The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 1308
INTRODUCER:	Criminal Justice Committee and Senators Brandes and Bracy
SUBJECT:	Criminal Justice
DATE:	February 5, 2020
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

- Modifying the list of enumerated offenses that exclude juvenile offenders convicted of capital murder from a sentence review hearing in accordance with s. 921.1402, F.S., enacted subsequent to the *Graham v. Florida* and *Miller v. Alabama* cases, to only murder.
- Retroactively applying the above modification to limit the prior offenses that serve as a bar for certain juvenile offenders to have a sentence review hearing to only murder.
- Providing that juvenile offenders who are no longer barred from a sentence review hearing due to the change to the 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 change to the 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 s. 921.1402, F.S., 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.
- Providing an exception to the requirement for prison releasee reoffenders to serve specified amounts of the term of imprisonment and allowing such prison releasee reoffenders that also qualify as juvenile offenders and young adult offenders to have sentence review hearings conducted by the court and be resentenced and released from imprisonment if deemed appropriate.
- 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 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 and 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.
- Providing the study's scope and requiring 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.

To the extent that the bill increases the number of certain offenders being released from prison as a result of the sentence review hearings, the bill may result in a negative indeterminate prison bed impact and a positive indeterminate impact to the supervision population managed by the DOC. Additionally, the bill may result in an increased workload to the courts, the DOC, and county jail facilities. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2020.

II. Present Situation:

Criminal Punishment Code

The Criminal Punishment Code (Code) is Florida's primary sentencing policy.[1] Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).[2] 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,

[1] Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.
[2] 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.[3] Absent mitigation,[4] 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.[5]

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.[6] The first of these was *Roper v. Simmons*,[7] 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*[8] and *Miller v. Alabama*.[9]

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

[3] Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.
[4] 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.
[5] *See* s. 775.082, F.S.
[6] 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.
[7] 125 S.Ct. 1183 (2005).
[8] 130 S.Ct. 2011 (2010).
[9] 132 S.Ct. 2455 (2012).

"provide him or her with some realistic opportunity to obtain release before the end of that term."[10] Because Florida abolished parole[11] and the possibility of executive clemency was deemed to be remote,[12] 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.[13]

Graham applies retroactively to previously sentenced offenders because it established a fundamental constitutional right.[14] 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 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.[15] 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.[16]

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*.[17]

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

[10] *Graham* at 82.
[11] 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.
[12] *Graham* at 70.
[13] *Graham* at 75.
[14] *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).
[15] *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)).
[16] *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).
[17] *Gridine v. State*, 175 So.3d 672 (Fla. 2015) and *Henry v. State*, 175 So.3d 675 (Fla. 2015).

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."[18] 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 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.[19]

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), codified in ch. 2014-220, L.O.F., 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[20] 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.[21]

[18] *Miller* at 2467.
[19] *Miller* at 2468.
[20] Section 782.04, F.S., establishes homicide offenses.
[21] Section 775.082(1)(b)1., F.S.

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;[22]
- Capital, life, or first degree felony homicide offense where the person did not actually kill, intend to kill, or attempt to kill the victim;[23] or
- Nonhomicide offense.[24]

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.[25]

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 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.[26]

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.[27] 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;

[22] Section 775.082(3)(a)5. and (b), F.S.
[23] Section 775.082(1)(b)2., F.S.
[24] Section 775.082(3)(c), F.S.
[25] Section 775.082(1)(b)1., F.S.
[26] *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.
[27] Section 921.1401(1), F.S.

- 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.[28]

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 his or her 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.

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.[29] 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.[30]

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

[28] Section 921.1401(2), F.S.
[29] Section 775.082(1)(b)1., F.S.
[30] Section 921.1402(2)(a), F.S.

review hearing after 25 years, if he or she is sentenced to a term of imprisonment for more than 25 years.[31]

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.[32]

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.[33]

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 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.[34]

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;[35]
- 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

[31] Section 921.1402(2)(b), F.S.
[32] Section 921.1402(2)(c), F.S.
[33] Section 921.1402(2)(d), F.S.
[34] Section 921.1402(3)-(5), F.S.
[35] 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.

- The results of any mental health assessment, risk assessment, or evaluation of the offender as to rehabilitation.[36]

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.[37]

These sentencing provisions are limited to the juvenile offenders that fall under the strict findings in *Graham* and *Miller*.[38] 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*.

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*,[39] 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*,[40] 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.[41]

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*.[42] The Court held that *Miller* applied retroactively because the ruling is a development of fundamental significance. The Court

[36] Section 921.1402(6), F.S.
[37] Section 921.1402(7), F.S.
[38] *See Graham v. Florida*, 130 S.Ct. 2011 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012).
[39] 121 So.3d 1130 (Fla. 5th DCA 2013).
[40] 160 So.3d 393 (Fla. 2015).
[41] 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 is constitutional under *Miller* when applied to a juvenile offender.
[42] 162 So.3d 954 (Fla. 2015).

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.[43]

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.[44]

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.[45]

Collateral Consequences of Felony Convictions

A collateral consequence is any adverse legal effect of a conviction that is not a part of a sentence.[46] If the consequence does not affect the range of punishment, it is said to be collateral to the plea.[47] 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.[48] Some examples of collateral consequences that occur upon any felony conviction in Florida include the loss of the right to vote,[49] hold public office,[50] serve on a jury,[51] obtain certain professional licenses,[52] and owning or possessing a firearm.[53] There are additional collateral consequences that can occur as a result

[43] *Falcon v. State*, 162 So.3d 954, 961 (Fla. 2015).
[44] *Virginia v. LeBlanc*, 137 S.Ct. 1726 (2017).
[45] *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 2019).
[46] 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 January 29, 2020).
[47] *See Bolware v. State*, 995 So.2d 268 (Fla. 2008).
[48] 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 January 29, 2020).
[49] Art. VI, s. 4, FLA. CONST.; s. 97.041, F.S.
[50] *Id*.
[51] Section 40.013(1), F.S.
[52] For example, s*ee* chs. 455, 489, and 626, F.S.
[53] Section 790.23, F.S.

of a felony conviction of specified offenses, such as the loss of driving privileges related to drug and theft offenses.[54] 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.[55]

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.[56]

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.[57] 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.

Prison Releasee Reoffender

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,[58] 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,[59] if the person is otherwise eligible.[60]

[54] *See* ss. 322.055 and 812.0155, F.S.
[55] 16 Fla. Prac., Sentencing, s. 6:120 (2019-2020 ed.).
[56] 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.
[57] *See* ch. 2019-162, L.O.F.
[58] *See* s. 775.082(9)(a)3., F.S., for a complete list of qualifying offenses.
[59] 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).
[60] Section 775.082(9)(a)1., F.S.

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.[61]

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 for a third degree felony;
- A 15-year mandatory minimum 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.[62]

Probation Supervision through the Department of Corrections

At sentencing, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.[63] 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.[64]

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.[65] 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, as well as provide in writing, any special conditions of probation imposed.

Violations of Probation or Community Control

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.[66] 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.[67]

[61] Section 775.082(9)(a)2., F.S.
[62] Section 775.082(9)(a)3., F.S.
[63] Section 948.01, F.S.
[64] The DOC, *Probation Services*, available at http://www.dc.state.fl.us/cc/index.html (last visited January 29, 2020).
[65] Section 948.001(8), F.S. Terms and conditions of probation are provided in s. 948.03, F.S.
[66] Section 948.10(3), F.S.
[67] Section 948.06(1)(a), F.S.

The offender must be returned to the court granting such probation.[68] 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.[69]

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.[70] In addition, if an offender qualifies as a violent felony offender of special concern (VFOSC), the court must revoke supervision, unless it makes written findings that the VFOSC does not pose a danger to the community.[71] The VFOSC status also accrues sentence points under the Code, which affects the scoring of the lowest permissible sentence.[72]

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."[73]

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

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

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

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[68] *Id*.
[69] 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.
[70] Section 948.06(2)(b), F.S.
[71] *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.
[72] Section 921.0024, F.S.
[73] Comment, *Today's Law and Yesterday's Crime: Retroactive Application of Ameliorative Criminal Legislation*, 121 U. Pa. L. Rev. 120, 129 (1972).

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."[74]

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.[75]

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[76] of a criminal statute for purposes of Article X, Section 9 of the State Constitution (Florida's constitutional savings clause).[77]

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.[78]

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, must be imposed according to the statute as amended.[79] 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.[80]

[74] *Jimenez v. Jones*, 261 So.3d 502, 504 (Fla. 2018).
[75] Section 775.022(2), F.S.
[76] 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).
[77] Section 775.022(1), F.S.
[78] Section 775.022(3), F.S.
[79] Section 775.022(4), F.S.
[80] Section 775.022(3), F.S.

The second exception relates to defenses and provides that the general savings statute does not limit the retroactive effect of any defense to a criminal statute enacted or amended by the Legislature to any criminal case that has not yet reached final judgment.[81]

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.[82]

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.[83] 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.[84] Students who are not classified as "residents for tuition purposes"[85] 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.[86]

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.

[81] Section 775.022(5), F.S.
[82] Art. 1, s. 16(b)(6)a., b., f., and g., FLA. CONST.
[83] Section 1009.01(1), F.S.
[84] Section 1009.21, F.S.
[85] Section 1009.21(1)(g), F.S.
[86] Section 1009.21(1)(d), F.S.

- 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.[87]

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.[88]

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

[87] Section 1009.21(2)(a), F.S.
[88] Section 1009.21(3), F.S.

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.[89]

III. Effect of Proposed Changes:

The bill provides that the act may be cited as "The Second Look Act."

Sentence Review Hearings for Specified Offenders

Juvenile Offenders

As discussed above, a juvenile offender sentenced to a sentence of life without parole for a capital felony[90] 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.[91] 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 that which 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 bar 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 July 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.

[89] The DOC, Agency Analysis for SB 1308, February 3, 2020, p. 4 (on file with the Senate Criminal Justice Committee) (hereinafter cited as "The DOC SB 1308 Analysis").
[90] In violation of s. 782.04, F.S.
[91] *See* ss. 775.082(1)(b)1. and 921.1402, F.S.

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.

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[92] offenses from a sentence review 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[93] is entitled to a review of his or her sentence after 20 years.[94]
- 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[95] 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 July 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.

[92] *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.
[93] Pursuant to s. 775.082(3)(a)1., 2., 3., 4., or 6., F.S.
[94] The bill provides that this does not apply to a person who is eligible for sentencing under s. 775.082(3)(a)5., F.S., which only applies to an offender who committed the offense before attaining the age of 18 years.
[95] 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, any of 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.[96]
- 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.

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.

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.

[96] 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.

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.

Prison Releasee Reoffenders

As stated above, a person sentenced as a prison releasee reoffender:

- Must serve 100 percent of the court-imposed sentence;
- May only be released when his or her sentence expires; and
- Is not eligible for parole, control release, or any form of early release.

The bill amends s. 775.082(9)(b), F.S., providing an exception to this requirement that allows an inmate who meets the above definitions of a juvenile offender or young adult offender eligible for a sentence review hearing under s. 921.1402, F.S., or s. 921.1403, F.S., to be resentenced and released from imprisonment if a court deems the resentencing appropriate in accordance with the review requirements as discussed above.

Incarceration Counting Toward Tuition Residency Requirements

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[97] or state correctional facility[98] to be credited toward the residency requirement, with any combination of documented time living in Florida before and 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 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.

[97] 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 felony or misdemeanor.
[98] 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.

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.

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

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.

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:

Sentence Review Hearings

The Criminal Justice Impact Conference has not heard the bill at this time, but the Office of Economic and Demographic Research (EDR) prepared a preliminary estimate for the bill stating that the bill will have a negative significant prison bed impact (i.e. decrease of more than 25 beds).[99]

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).

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.[100]

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.

Juvenile and Young Adult Offenders Sentenced as Prison Releasee Reoffenders

The DOC provides that there are approximately 110 inmates that may be eligible for a sentence review hearing under the changes made to s. 775.082(9), F.S. 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 this provision of the bill may result in a negative indeterminate prison bed impact (i.e. an

[99] The EDR, Preliminary Estimate on SB 1308 – Criminal Justice, p. 2 (on file with the Senate Criminal Justice Committee).
[100] The DOC SB 1308 Analysis, p. 5, 6, and 8.

unquantifiable decrease in prison beds) and an indeterminate positive impact on the supervision population managed by the DOC.[101]

Notification of Certain Release Information

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. The DOC provides that this provision of the bill will require significant programming changes, but such necessary changes are not specified by the DOC.[102]

Residency for Tuition Purposes

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 on such entities.

Additionally, to the extent that the bill results in additional persons enrolling in postsecondary education in Florida that would otherwise have been unable to do so, there could be a positive fiscal impact to such postsecondary entities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.082, 921.1402, 944.705, 951.30, and 1009.21.

This bill creates the following sections of the Florida Statutes: 921.14021 and 921.1403.

[101] The DOC SB 1308 Analysis, p. 5.
[102] 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.)

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.