media/assets/2017/10/sfh_prison_health_care_costs_and_quality_final.pdf (last visited February 21, 2020) (hereinafter cited as "The PEW Trusts Prison Health Care Cost Report").

[260] *Id*. *See also* McDonald, D., *Medical Care in Prisons*, Crime and Justice, Vol. 26, 1999, p. 431, available at https://www.journals.uchicago.edu/doi/abs/10.1086/449301 (last visited February 21, 2020); *See also Newman et al. v. Alabama et al.*, 349 F. Supp. 278 (M.D. Ala. 1972).

[261] 430 U.S. 325 (1977).

[262] *Id*. The Correctional Medical Authority, FY 2017-18 Annual Report and Update on the Status of Elderly Offender's in Florida's Prisons, p. 1 (on file with the Appropriations Subcommittee on Criminal and Civil Justice). The Correctional Medical Authority was created in response to such federal litigation.

care."[263] Prisoners are entitled to access to care for diagnosis and treatment, a professional medical opinion, and administration of the prescribed treatment and such obligation persists even if some or all of the medical services are provided through the use of contractors. This is also the standard for state prisoners who are under the custody of private prisons or local jails. Recent cases have reinforced states' constitutional obligations.[264]

The DOC's Duty to Provide Health Care

The DOC is responsible for the inmates of the state correctional system and has supervisory and protective care, custody, and control of the inmates within its facilities.[265] The DOC has the constitutional and statutory imperative to provide adequate health services to state prison inmates directly related to this responsibility.[266] This medical care includes comprehensive medical, mental health, and dental services, and all associated ancillary services.[267] The DOC's Office of Health Service (OHS) oversees the delivery of health care services and handles statewide functions for such delivery. The OHS is led by the Director of Health Services, who reports to the Secretary.[268]

The DOC contracts with the Centurion of Florida, LLC (Centurion) to provide comprehensive statewide medical, mental health, dental services, and operates the DOC's reception medical center. The care provided is under a cost plus model. All inmates are screened at a DOC reception center upon arrival from the county jail. The purpose of this intake process is to determine the inmate's current medical, dental, and mental health care needs, which is achieved through assessments, in part, for auditory, mobility and vision disabilities, and the need for specialized mental health treatment.[269]

After the intake process is completed, inmates are assigned to an institution based on their medical and mental health needs and security requirements. The Centurion provides primary care using a staff of clinicians, nurses, mental health, and dental professionals and administrators within each major correctional institution. The health services team provides health care services in the dorms for inmates who are in confinement.[270]

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.[271] An inmate is not eligible to

[263] The PEW Trusts Prison Health Care Cost Report, p. 4.
[264] *Id*.
[265] Sections 945.04(1) and 945.025(1), F.S.
[266] *Crews v. Florida Public Employers Council 79, AFSCME*, 113 So. 3d 1063 (Fla. 1st DCA 2013); *See also* s. 945.025(2), F.S.
[267] The DOC, Office of Health Services, available at http://www.dc.state.fl.us/org/health.html (last visited February 21, 2020).
[268] *Id*.
[269] *Id*. *See also* the DOC Annual Report, p. 19.
[270] *Id*.
[271] 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

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.[272]

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.[273] The only forms of gain-time that can currently be earned are:

- Incentive gain-time;[274]
- Meritorious gain-time;[275] and
- Educational achievement gain-time.[276]

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.[277] The maximum sentence expiration date represents the date when the sentence or combined sentences imposed 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.[278]

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.[279] 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.[280]

The DOC is authorized in certain circumstances, including when a medical releasee has his or her CMR revoked, to declare all gain-time earned by an inmate forfeited.[281]

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minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

[272] Section 944.275(4)(f), F.S.

[273] Chapter 93-406, L.O.F.

[274] Section 944.275(4)(b), F.S, provides that 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.

[275] 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.

[276] 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.

[277] Section 944.275(3)(c), F.S.

[278] Section 944.275(2)(a), F.S.

[279] Section 944.275(3)(a), F.S.

[280] *Id*. *See also* s. 944.275(4)(b), F.S.

[281] Section 944.28(1), F.S.

Federal First Step Act

In December, 2018, the United States Congress passed, and President Trump signed into law, the "Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act" or the "FIRST STEP Act" (First Step Act).[282] The law makes a number of changes to the federal criminal justice system and procedures applicable to inmates in the Federal Bureau of Prisons (BOP), including, in part, modifying provisions related to compassionate release to:

- Require inmates be informed of reduction in sentence availability and process;
- Modify the definition of "terminally ill;"
- Require notice and assistance for terminally ill offenders;
- Require requests from terminally ill offenders to be processed within 14 days.[283]

Specifically, in the case of a diagnosis of a terminal illness, the BOP is required to, subject to confidentiality requirements:

- Notify the defendant's attorney, partner, and family members, not later than 72 hours after the diagnosis, of the defendant's diagnosis of a terminal condition and inform the defendant's attorney, partner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction;
- Provide the defendant's partner and family members, including extended family, with an opportunity to visit the defendant in person not later than 7 days after the date of the diagnosis;
- Upon request from the defendant or his attorney, partner, or a family member, ensure that BOP employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction; and
- Process a request for sentence reduction submitted on the defendant's behalf by the defendant or the defendant's attorney, partner, or family member not later than 14 days from receipt of a request.[284]

The statutory time frames mentioned above begin once the Clinical Director of an institution makes a terminal diagnosis. Once the diagnosis is made, the Clinical Director will inform the Warden and the appropriate Unit Manager as soon as possible to ensure requirements are met.[285]

Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.[286] Article X, s. 13 of the Florida Constitution allows the Legislature to waive this immunity. Further, s. 768.28(1), F.S., allows for suits in tort against Florida and its agencies and

[282] The First Step Act of 2018, Pub. L. No. 115-391 (2018).
[283] Section 603(b) of the First Step Act, codified at 18 USC s. 3582. *See also* U.S. Department of Justice, Federal Bureau of Prisons, *Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. Section 3582 and 4205(g)*, January 17, 2019, p. 3-4, available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf (last visited February 21, 2020).
[284] *Id*.
[285] *Id*.
[286] The Legal Information Institute, *Sovereign immunity*, available at https://www.law.cornell.edu/wex/sovereign_immunity (last visited February 21, 2020).

subdivisions for damages resulting from the negligence of government employees acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct. Section 768.28, F.S., applies only to "injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment ...."[287]

Section 768.28(5), F.S., limits tort recovery from a governmental entity at $200,000 per person and $300,000 per accident.[288] This limitation does not prevent a judgement in excess of such amounts from being entered, but a claimant is unable to collect above the statutory limit unless a claim bill is passed by the Legislature.[289]

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment, unless the damages result from the employee's acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.[290, 291] Thus, the immunity may be pierced only if state employees or agents either act outside the scope of their employment, or act "in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property."[292]

Courts that have construed the bad faith prong of s. 768.28, F.S., to mean the actual malice standard, which means the conduct must be committed with "ill will, hatred, spite, [or] an evil intent."[293] Conduct meeting the wanton and willful standard is defined as "worse than gross negligence,"[294] and "more reprehensible and unacceptable than mere intentional conduct."[295, 296]

Effect of the Bill

The bill creates two programs for conditional release within the DOC, CMR and conditional aging inmate release (CAIR). The bill repeals s. 947.149, F.S., which establishes the CMR program within the FCOR and creates s. 945.0911, F.S., to establish a CMR program within the DOC. The bill also creates s. 945.0912, F.S., which establishes a CAIR program within the DOC. Both programs have the same stated purpose, which is to:

- Determine whether release is appropriate for eligible inmates;
- Supervise the released inmates; and
- Conduct revocation hearings.

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[287] *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.).
[288] Section 768.28(5), F.S.
[289] *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).
[290] *See Peterson v. Pollack*, 2019 WL 6884887 (Fla. 4th DCA December 18, 2019).
[291] Section 768.28(9)(a), F.S.
[292] *Eiras v. Fla.*, 239 F. Supp. 3d 1331, 1343 (M.D. Fla. 2017).
[293] *See Parker v. State Bd. of Regents ex rel. Fla. State Univ.*, 724 So.2d 163, 167 (Fla. 1st DCA 1998); *Reed v. State*, 837 So.2d 366, 368–69 (Fla. 2002); and *Eiras v. Fla.*, 239 F. Supp. 3d 1331, 1343 (M.D. Fla. 2017).
[294] *Eiras v. Fla.*, 239 , *supra* at 50; *Sierra v. Associated Marine Insts., Inc.*, 850 So.2d 582, 593 (Fla. 2d DCA 2003).
[295] *Eiras v. Fla.*, *supra* at 50; *Richardson v. City of Pompano Beach*, 511 So.2d 1121, 1123 (Fla. 4th DCA 1987).
[296] *See also Kastritis v. City of Daytona Beach Shores*, 835 F.Supp.2d 1200, 1225 (M.D. Fla. 2011) (defining these standards).

The CMR program established within the DOC retains similarities to the program currently in existence within the FCOR, including that the CMR program must include a panel of at least three people. The members of the panel are appointed by the secretary or his or her designee for the purpose of determining the appropriateness of CMR and conducting revocation hearings on the inmate releases.

The CAIR program also must include a panel of at least three people appointed by the Secretary for the purpose of determining the appropriateness of CAIR and conducting revocation hearings on the inmate releases.

The eligibility criteria for each program differs, but both programs have very similar structures and will be discussed together below when possible.

Eligibility Criteria

The bill provides a specific exception to the 85 percent rule that allows an inmate who meets the eligibility criteria for CMR or CAIR to be released from the custody of the DOC pursuant to the applicable program prior to satisfying 85 percent of his or her term of imprisonment. The specific eligibility criteria for each program are discussed below.

CMR

The bill provides that an inmate is eligible for consideration for release under the CMR program when the inmate, because of an existing medical or physical condition, is determined by the DOC to be an inmate with a debilitating illness, a permanently incapacitated inmate, or a terminally ill inmate. The bill provides definitions for such terms, including:

- "Inmate with a debilitating illness," which means 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 to others.
- "Permanently incapacitated inmate," which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or to others.
- "Terminally ill inmate," which means an inmate who has a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery, death is expected within 12 months, and the inmate does not constitute a danger to herself or himself or to others.

CAIR

An inmate is eligible for consideration for release under the CAIR program when the inmate has reached 65 years of age and has served at least 10 years on his or her term of imprisonment.

An inmate may not be considered for release through the CAIR program if he or she has ever been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent for committing:

- Any offense classified as a capital felony, life felony, or first degree felony punishable by a term of years not exceeding life imprisonment;
- Any violation of law that results in the killing of a human being;
- An offense that requires registration as a sexual offender on the sexual offender registry in accordance with s. 943.0435, F.S; or
- Any similar offense committed in another jurisdiction which would be an offense included in this list if it had been committed in violation of the laws of Florida.

The bill also prohibits an inmate who has previously been released on any form of conditional or discretionary release and who was recommitted to the DOC as a result of a finding that he or she subsequently violated the terms of such conditional or discretionary release to be considered for release through the CAIR program.

Referral Process

The bill requires that any inmate in the custody of the DOC who meets one or more of the above-mentioned eligibility requirements must be considered for CMR or CAIR, respectively. However, the authority to grant CMR or CAIR rests solely with the DOC. Additionally, the bill provides that an inmate does not have a right to release or to a medical evaluation to determine eligibility for release on CMR pursuant to s. 945.0911, F.S., or a right to release on CAIR pursuant to s. 945.0912, F.S., respectively.

The bill requires the DOC to identify inmates who may be eligible for CMR based upon available medical information and authorizes the DOC to require additional medical evidence, including examinations of the inmate, or any other additional investigations it deems necessary for determining the appropriateness of the eligible inmate's release. Further, the DOC must identify inmates who may be eligible for CAIR. In considering an inmate for the CAIR program, the DOC may require the production of additional evidence or any other additional investigations that the DOC deems necessary for determining the appropriateness of the eligible inmate's release.

Upon an inmate's identification as potentially eligible for release on CMR or CAIR, the DOC must refer such inmate to the respective three-member panel described above for review and determination of release.

The bill requires the DOC to provide notice to a victim of the inmate's referral to the panel immediately upon identification of the inmate as potentially eligible for release on CMR or CAIR if the case that resulted in the inmate's commitment to the DOC involved a victim and such victim specifically requested notification pursuant to Article I, s. 16 of the Florida Constitution. Additionally, the victim must be afforded the right to be heard regarding the release of the inmate.

Determination of Release

The bill requires the three-member panel established in s. 945.0911(1), F.S., or s. 945.0912, F.S., whichever is applicable, to conduct a hearing within a specified time after receiving the referral to determine whether CMR or CAIR, respectively, is appropriate for the inmate. The bill specifies that the hearing must be conducted by the panel:

- By April 1, 2021, if the inmate is immediately eligible for consideration for the CMR program or the CAIR program when the provisions take effect on October 1, 2020.
- By July 1, 2021, if the inmate becomes eligible for consideration for the CMR program or the CAIR program after October 1, 2020, but before July 1, 2021.
- Within 45 days after receiving the referral if the inmate becomes eligible for the CMR program or the CAIR program any time on or after July 1, 2021.

Before the hearing for an inmate being referred for the CMR program, the director of inmate health services or his or her designee must review any relevant information, including, but not limited to, medical evidence, and provide the panel with a recommendation regarding the appropriateness of releasing the inmate on CMR.

A majority of the panel members must agree that release on CMR or CAIR is appropriate for the inmate. If CMR or CAIR is approved, the inmate must be released by the DOC to the community within a reasonable amount of time with necessary release conditions imposed.

The bill provides that an inmate who is granted CMR is considered a medical releasee upon release to the community. Similarly, the bill provides that an inmate released on CAIR is considered an aging releasee upon release to the community.

An inmate who is denied CMR or CAIR by the three-member panel is able to have the decision reviewed. For an inmate who is denied release on CMR, the bill provides that the DOC's general counsel and chief medical officer must review the decision of the three-member panel and make a recommendation to the secretary. For an inmate who is denied release on CAIR, the decision is only reviewed by the DOC's general counsel, who must make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of the release on CMR or CAIR and the bill provides that the appeal decision of the secretary is a final administrative decision not subject to appeal.

Additionally, an inmate who is denied CMR or CAIR who requests to have the decision reviewed must do so in a manner prescribed in rule and may be subsequently reconsidered for such release in a manner prescribed by department rule.

Release Conditions

The bill requires that an inmate granted release on CMR or CAIR must be released for a period equal to the length of time remaining on his or her term of imprisonment on the date the release is granted. The medical releasee or aging releasee must comply with all reasonable conditions of release the DOC imposes, which must include, at a minimum:

- Supervision by an officer trained to handle special offender caseloads.
- Active electronic monitoring, if such monitoring is determined to be necessary to ensure the safety of the public and the releasee's compliance with release conditions.

- Any conditions of community control provided for in s. 948.101, F.S.[297]
- Any other conditions the DOC deems appropriate to ensure the safety of the community and compliance by the medical releasee or aging releasee.

Additionally, the bill requires a medical releasee to have periodic medical evaluations at intervals determined by the DOC at the time of release.

The bill provides that a medical releasee or an aging releasee is considered to be in the custody, supervision, and control of the DOC. The bill further states that this does not create a duty for the DOC to provide the medical releasee or aging releasee with medical care upon release into the community. The bill provides that the medical releasee or aging releasee remains eligible to earn or lose gain-time in accordance with s. 944.275, F.S., and department rule. However, the bill clarifies that the medical releasee or aging releasee may not be counted in the prison system population, and the medical releasee's or aging releasee's approved community-based housing location may not be counted in the capacity figures for the prison system.

Revocation of Conditional Release and Recommitment to the DOC

The bill establishes a process for the revocation of CMR that very closely parallels current law and for which may be based on two circumstances, including the:

- Discovery that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for release on CMR; or
- Violation of any release conditions the DOC establishes, including, but not limited to, a new violation of law.

The bill provides that CAIR may be revoked for a violation of any release conditions the DOC establishes, including, but not limited to, a new violation of law. The DOC may terminate the medical releasee's CMR or the aging releasee's CAIR and return him or her to the same or another institution designated by the DOC.

Revocation Based on Medical or Physical Improvement - CMR

This provision only applies to revocation of a medical releasee's CMR.

When the basis of the revocation proceedings are based on an improved medical or physical condition of the medical releasee, the bill authorizes the DOC to:

- Order that the medical releasee be returned to the custody of the DOC for a CMR revocation hearing, as prescribed by rule; or
- Allow the medical releasee to remain in the community pending the revocation hearing.

If the DOC elects to order the medical releasee to be returned to custody pending the revocation hearing, the officer or duly authorized representative may cause a warrant to be issued for the arrest of the medical releasee.

[297] Some examples on community control conditions required under s. 948.101, F.S., include to maintain specified contact with the parole and probation officer; confinement to an agreed-upon residence during hours away from employment and public service activities; mandatory public service; and supervision by the DOC by means of an electronic monitoring device or system.

The revocation hearing must be conducted by the three-member panel discussed above and a majority of the panel members must agree that revocation is appropriate for the medical releasee's conditional medical release to be revoked. The bill requires the director of inmate health services or his or her designee to review any medical evidence pertaining to the medical releasee and provide the panel with a recommendation regarding the medical releasee's improvement and current medical or physical condition.

A medical releasee whose CMR was revoked due to improvement in his or her medical or physical condition must be recommitted to the DOC to serve the balance of his or her sentence with credit for the time served on CMR and without forfeiture of any gain-time accrued before recommitment. If the medical releasee whose CMR is revoked due to an improvement in her or his medical or physical condition would otherwise be eligible for parole or any other release program, the medical releasee may be considered for such release program pursuant to law.

Revocation Based on Violation of Conditions

The bill provides that CMR or CAIR may be revoked for violation of any release conditions the DOC establishes, including, but not limited to, a new violation of law. The bill provides that if a duly authorized representative of the DOC has reasonable grounds to believe that a medical releasee or aging releasee has violated the conditions of his or her release in a material respect, such representative may cause a warrant to be issued for the arrest of the medical releasee or aging releasee.

Further, a law enforcement officer or a probation officer may arrest the medical releasee or aging releasee without a warrant in accordance with s. 948.06, F.S., if there are reasonable grounds to believe he or she has violated the terms and conditions of his or her CMR or CAIR, respectively. The law enforcement officer must report the medical releasee's or aging releasee's alleged violations to the supervising probation office or the DOC's emergency action center for initiation of revocation proceedings.

If the basis of the violation of release conditions is related to a new violation of law, the medical releasee or aging releasee must be detained without bond until his or her initial appearance at which a judicial determination of probable cause is made. If the judge determines that there was no probable cause for the arrest, the medical releasee or aging releasee may be released. If the judge determines that there was probable cause for the arrest, the judge's probable cause determination also constitutes reasonable grounds to believe that the medical releasee or aging releasee violated the conditions of the CMR or CAIR, respectively.

The bill requires the DOC to order that the medical releasee or aging releasee subject to revocation for a violation of conditions be returned to the custody of the DOC for a CMR or CAIR revocation hearing, respectively, as prescribed by rule. A medical releasee or an aging releasee may admit to the alleged violation of the conditions of CMR or CAIR, respectively, or may elect to proceed to a revocation hearing. A majority of the panel members must agree that revocation is appropriate for the medical releasee's CMR or the aging releasee's CAIR to be revoked.

The bill provides that a medical releasee who has his or her CMR, or an aging releasee who has had his or her CAIR, revoked due to a violation of conditions must serve the balance of his or her sentence in an institution designated by the DOC with credit for the actual time served on CMR or CAIR, respectively. Additionally, the medical releasee's or aging releasee's gain-time accrued before recommitment may be forfeited pursuant to s. 944.28(1), F.S. If the medical releasee whose CMR is revoked or aging releasee whose CAIR is revoked would otherwise be eligible for parole or any other release program, he or she may be considered for such release program pursuant to law.

The bill provides that a medical releasee whose CMR or aging releasee whose CAIR is revoked and is recommitted to the DOC must comply with the 85 percent requirement discussed above upon recommitment.

Revocation Hearing Process

CMR

If the medical releasee subject to revocation for either basis elects to proceed with a hearing, the medical releasee must be informed orally and in writing of certain rights, including the releasee's:

- Alleged basis for the pending revocation proceeding against the releasee.
- Right to:
  - Be represented by counsel.[298]
  - Be heard in person.
  - Secure, present, and compel the attendance of witnesses relevant to the proceeding.
  - Produce documents on his or her own behalf.
  - Access all evidence used to support the revocation proceeding against the releasee and confront and cross-examine adverse witnesses.
  - Waive the hearing.

CAIR

If the aging releasee is subject to revocation and elects to proceed with a hearing, the aging releasee must be informed orally and in writing of certain rights, including the releasee's:

- Alleged violation with which he or she is charged.
- Right to:
  - Be represented by counsel.[299]
  - Be heard in person.
  - Secure, present, and compel the attendance of witnesses relevant to the proceeding.
  - Produce documents on his or her own behalf.
  - Access all evidence used against the releasee and confront and cross-examine adverse witnesses.
  - Waive the hearing.

If the panel approves the revocation of the medical releasee's CMR or aging releasee's CAIR, the panel must provide a written statement as to evidence relied on and reasons for revocation.

[298] However, this bill explicitly provides that this does not create a right to publicly funded legal counsel.
[299] However, this bill explicitly provides that this does not create a right to publicly funded legal counsel.

Sovereign Immunity

The bill includes language providing that unless otherwise provided by law and in accordance with Article X, s. 13 of the Florida Constitution, members of the panel who are involved with decisions that grant or revoke CMR or CAIR are provided immunity from liability for actions that directly relate to such decisions.

The bill authorizes the DOC to adopt rules as necessary to implement the act.

The bill also amends a number of sections to conform these provisions to changes made by the Act.

These provisions of the bill are effective October 1, 2020.

Wrongful Incarceration Compensation Eligibility (Sections 24-28)

In Florida, 13 people have been exonerated or released from incarceration since 2000 as a result of post-conviction DNA testing. [300] The Victims of Wrongful Incarceration Compensation Act (the Act) has been in effect since July 1, 2008.[301] The Act provides a process whereby a person may petition the original sentencing court for an order finding the petitioner to be a wrongfully incarcerated person who is eligible for compensation from the state.

A person is considered a "wrongfully incarcerated person" when his or her felony conviction and sentence have been vacated by a court of competent jurisdiction and he or she is the subject of an order issued by the original sentencing court pursuant to s. 961.03, F.S., finding that the person did not:

- Commit the act or offense that served as the basis for the conviction and incarceration; and
- Aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.[302]

A person is deemed "eligible for compensation" if he or she meets the definition of the term "wrongfully incarcerated person" and is not disqualified from seeking compensation under the criteria prescribed in s. 961.04, F.S.[303] Further, a person is considered to be "entitled to compensation" if he or she is deemed "eligible for compensation" and satisfies the application

[300] These persons include Frank Lee Smith, Jerry Townsend, Wilton Dedge, Luis Diaz, Alan Crotzer, Orlando Boquete, Larry Bostic, Chad Heins, Cody Davis, William Dillon, James Bain, Anthony Caravella, and Derrick Williams who have been released from prison or exonerated in Florida based on DNA testing. The National Registry of Exonerations, *Browse Cases, Florida*, available at https://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View={B8342AE7-6520-4A32-8A06-4B326208BAF8}&FilterField1=State&FilterValue1=Florida&FilterField2=DNA&FilterValue2=8%5FDNA (last visited on February 12, 2020).

[301] Chapter 961, F.S. (ch. 2008-39, L.O.F.). To date, four persons have been compensated under the Act. E-mail and documentation received from the Office of the Attorney General, October 16, 2019 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).

[302] Section 961.02(7), F.S.

[303] Section 961.02(4), F.S.

requirements prescribed in s. 961.05, F.S., and may receive compensation pursuant to s. 961.06, F.S.[304]

The Department of Legal Affairs (DLA) administers the eligible person's application process and verifies the validity of the claim.[305] The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a rate of $50,000 for each year of wrongful incarceration up to a total of $2 million.[306] To date, four persons have been compensated under the Act for a total of $4,276,901.[307]

In cases where sufficient evidence of actual innocence exists, s. 961.04, F.S., provides that a person is nonetheless *ineligible* for compensation if:

- *Before* the person's wrongful conviction and incarceration the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication *any single violent felony*, or *more than one nonviolent felony*, or a crime or crimes committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;
- *During* the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, *any violent felony offense* or *more than one nonviolent felony*; or
- *During* the person's wrongful incarceration, the person was also serving a *concurrent sentence for another felony* for which the person was not wrongfully convicted.

A person could be wrongfully incarcerated for a crime and then placed on parole or community supervision for that crime after the incarcerative part of the sentence is served.[308] Section 961.06(2), F.S., addresses this situation in terms of eligibility for compensation for the period of wrongful incarceration. Under this provision, if a person commits a misdemeanor, no more than one nonviolent felony, or some technical violation of his or her supervision that results in the revocation of parole or community supervision, the person is still eligible for compensation. If, however, any single violent felony law violation or multiple nonviolent felony law violations result in revocation, the person is ineligible for compensation.[309]

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[304] Section 961.02(5), F.S.
[305] Section 961.05, F.S.
[306] Additionally, the wrongfully incarcerated person is entitled to: waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any state college as defined in s. 1000.21(3), F.S., or any state university as defined in s. 100.21(6), F.S., if the wrongfully incarcerated person meets certain requirements; the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person; the amount of any reasonable attorney's fees and expenses incurred and paid by the wrongfully incarcerated person in connection with all criminal proceedings and appeals regarding the wrongful conviction; and notwithstanding any provision to the contrary in s. 943.0583, F.S., or s. 943.0585, F.S., and immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. Section 961.06, F.S.
[307] E-mail and documentation received from the Office of the Attorney General, October 16, 2019 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).
[308] Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines, which was October 1, 1983, and only then if they meet the statutory criteria. Chapter 82-171, L.O.F., and s. 947.16, F.S. The term "community supervision" as used in s. 961.06(2), F.S., could include control release, conditional medical release, or conditional release under the authority of the FCOR (ch. 947, F.S.), or community control or probation under the supervision of the DOC (ch. 948, F.S.).
[309] Section 961.06(2), F.S.

The term "violent felony" is defined in s. 961.02(6), F.S., by cross-referencing felonies listed in s. 775.084(1)(c)1. or s. 948.06(8)(c), F.S. The combined list of those violent felony offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar. The violent felonies referenced in s. 961.02(6), F.S., are:

- Kidnapping;
- False imprisonment of a child;
- Luring or enticing a child;
- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- Robbery;
- Carjacking;
- Home invasion robbery;
- Sexual Battery;
- Aggravated battery;
- Armed burglary and other burglary offenses that are first or second degree felonies;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Arson;
- Aggravated assault;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Treason;
- Aggravated stalking;
- Aircraft piracy;
- Abuse of a dead human body;
- Poisoning food or water;
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer;
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer pornography;
- Transmission of child pornography; and
- Selling or buying of minors.

Since the Act's inception, a number of claim bills have been filed on behalf of wrongfully incarcerated persons who are ineligible for compensation under the Act because of a felony conviction prior to the person's wrongful incarceration. At least two such persons have received compensation for wrongful incarceration through the claim bill process.

In 2008, Alan Crotzer prevailed in a claim bill for his wrongful incarceration. Crotzer was ineligible for compensation under the Act because of a prior violent felony conviction for armed

robbery when he was 18 years old.[310] In 2012, prior to the eligibility expansion in 2017, William Dillon prevailed in a claim bill for his wrongful incarceration. Dillon was barred from seeking compensation under the Act because of a prior felony conviction for possession of a single Quaalude.[311]

Effect of the Bill

The bill makes a number of changes to ch. 961, F.S., the "Victims of Wrongful Incarceration Compensation Act." The bill amends s. 961.03, F.S., to extend the time for a person who was wrongfully incarcerated for a petition from 90 days to within two years after an order vacating a conviction and sentence becomes final and the criminal charges against a person are dismissed, if the person's conviction and sentence is vacated on or after July 1, 2020.

The bill also authorizes a person to file a petition for determination of status as a wrongfully incarcerated person and determination of eligibility for compensation by July 1, 2022, if the:

- Person's conviction and sentence was vacated and the criminal charges against the person were dismissed, or the person was retried and found not guilty after January 1, 2006, but before July 1, 2020; and
- Person previously filed a claim that was dismissed or did not file a claim under ch. 961, F.S., because the:
  - Date when the criminal charges against the person were dismissed or the date the person was acquitted occurred more than 90 days after the date of the final order vacating the conviction and sentence; or
  - Person was convicted of an unrelated felony before his or her wrongful conviction and incarceration and was previously barred under the clean hands provision.

Additionally, the bill repeals s. 961.04, F.S., removing the bar to compensation for a claimant who has been convicted of a violent felony or multiple nonviolent felonies prior to or during his or her wrongful conviction and incarceration. Accordingly, an otherwise eligible claimant who was convicted of a violent felony or multiple nonviolent felonies will not be disqualified from receiving compensation under the Act for their unrelated wrongful conviction and incarceration.

A deceased person's heirs, successors, or assigns do not have standing to file a claim on the deceased person's behalf for wrongful incarceration compensation.

If a sentencing court determines that a person is a wrongfully incarcerated person and eligible for compensation under s. 961.03, F.S., the person is authorized to apply for compensation with the DLA.

The bill removes the requirement for a wrongfully incarcerated person to release the state or any agency from all claims arising out of the facts relating to the person's wrongful conviction and incarceration. The bill also removes the bar to applying for wrongful incarceration compensation if the person has a pending lawsuit against the state or any agency, or any political subdivision thereof for damages relating to the person's wrongful conviction and incarceration.

[310] *See* ch. 2008-259, L.O.F.
[311] *See* ch. 2012-229, L.O.F. (compensating William Dillion for wrongful incarceration despite ineligibility for compensation under the Act).

Finally, the bill replaces the bar on civil litigation with an "offset provision" that:

- Authorizes the state to deduct the amount of a civil award recovered in a lawsuit from the state compensation owed if the claimant receives a civil award first;
- Requires a claimant to reimburse the state for any difference between state compensation and a civil award if the claimant receives statutory compensation prior to a civil award; and
- Requires a claimant to notify the DLA upon filing a civil action and the DLA to file a notice of payment of monetary compensation in such action to recover any amount owed for state compensation already awarded.

As mentioned above, the bill repeals s. 961.04, F.S., which prohibited compensation based on unrelated violent felony convictions. The bill deletes the terms "eligible for compensation" and "violent felony" and modifies the term "entitled to compensation" from s. 961.02, F.S., to conform this change. The bill makes additional confirming changes throughout the Act.

These provisions of the bill are effective July 1, 2020.

Incarceration Counting Toward Tuition Residency Requirements (Sections 18, 23, and 29)

Residency Status for Tuition Purposes

Florida law defines "tuition" to mean the basic fee charged to a student for instruction provided by a public postsecondary educational institution in the state.[312] Residency designations are used for assessing tuition in postsecondary educational programs offered by charter technical career centers or career centers operated by school districts, in Florida College System institutions, and in state universities.[313] Students who are not classified as "residents for tuition purposes"[314] are required to pay the full cost of instruction at a public postsecondary institution. A person is able to meet the definition of a "legal resident" if the person has maintained his or her residence in Florida for the preceding year, has purchased a home which is occupied by him or her as his or her residence, or has established a domicile in this state.[315]

Specifically, to qualify as a resident for tuition purposes:

- A person or, if that person is a dependent child, his or her parent or parents must have established legal residence in Florida and must have maintained legal residence for at least 12 consecutive months immediately prior to his or her initial enrollment in an institution of higher education.
- Every applicant for admission to an institution of higher education is required to make a statement as to his or her length of residence and establish that his or her presence or, if the applicant is a dependent child, the presence of his or her parent or parents in Florida currently is, and during the requisite 12-month qualifying period was, for the purpose of maintaining a bona fide domicile.[316]

[312] Section 1009.01(1), F.S.
[313] Section 1009.21, F.S.
[314] Section 1009.21(1)(g), F.S.
[315] Section 1009.21(1)(d), F.S.
[316] Section 1009.21(2)(a), F.S.

A person must show certain proof that he or she should be classified as a resident for tuition purposes and may not receive the in-state tuition rate until clear and convincing evidence related to legal residence and its duration has been provided. Each institution of higher education must make a residency determination that is documented by the submission of written or electronic verification that includes two or more specified documents that:

- Must include at least one of the following:
  - A Florida voter's registration card.
  - A Florida driver license.
  - A State of Florida identification card.
  - A Florida vehicle registration.
  - Proof of a permanent home in Florida which is occupied as a primary residence by the individual or by the individual's parent if the individual is a dependent child.
  - Proof of a homestead exemption in Florida.
  - Transcripts from a Florida high school for multiple years if the Florida high school diploma or high school equivalency diploma was earned within the last 12 months.
  - Proof of permanent full-time employment in Florida for at least 30 hours per week for a 12-month period.
- May include one or more of the following:
  - A declaration of domicile in Florida.
  - A Florida professional or occupational license.
  - Florida incorporation.
  - A document evidencing family ties in Florida.
  - Proof of membership in a Florida-based charitable or professional organization.
  - Any other documentation that supports the student's request for resident status, including, but not limited to, utility bills and proof of 12 consecutive months of payments; a lease agreement and proof of 12 consecutive months of payments; or an official state, federal, or court document evidencing legal ties to Florida.[317]

Florida law is silent as to whether time incarcerated in a Florida prison or county detention facility may count toward the 12-month legal residency requirements.

The DOC reports that it and Florida Gateway College partnered to offer the Second Chance Pell Program at Columbia Correctional Institution Annex, which is a pilot program operating under the Second Chance Pell Experimental Sites Initiative through the U.S. Department of Education and the Department of Justice. The program at Columbia Correctional Institution Annex commenced on January 24, 2017, and has recently been renewed for another three-years. The DOC reports that this pilot program allows eligible inmates to access Pell Grant funds for post-secondary education. Such funds accessed through the grant must be used to cover the costs of tuition, fees, books, and supplies. The DOC is currently attempting to expand post-secondary opportunities for inmates in collaboration with several Florida colleges and universities.[318]

[317] Section 1009.21(3), F.S.
[318] The DOC, *Agency Analysis for SB 1308*, February 3, 2020, p. 4 (on file with the Appropriations Subcommittee on Senate Criminal and Civil Justice Committee) (hereinafter cited as "The DOC SB 1308 Analysis").

Requirement to Provide Certain Information to Persons Upon Release From Imprisonment

Entities that imprison persons convicted of offenses in violation of Florida law are required in certain circumstances to provide specified information to such persons upon release. For example, s. 944.705(6), F.S., requires the DOC to notify every inmate upon release, in no less than 18-point type in the inmate's release documents, that the inmate may be sentenced pursuant to s. 775.082(9), F.S., as a prison releasee reoffender as discussed below if the inmate commits any enumerated felony offense within 3 years after the inmate's release. Additionally, the notice must be prefaced by the word "WARNING" in boldfaced type.[319]

Further, specified entities are required to provide inmates with certain information related to all outstanding terms of sentence in accordance with CS/SB 7066 (2019), related to voting rights restoration.[320] For example, ss. 944.705 and 948.041, F.S., require the DOC to notify an inmate or offender in writing of all outstanding terms of sentence at the time of release or termination of probation or community control.

Such entities are not currently required to provide inmates being released from their facilities information related to dates of his or her admission to and release from the custody of the facility, including the total length of the term of imprisonment from which he or she is being released.

Effect of the Bill

The bill amends s. 1009.21(2), F.S., authorizing time spent incarcerated in a county detention facility or state correctional facility to apply towards the requirement to reside in Florida through an authorized manner for 12 consecutive months immediately before enrollment for the designation as a resident for tuition purposes. The bill also amends s. 1009.21(3), F.S., requiring time spent incarcerated in a county detention facility[321] or state correctional facility[322] to be credited toward the residency requirement, with any combination of documented time living in Florida before or after incarceration.

Further, the bill amends s. 944.705, F.S., and creates s. 951.30, F.S., requiring the DOC and administrators of county detention facilities, respectively, to provide written documentation to inmates upon release specifying the dates of the inmate's admission to and release from the custody of the facility. This notification must include the total length of the term of imprisonment from which he or she is being released.

This documentation will assist inmates with providing the proper evidence to satisfy residency requirements for tuition purposes pursuant to s. 1009.21(3), F.S.

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[319] Section 944.705(6), F.S., further provides that evidence that the DOC failed to provide this notice to an inmate will not prohibit a person from being sentenced pursuant to s. 775.082(9), F.S. The state is not be required to demonstrate that a person received any notice from the DOC in order for the court to impose a sentence pursuant to s. 775.082(9), F.S.

[320] *See* ch. 2019-162, L.O.F.

[321] Section 951.23(1)(a), F.S., defines "county detention facility" to mean a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor.

[322] Section 944.02(8), F.S., defines "state correctional institution" to mean any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the DOC.

Office of Program Policy and Governmental Accountability (OPPAGA) Study on Collateral Consequences (Section 30)

The bill requires the OPPAGA to conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment. The bill provides that the study's scope must include, but need not be limited to:

- Any barriers to such opportunities;
- The collateral consequences that are present, if applicable, for persons who are released from incarceration into the community; and
- Methods for reducing the collateral consequences identified.

The bill requires the OPPAGA to submit a report to the Governor, the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives by November 1, 2020, on its findings.

This provision of the bill is effective July 1, 2020.

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:

None.

C. Government Sector Impact:

Driving With a License Suspended or Revoked (DWLSR) Amendments (Sections 1 and 15)

Retroactive DWLSR Sentencing Provisions

The Criminal Justice Impact Conference (CJIC) heard CS/SB 1504, the identical provisions of which are included herein on February 10, 2020. The CJIC found that the retroactive sentencing provisions of CS/SB 1504 will have a negative significant prison bed impact (i.e. decrease of more than 25 beds).[323]

The bill also allows for people to be sentenced to misdemeanor penalties, rather than to prison for such offenses. To the extent that the bill results in persons being sentenced to non-state sanctions or resentenced and released from imprisonment with the DOC, the bill will have an indeterminate negative prison bed impact (i.e. an unquantifiable decrease).[324]

According to the DOC, there are currently 2,086 inmates in custody for the offense of DWLSR who were sentenced under former s. 332.34, F.S., which would need to be reviewed for eligibility under the bill. Further, the DOC states that the bill would result in a significant, but temporary fiscal impact on the DOC. Therefore, the DOC will need one full-time non-recurring, Correctional Services Assistant Consultant at a cost of $65,395, to conduct the review for eligibility of certain offenders. DOC also estimates there will be a minimal technology impact of $3,480, based on a possible request for expungement of cases.[325]

Expunction Provisions

The CJIC also found that the expunction provisions of CS/SB 1504 will have a positive insignificant prison bed impact (i.e. an increase of 10 or fewer prison beds).[326]

The bill allows for certain persons to have any specified criminal history records related to a DWLSR conviction expunged. This will result in a negative fiscal impact on the FDLE' workload. To accommodate this increased workload, the FDLE estimates it will need an additional 16 positions totaling $1,039,809 ($1,029,867 recurring),[327] which may

[323] The Office of Economic and Demographic Research, CJIC Narrative Analyses of Adopted Impacts, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm (last visited February 12, 2020). *See also* the CJIC, *CS/SB 1504 Adopted Impact*, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB1504.pdf (last visited February 12, 2020) (hereinafter cited as "The CJIC CS/SB 1504 Impact Results").
[324] February 10, 2020 Conference Results, Criminal Justice Impact Conference, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm (last visited February 14, 2020).
[325] The DOC, *Agency Analysis for SB 1504*, January 31, 2020, p. 3-7 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).
[326] The CJIC, CS/SB 1504 Impact Results.
[327] The 2020 FDLE Legislative Bill Analysis for SB 1504 C1, February 10, 2020, p 5 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).

be offset in part by the $75 fee collected for each application for COE associated with this additional category of expunction records.

Mandatory Minimum Sentences (Sections 2-5, 7, and 8)

The bill amends ss. 379.407, 403.4154, 456.065, 624.401, and 817.234, F.S., to remove various mandatory minimum penalties. To the extent that persons convicted for these various offenses that currently require the imposition of a minimum mandatory term of imprisonment are sentenced to lesser sentences of imprisonment than are currently required, the bill is expected to have a negative prison bed impact.

Drug Trafficking Safety Valve (Section 8)

The CJIC heard SB 468, which is identical to this provision in the bill, on January 27, 2020, and determined that this provision will result in a negative indeterminate prison bed impact (i.e. an unquantifiable decrease in prison beds) due to the discretion given to the court to depart from such mandatory sentences.[328]

Prison Releasee Reoffenders (Section 6)

The CJIC heard CS/SB 1716, which is identical to these provisions of the bill, on February 10, 2020, and determined that the bill will have a negative significant prison bed impact (i.e. decrease of more than 25 prison beds).[329]

The DOC states that since it will be required to provide notice to the inmate of his or her eligibility to request a sentence review hearing, there will be a need in the Bureau of Admissions and Release for a full time, temporary position, funded for up to one year to handle the work load increase required to complete notifications for the 7,400 inmates that this bill will effect.[330]

Probation Violations (Section 22)

The bill clarifies that all of the enumerated conditions must be satisfied for a court to be required to continue or modify a person on probation subsequent to certain violations of probation. To the extent that this results in less people being continued or modified on probation, the bill may result in more people having their probation revoked and sentenced to prison or jail. According the State Court Administrator, this bill is not likely to have a significant effect on judicial workload and not fiscal impact.[331]

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[328] The CJIC, *SB 468 Adopted Impact*, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/SB468.pdf (last visited February 12, 2020).
[329] The DOC, *Agency Analysis for SB 1716*, February 20, 2020, p. 3-7 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).
[330] Id.
[331] The State Courts Administrator, 2020 Judicial Impact Statement for SB 7064, February 23, 2020, p. 1 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).

Sentence Review Hearings (Sections 10-12)

The CJIC, reviewed CS/SB 1308, the provisions of which are included herein, on February 10, 2020 and estimates the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds). The EDR provided the following information relevant to its estimate:[332]

Further, the bill modifies the ability of certain juvenile offenders from being eligible for a sentence review hearing in addition to creating a new sentence review hearing process for young adult offenders sentenced for committing specified offenses before attaining the age of 25 years. To the extent that the bill results in juvenile or young adult offenders being released from prison earlier than otherwise may occur as a result of such sentence review hearings, the bill may result in a negative indeterminate prison bed impact (i.e. an unquantifiable decrease in prison beds).[333]

The DOC reports that there are 37 inmates eligible for review based on the changes made to s. 921.1402, F.S., and the retroactive application of such changes. Additionally, the DOC states that there are 5,312 potentially eligible young adult offenders that will require eligibility notification under the newly-created s. 921.1403, F.S. As stated above, to the extent that the bill results in juvenile or young adult offenders being released from prison earlier than otherwise may occur as a result of such sentence review hearings, the DOC provides that the bill may result in a negative indeterminate prison bed impact (i.e. an unquantifiable decrease in prison beds) and an indeterminate positive impact on the supervision population managed by the DOC.[334]

Additionally, the bill may have an impact on the court system to the extent that resentencing hearings for such offenders affected by the bill will require more time and resources. However, any fiscal impact cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial and court staff workload.[335]

The Public Defender Association states that they currently represent a large majority of the juvenile offenders who are seeking to be resentenced, but the bill adds adult offenders who committed their offenses between the ages of 18-25. Therefore, it is anticipated that this bill will create more workload for public defender staff for the next several fiscal years.[336]

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[332] February 10, 2020 Conference Results, Criminal Justice Impact Conference, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm (last visited February 14, 2020).
[333] Id.
[334] The DOC SB 1308 Analysis, p. 5, 6, and 8.
[335] The State Courts Administrator, 2020 Judicial Impact Statement for SB 7064, February 23, 2020, p. 1 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).
[336] Florida Public Defender Association, Inc., Fiscal Analysis for SB 1308, (January 13, 2020) (on file with Senate Appropriations Subcommittee on Criminal and Civil Justice).

Postconviction Forensic Analysis (Sections 13, 14, 16, and 17)

The CJIC heard HB 7077, which is identical to the provisions contained herein, on February 10, 2020, and found that the bill will have a negative indeterminate prison bed impact (i.e. an unquantifiable decrease in prison beds).[337] The bill may increase the amount of postsentencing forensic analysis the FDLE is ordered to perform, but the bill also authorizes third-party laboratories to conduct such analysis as well. To the extent that the bill increases analysis that is conducted by the FDLE, these provisions will likely increase the FDLE laboratories' workload. Additionally, if indigent defendants are successful in petitioning for postsentencing forensic analysis, the state may be responsible for increased testing costs. However, since the bill authorizes private laboratory testing, at the petitioner's expense, the degree to which state laboratories' workload and testing costs will increase is unknown.[338]

Conditional Release for Certain Inmates (In part, Sections 19- 21)

Conditional Medical Release (CMR)

The CJIC reviewed CS/CS/SB 556, which is identical to the provisions in this bill, on January 27, 2020. The CJIC determined that theses sections will likely result in a negative significant prison bed impact (i.e. a decrease of more than 25 prison beds).[339] Additionally, these sections will likely result in a reduction in the associated inmate healthcare costs.

The bill removes any role of determining the appropriateness of an inmate's release on CMR from the FCOR and places such comparable duties within the DOC. In Fiscal Year 2018-2019, FCOR conducted 84 CMR determinations. They report that they spent 804 hours on the investigation/determination, 64 hours on victim assistance, and 433 hours on revocations for CMR. The FCOR reports that this equates to less than 1 FTE.[340]

The DOC reports that when the inmate population is impacted in small increments statewide, the inmate variable per diem of $20.04 is the most appropriate to use to determine the fiscal impact. The variable per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The DOC's Fiscal Year 2017-2018 average per diem for community supervision was $5.47.[341]

[337] The CJIC, *HB 7077 Adopted Impact*, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB7077.pdf (last visited February 24, 2020).
[338] The Florida House of Representatives, HB 7077 staff analysis, p. 9 (February 24, 2020.
[339] The CJIC meeting at which this bill estimate was made occurred during a meeting of the Criminal Justice Estimating Conference on January 27, 2020. The meeting is available on video on the Florida Channel at https://thefloridachannel.org/videos/1-27-20-criminal-justice-estimating-conference/ (last visited January 29, 2020).
[340] The FCOR, CS/SB 556 Agency Bill Analysis, p. 5 (October 24, 2019).
[341] The DOC SB 574 Analysis, p. 5.

According to the DOC, the department will need 9 additional staff in the Bureau of Classification Management to oversee, provide guidance, and coordinate the implementation and administration of the CMR program, as follows.[342]

1	Correctional Program Administrator	$90,279 (salary and benefits)
1	Correctional Services Consultant	$68,931 (salary and benefits)
1	Correctional Services Asst. Cons.	$58,732 (salary and benefits)
1	Government Oper. Consult. I	$52,324 (salary and benefits)
1	Senior Attorney	$79,073 (salary and benefits)
4	Correctional Probation Senior Ofcr.	$246,848 (salary and benefits)

Professional travel	$ 13,512 (recurring)	$17,716 (non-recurring)
Expense	$ 42,275 (recurring)	$29,795 (non-recurring)
Human Resources	$ 2,961 (recurring)	
Salary Incentive (if applicable)	$ 4,512 (recurring)	
Information Technology		$ 17,400 (non-recurring)
Total All Funds[343]	**$659,447 (recurring)**	**$64,911(non-recurring)**

Conditional Aging Inmate Release (CAIR)

The CJIC reviewed CS/CS/SB 574, which is identical to the sections in this bill, on January 27, 2020. The CJIC determined that these sections will likely result in a negative insignificant prison bed impact (i.e. a decrease of 10 or fewer prison beds).[344]

The DOC reports that the overall fiscal impact of these sections is indeterminate because release will be at the discretion of the DOC.[345] The DOC reports that as of October 18, 2019, there were a total of 1,849 inmates age 70 or older in its custody, and, based on the criteria set forth in the bill, only 168 of these inmates would meet the eligibility criteria for consideration for CAIR. The DOC reports that an additional 291 inmates were projected to become eligible based on the 70 years of age threshold over the next five years.[346] This data was provided based on the age threshold contained in CS/SB 574. However, PCS/CS/SB 574, which is identical to the section in this bill, lowers the age threshold for eligibility to 65 years of age and also expands the offenses which preclude eligibility for release under the program. Therefore, this bill may expand the pool of inmates who are eligible for consideration of CAIR release.

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[342] The DOC spreadsheet (January 30, 2020) (on file with the Committee on Criminal and Civil Justice Appropriations).
[343] DOC Spreadsheet (January 30, 2019), (on file with the committee on Criminal and Civil Justice Appropriations).
[344] The CJIC meeting at which this bill estimate was made occurred during a meeting of the Criminal Justice Estimating Conference on January 27, 2020. The meeting is available on video on the Florida Channel at https://thefloridachannel.org/videos/1-27-20-criminal-justice-estimating-conference/ (last visited January 29, 2020).
[345] The five highest occurring offenses of incarceration for these inmates are first or second degree murder (s. 782.04, F.S.), sexual battery on a victim under 12 (s. 794.011, F.S.), lewd or lascivious molestation on a victim under 12 (s. 800.04, F.S.), and robbery with a gun or deadly weapon (s. 812.13, F.S.). The DOC, *SB 574 Agency Analysis*, p. 1 and 4 (December 6, 2019)(on file with the Senate Criminal Justice Committee) [hereinafter cited as "The DOC SB 574 Analysis"].
[346] The DOC, *SB 574 Agency Analysis Updated*, p. 2 and 4 (January 29, 2020)(on file with the Senate Appropriations Subcommittee on Civil and Criminal Justice) [hereinafter cited as "The DOC SB 574 Updated Analysis"].

The DOC reports that when the inmate population is impacted in small increments statewide, the inmate variable per diem of $20.04 is the most appropriate to use to determine the fiscal impact. The variable per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The DOC's Fiscal Year 2017-2018 average per diem for community supervision was $5.47.[347]

According to the DOC, the department will need 9 additional staff in the Bureau of Classification Management to oversee, provide guidance, and coordinate the implementation and administration of the CAIR program, as follows. [348]

1	Correctional Program Administrator	$90,279 (salary and benefits)
1	Correctional Services Consultant	$68,931 (salary and benefits)
1	Correctional Services Asst. Cons.	$58,732 (salary and benefits)
1	Government Oper. Consult. I	$52,324 (salary and benefits)
1	Senior Attorney	$79,073 (salary and benefits)
4	Correctional Probation Senior Ofcr.	$246,848 (salary and benefits)

Professional travel	$ 13,512 (recurring)	$17,716 (non-recurring)
Expense	$ 42,275 (recurring)	$29,795 (non-recurring)
Human Resources	$ 2,961 (recurring)	
Salary Incentive (if applicable)	$ 4,512 (recurring)	
Information Technology	$ 17,400 (non-recurring)	
Total All Funds[349]	**$659,447 (recurring)**	**$64,911(non-recurring)**

Compensation for Wrongful Incarceration (Sections 24-28)

More persons are potentially eligible for compensation for wrongful incarceration under these sections of the bill. A person who is entitled to compensation based on wrongful incarceration would be paid at the rate of $50,000 per year of wrongful incarceration up to a limit of $2 million. Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. The Victims of Wrongful Incarceration Compensation Act is funded through a continuing appropriation pursuant to s. 961.07, F.S.

Although statutory limits on compensation under the Act are clear, the fiscal impact of the bill is unquantifiable. The possibility that a person would be compensated for wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently exist or might exist in the future. Four successful claims since the Act became effective total $4,276,901.

[347] The DOC SB 574 Analysis, p. 5.
[348] The DOC spreadsheet (January 30, 2020) (on file with the Committee on Criminal and Civil Justice Appropriations).
[349] DOC Spreadsheet (January 30, 2019), (on file with the committee on Criminal and Civil Justice Appropriations).

Notification of Certain Release Information (Sections 18, 23, and 29)

The bill requires the DOC and county detention facilities to provide inmates certain information related to the length of incarceration. The DOC states that inmates in its custody often have multiple sentences with various admission dates, release dates, and terms imposed. Further, each sentence length is calculated individually based on a number of factors and therefore an inmate may have multiple endpoints of their various sentences. According to the DOC, these sections of the bill will require significant programming changes, but such necessary changes are not specified by the DOC.[350]

Residency for Tuition Purposes (Sections 29)

The bill allows time incarcerated in a Florida facility to count towards the 12-month residency requirement for tuition purposes and requires the DOC and county detention facilities to provide certain information to inmates upon release from such facilities. To the extent that the requirement to provide such notification increases the workload of the DOC and county detention facilities, the bill may result in an indeterminate fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.1935, 379.407, 403.4154, 456.065, 624.401, 775.082, 775.084, 775.087, 782.051, 784.07, 790.235, 794.0115, 817.234, 817.568, 893.03, 893.13, 893.135, 893.20, 910.035, 921.002, 921.0022, 921.0023, 921.0024, 921.0025, 921.0026, 921.0027, 924.06, 924.07, 921.1402, 925.11, 925.12, 943.325, 943.3251, 944.17, 944.605, 944.70, 944.705, 947.13, 947.141, 948.01, 948.015, 948.06, 948.20, 948.51, 958.04, 961.02, 961.03, 961.05, 961.06, 985.465, and 1009.21.

This bill creates the following sections of the Florida Statutes: 322.3401, 921.14021, 921.1403, 943.0587, 945.0911, 945.0912 and 951.30.

The bill repeals the following sections of the Florida Statutes: 947.149 and 961.04.

[350] The DOC SB 1308 Analysis, p. 6.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on February 25, 2020:
The proposed committee substitute:

- Providing for the retroactive application of the changes made by CS/HB 7125 (2019) to s. 322.34, F.S., related to the offense of driving while license suspended or revoked (DWLSR).
- Requiring offenders convicted of DWLSR who have not been sentenced as of October 1, 2020, to be sentenced in accordance with the new penalties outlined in CS/HB 7125 (2019).
- Authorizing offenders convicted of DWLSR who have been sentenced and are still serving such sentence to be resentenced in accordance with the penalties in CS/HB 7125 (2019).
- Providing procedures for the resentencing of eligible persons previously convicted of DWLSR and requires the court of original jurisdiction, upon receiving an application for sentence review from the eligible person, to hold a sentence review hearing to determine if the eligible person meets the criteria for resentencing.
- Providing that a person is eligible to expunge a criminal history record of a conviction that resulted from former s. 322.34, F.S., in specified circumstances.
- Renaming of the Criminal Punishment Code to the "Public Safety Code" and changing the primary purpose from punishing the offender to public safety.
- Removing various mandatory minimum terms of imprisonment for specified offenses.
- Reducing the mandatory minimum penalties imposed upon a prison releasee reoffender (PRR), a category of repeat offenders, under s. 775.082(9), F.S., and expressly applying such changes retroactively.
- Providing a process for resentencing certain prison releasee reoffenders and removing a provision of law that prohibits a prison releasee reoffender from any form of early release.
- Authorizing a court to depart from the imposition of a mandatory minimum sentence in drug trafficking cases if certain circumstances are met.
- Clarifying that a court is only required to modify or continue an offender's probationary term if all of the enumerated specified factors apply.
- Expanding the types of forensic analysis available to a petitioner beyond DNA testing.
- Requiring a petitioner to show that forensic analysis may result in evidence material to the identity of the perpetrator of, or an accomplice to, the crime that resulted in the person's conviction, rather than having to show the evidence would exonerate the person or mitigate his or her sentence.
- Authorizing a private laboratory to perform forensic analysis under specified circumstances at the petitioner's expense.

- Requiring the Florida Department of Law Enforcement (FDLE) to conduct a search of the statewide DNA database and request the National DNA Index System (NDIS) to search the federal database if forensic analysis produces a DNA profile.
- Authorizing a court to order a governmental entity that is in possession of physical evidence claimed to be lost or destroyed to search for the physical evidence and produce a report to the court, the petitioner, and the prosecuting authority regarding such lost evidence.
- Repealing s. 947.149, F.S., which establishes the conditional medical release (CMR) program within the Florida Commission on Offender Review (FCOR) and creates s. 945.0911, F.S., to establish a CMR program within the Department of Corrections (DOC).
- Providing definitions and eligibility criteria for the CMR program.
- Providing a process for the referral, determination of release, and revocation of release for the CMR program.
- Establishing a conditional aging inmate release (CAIR) program within the DOC.
- Providing eligibility criteria for the CAIR program.
- Providing a process for the referral, determination of release, and revocation of release for the CAIR program.
- Deleting and modifying terms related to the "Victims of Wrongful Incarceration Compensation Act."
- Eliminating specified factors barring from consideration for certain persons from compensation for wrongful incarceration.
- Extending the time for a person who was wrongfully incarcerated to file a petition with the court to determine eligibility for compensation from 90 days to two years.
- Authorizing certain persons who were previously barred from filing a petition for wrongful compensation to file a petition with the court by July 1, 2021.
- Requiring the Department of Corrections (DOC and county detention facilities to provide documentation to inmates upon release specifying the total length of the term of imprisonment at the time of release.
- Allowing the time spent incarcerated in a county detention facility or state correctional facility to apply towards satisfaction of residing for a specified amount of time in Florida for designation as a resident for tuition purposes.
- Requiring the time spent incarcerated in a county detention facility or state correctional facility to be credited toward the residency requirement, with any combination of documented time living in Florida before or after incarceration.
- Requiring the Office of Program Policy and Governmental Accountability (OPPAGA) to conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment and submit a report by November 1, 2020.

CS by Criminal Justice on February 4, 2020:
The committee substitute:

- Fixes incorrect citations in the provision that allowed juvenile offenders and young adult offenders sentenced with the PRR enhancement to be released if the court deems appropriate;

- Adds legislative findings language to the section created to retroactively apply the changes made to the juvenile offenders who are eligible for a sentence review;
- Corrects language in the provision limiting review of certain juvenile offenders related to the two criminal episodes to ensure the correct application of limiting such reviews; and
- Ensures the provisions that limit certain offenders from having a review are the same between the juvenile offender and young adult offender statutes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.