

Tab 2 **SB 84** by **Joyner**; (Identical to H 0327) Controlled Substances

Tab 3 **SB 218** by **Hutson**; (Similar to H 0105) Offenses Involving Electronic Benefits Transfer Cards

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Tab 4 **SB 228** by **Bean**; (Similar to H 0135) Self-Defense Protection Act

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Tab 5 **SB 230** by **Dean**; (Identical to H 0011) Missing Persons with Special Needs

Tab 6 **SPB 7006** by **CJ**; Corrections

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Gibson, Vice Chair

MEETING DATE: Monday, October 5, 2015
TIME: 4:00—6:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Evers, Chair; Senator Gibson, Vice Chair; Senators Bradley, Brandes, and Clemens

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Presentation by Secretary Julie Jones on the implementation of Executive Orders 15-102, 15-134, and 15-175 and recent developments within the Department of Corrections.		Presented
2	SB 84 Joyner	Controlled Substances; Authorizing a defendant to move to depart from the mandatory minimum term of imprisonment of 3 years and from the mandatory fine for a drug trafficking violation involving a specified quantity of a specified controlled substance; authorizing the state attorney to file an objection to the motion; authorizing the sentencing court to grant the motion if the court finds that the defendant has demonstrated by a preponderance of the evidence that specified criteria are met, etc. CJ 10/05/2015 Favorable ACJ FP RC	Favorable Yeas 5 Nays 0
3	SB 218 Hutson (Similar H 105)	Offenses Involving Electronic Benefits Transfer Cards; Specifying acts that constitute trafficking in food assistance benefits cards and are subject to criminal penalties; providing criminal penalties, etc. CJ 10/05/2015 Fav/CS ACJ AP	Fav/CS Yeas 4 Nays 1
4	SB 228 Bean (Similar H 135)	Self-Defense Protection Act; Citing this act as the "Self-Defense Protection Act"; extending an exception to certain mandatory minimum sentences if a use or threatened use of force was justifiable under specified provisions to other cases, including those involving aggravated assault; revising required written findings, etc. CJ 10/05/2015 Fav/CS ACJ FP	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, October 5, 2015, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 230 Dean (Identical H 11)	Missing Persons with Special Needs; Creating a pilot project in specified counties to provide personal devices to aid search-and-rescue efforts for persons with special needs; providing for administration of the project; requiring reports; providing for expiration; providing an appropriation, etc. CJ 10/05/2015 Favorable CF AP	Favorable Yeas 5 Nays 0
Consideration of proposed bill:			
6	SPB 7006	Corrections; Requiring the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders; revising the definition of "victim injury" by removing a prohibition on assessing certain victim injury sentence points for sexual misconduct by an employee of the Department of Corrections or a private correctional facility with an inmate or an offender supervised by the department; expanding applicability of a current felony offense to include employees of private providers and private correctional facilities, etc.	Temporarily Postponed
7	Presentation by OPPAGA on the "Review of Department of Corrections and Criminal Justice Standards and Training Commission Processes for Correctional Officer Misconduct."		Presented
Other Related Meeting Documents			



Florida Department of Corrections



Update

Senate Criminal Justice Committee
October 5, 2015

Julie Jones, Secretary

First Year Scope of Work



- Completed a fiscal audit
- Revised personnel processes
- Officer Equipment
- Facility maintenance schedule

Executive Order 15-102



- Implemented four region model
 - Fiscal and geographical realignment
- Strengthen the role of the Regional Director
- Zero Tolerance for Retaliation Memo
- FDLE MOU

Executive Order 15-134



- Independent staffing audit and analysis
- Develop two prototype institutions
 - Lake C.I.
 - Selected with an emphasis on housing, treatment and rehabilitation of the mentally ill inmate population
 - Liberty C.I.
 - Selected as a model to emphasize housing and programming for the general inmate population
- Partner with DCF and DJJ on mental health policies and procedures in Broward assessment

Personnel



- Net staff gained
- Staffing issues
- Supervisory accountability

Use of Force



- Three-year low
- Critical Incident Training
- Association of State Correctional Administrators audit
 - Use of Force Policy
 - Use of Force Procedures
 - Culture
 - Staffing
 - Institutional Operations

Mental Health



- Mental Health Ombudsmen
- Changes to mental health units
- Training for staff

Health Care Contracts



The Department remains committed to seeking the best care possible for our inmate population, while remaining a fiscally responsible steward of taxpayer dollars.

- ITN scheduled for release in December
- Ongoing data gathering and analysis

Community Corrections



- Vehicles
- Smartphones
- Promoting criminal justice partnerships
 - More Planned Compliance Initiatives
 - Expand the Alternative Sanctions Program

Moving Forward



- Modernizing the Department's Approach
 - Inmate/offender programs
 - Redefining the reception process

Vision



Inspiring success by transforming one life at a time.

Mission



Provide a continuum of services to meet the needs of those entrusted to our care, creating a safe and professional environment with the outcome of reduced victimization, safer communities and an emphasis on the premium of life.

Values



Safety

Accountability

Fairness & Integrity

Innovation

Goals



Talent Development: Invest in our members for their professional development, growth and success.

Inmate/Offender Programs: Implement rehabilitative programs that support a continuum of services for inmates and offenders, resulting in a successful transition into the community.

Communications: Promote a collaborative and transparent communications framework that engages all members and stakeholders.

Environment: Provide healthy, sustainable and compassionate environments that are the foundation of our values.

Thank You



Julie Jones, Secretary
(850) 717-3030

STATE OF FLORIDA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NUMBER 15-102

WHEREAS, the Governor is vested with the supreme executive power and must take care that the laws be faithfully executed, pursuant to Article IV, Section 1 of the Florida Constitution; and

WHEREAS, the Department of Corrections (“Department”) is an executive department of the State of Florida, created by Section 20.315, Florida Statutes, the administration of which is placed under the direct supervision of the Governor, pursuant to Article IV, Section 6 of the Florida Constitution; and

WHEREAS, the Department is charged with providing a safe and humane environment for offenders and staff, and to provide the level of security within its correctional institutions and facilities commensurate with the custody requirements and management needs of inmates, pursuant to Section 20.315(1), Florida Statutes; and

WHEREAS, the head of the Department is the Secretary of Corrections (“Secretary”), who is appointed by and serves at the pleasure of the Governor, pursuant to Section 20.315(3), Florida Statutes; and

NOW, THEREFORE, I, RICK SCOTT, Governor of Florida, by virtue of the authority vested in me by the Florida Constitution, and all other applicable laws, hereby promulgate the following Executive Order, effective immediately:

Section 1. In order to improve institutional oversight, I hereby direct the Secretary to increase the number of security and institutional operations regions within the State from three to

four. The Secretary shall implement this modification in a cost-effective manner. The Secretary shall appoint or reappoint a director for each of the four regions. Each director must:

1. Ensure the policies of the Department, particularly those policies associated with inmates, are appropriately implemented and enforced at each correctional facility within the director's assigned region.
2. Review, recommend, and hold subordinate chain-of-command staff responsible for appropriate and measured disciplinary decisions.
3. Ensure that each correctional facility in the director's assigned region maintains a retaliation-free environment, both for staff and for inmates.
4. Make at least two unannounced visits to each correctional facility within the director's assigned region on a quarterly basis.
5. Review on a quarterly basis statistics and trends related to uses of force, inmate grievances, employee discipline reports, and inquiries received by the Department, including inmate abuse.

Section 2. I hereby direct the Secretary to ensure that safety shall be added as a priority to the security reviews at each correctional institution and facility. The security review committee at each correctional institution and facility shall evaluate new safety and security technology, review, and discuss current issues impacting correctional institutions and facilities.

Section 3. I hereby direct the Secretary to ensure that appropriate staff investigates and evaluates the usefulness and dependability of existing safety and security technology, as well as new technology and video monitoring systems available, and makes periodic written recommendations to the Secretary on the discontinuation or purchase of safety and security devices.

Section 4. I hereby direct the Secretary to ensure that the Department contracts with security personnel, engineers, architects, or other safety and security experts as the Secretary deems necessary for safety and security consultant services.

Section 5. I hereby direct the Secretary to ensure that appropriate staff review staffing policies, classification, and practices, as needed.

Section 6. I hereby direct the Secretary to ensure that the Department complies with the requirements of the memorandum of understanding with the Florida Department of Law Enforcement, pursuant to Section 944.31, Florida Statutes, which adds additional independent oversight over certain use-of-force incidents. The Secretary shall provide copies of the memorandum of understanding in a timely manner to my office, the President of the Senate, and the Speaker of the House of Representatives.

Section 7. I hereby direct the Secretary to ensure that inspectors in the Office of Inspector General who conduct sexual abuse investigations in confinement settings receive specialized training in conducting such investigations. Specialized training shall include, but need not be limited to: techniques for interviewing sexual abuse victims; the proper use of *Miranda* and *Garrity* warnings; sexual abuse evidence collections in confinement settings; and the criteria and evidence required to substantiate a case for administrative action or prosecution.

Section 8. I hereby direct the Secretary to ensure that each employee who either applies physical force or was responsible for the decision to apply physical force upon an inmate or an offender supervised by the Department signs an independent report under oath, which details that employee's involvement and other pertinent information regarding the incident within one working day of the incident.

Section 9. I hereby direct the Secretary to ensure that the Department establishes a usage and inventory policy to track, by institution, the use of chemical agents and the disposal of expired, used, or damaged canisters of chemical agents.

Section 10. I hereby direct the Secretary to provide medical staff the option of using identification numbers in lieu of names when completing incident reports.

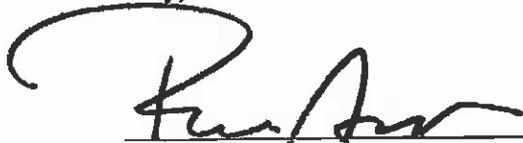
Section 11. I hereby direct the Secretary to ensure that the Department tracks and reports incidents of use-of-force.

Section 12. I hereby direct the Secretary to ensure that the Department establishes a policy to protect from retaliation those employees who report wrongdoing.

BEING FULLY ADVISED in the premise, and in accordance with the Florida Constitution and the laws of the State of Florida, this Executive Order is issued.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 8th day of May, 2015.



RICK SCOTT, GOVERNOR

ATTEST:



SECRETARY OF STATE

FILED
2015 MAY - 8 PM 3:05
TALLAHASSEE, FLORIDA
SECRETARY OF STATE

STATE OF FLORIDA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NUMBER 15-134

WHEREAS, the Governor is vested with the supreme executive power and must take care that the laws be faithfully executed, pursuant to Article IV, Section 1 of the Florida Constitution; and

WHEREAS, the Department of Corrections (“Department”) is an executive department of the State of Florida, created by Section 20.315, Florida Statutes, the administration of which is placed under the direct supervision of the Governor, pursuant to Article IV, Section 6 of the Florida Constitution; and

WHEREAS, the Department is charged with protecting the public through the incarceration, supervision, and rehabilitation of offenders, pursuant to Section 20.315(1), Florida Statutes; and

WHEREAS, the head of the Department is the Secretary of Corrections (“Secretary”), who is appointed by and serves at the pleasure of the Governor, pursuant to Section 20.315(3), Florida Statutes; and

NOW, THEREFORE, I, RICK SCOTT, Governor of Florida, by virtue of the authority vested in me by Article IV of the Florida Constitution, and all other applicable laws, hereby promulgate the following Executive Order, to take immediate effect:

Section 1. In the interests of improved institutional oversight and reform, I hereby direct the Secretary to engage the National Institute of Corrections and the Association of State Correctional Administrators to perform an external, independent audit and analysis of Department policies, practices, processes, needs, and performance related to staffing levels and organization.

The audit and analysis shall contemplate how changing Department staffing can positively affect safety, security, and inmate rehabilitation.

Section 2. I hereby direct that the Secretary develop and implement two (2) prototype correctional institutions to evaluate the impact of enhanced operational elements related to modern and innovative security techniques, technology, productivity, environmental factors, staffing levels and functions, climate control, institutional organization, shift scheduling, training and certification, and other additional facility improvements, with an emphasis on enhancing the safety, health, and well-being of staff and inmates. Specifically:

1. One prototype institution shall be created at the existing Lake Correctional Institution. That institution shall explore the impact of enhanced operational elements while specializing in housing, treating, and rehabilitating the mentally ill inmate population.
2. One prototype institution shall be created at the existing Liberty Correctional Institution. That institution shall explore the impact of enhanced operational elements while specializing in housing and reforming the conduct of the general inmate population.
3. Develop metrics or other quantifiable sets of standards to compare the Department's existing facilities with the operations of the two prototype institutions contemplated herein. The metrics or standards shall evaluate the effectiveness and efficiency of implementing the enhanced operational elements on a larger scale to include other Department facilities.

Section 3. I hereby direct the Secretary to consult with the Secretary of the Department of Children and Families and the Secretary of the Department of Juvenile Justice to explore

collaboration between the three agencies in order to develop and implement best management practices to positively impact mental health services. Specifically:

1. In Broward County, ensure consideration is given to the areas that potentially involve the agencies, including, but not limited to: addressing the needs of inmates with mental health issues who have been recently released back into the community; measures that may be employed to positively impact recidivism rates; and, providing support for individuals with mental health needs before those individuals are committed to the custody or supervision of the agencies.
2. Develop metrics or other quantifiable sets of standards to measure the results of the collaboration and shared resources of the agencies. The metrics or standards shall provide adequate data to evaluate the effectiveness and efficiency of implementing the collaborative strategies on a larger scale.

BEING FULLY ADVISED in the premise, and in accordance with the Florida Constitution and the laws of the State of Florida, this Executive Order is issued.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 9th day of July, 2015.



RICK SCOTT, GOVERNOR

ATTEST:



SECRETARY OF STATE

2015 JUL -9 6:11:35
FBI, FBI
STATE OF FLORIDA

STATE OF FLORIDA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NUMBER 15-175
(Addendum to Executive Order 15-134)

WHEREAS, On July 9, 2015, I issued Executive Order 15-134, which highlighted mental health reforms needed across Florida. Executive Order 15-134 charged the Department of Corrections (DOC), the Department of Children and Families (DCF) and the Department of Juvenile Justice (DJJ) to develop and implement best management practices to positively impact mental health services in Florida, including creating a pilot program in Broward County. This Executive Order is an addendum to Executive Order 15-134; and

WHEREAS, state funding for mental healthcare is too fragmented. It is critical that our state's social service agencies work together, along with local entities, to better coordinate care to ensure we are properly investing taxpayer funds so patients can get the care they need in their own communities; and

WHEREAS, the state's pilot program in Broward County is currently conducting a countywide inventory of all programs available across agencies that address mental health needs. The state is working to find the best ways to support individuals with mental health needs before they are committed to the custody or supervision of the state; and

WHEREAS, this Executive Order updates the scope of agencies and now includes the Department of Health (DOH) and Agency for Health Care Administration (AHCA), which both play a critical role with respect to mental health care services in Florida. This addendum also expands the pilot program to include Alachua and Pinellas counties, in addition to Broward County.

NOW, THEREFORE, I, RICK SCOTT, as Governor of Florida, by virtue of the authority vested in me by Article IV, of the Florida Constitution, and all other applicable laws, promulgate the following Executive Order, to take immediate effect:

Section 1. In the interest of improving the coordination and effectiveness of mental health services in Florida, I hereby direct the Secretary of the Department of Children and Families to lead the respective state social services agencies to conduct a comprehensive review of local, state, and federally funded behavioral health services and to conduct an analysis of how those services are delivered and how well they are integrated with other similar and/or interdependent services within a community. The goal of this review shall be the development of a statewide model for a coordinated system of behavioral health care services and a streamlined budgeting process that integrates and tracks behavioral health care spending across multiple funding streams. Specifically:

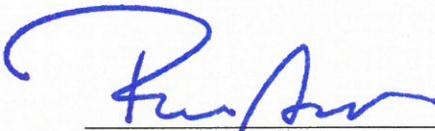
- A. The Broward County pilot will be expanded to include Pinellas and Alachua counties to determine the feasibility of establishing a single client identifier system for recipients of behavioral health treatment services to allow for the effective coordination of behavioral health care across multiple agencies.
- B. The pilots shall examine the availability and effectiveness of institutional care and outline reforms to ensure patients can receive effective care in their communities. The pilots shall also examine the effectiveness of services designed to divert individuals with a behavioral health diagnosis from state mental health treatment facilities or the criminal justice system.
- C. With the goal of developing a long term strategic plan for the state's mental

health treatment facilities, DCF shall conduct an audit of those facilities, examining such factors as patient care and well-being, safety and security, technology, productivity, staffing levels and functions, institutional organization, and training.

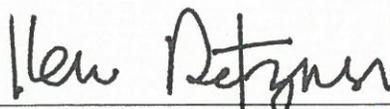
Section 2. Based on the findings of the pilot programs, I hereby direct the Secretary of DCF to provide me with recommendations on how best to meet the behavioral health care needs of Florida's citizens through an integrated system of coordinated care that optimizes resources to achieve optimal outcomes for those individuals who are seriously mentally ill, youth who are emotionally disturbed or mentally ill, and those persons who are involved in the criminal and juvenile justice systems, the child welfare system, and those in state treatment facilities and their families.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 9th day of September, 2015.




GOVERNOR

ATTEST:


SECRETARY OF STATE

FILED
2015 SEP - 9 PM 12: 55
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

*Assessment of Use of Force Policy and Practices within
the Florida Department of Corrections*

Submitted to the:

Florida Department of Corrections
Tallahassee, Florida

By the:

Association of State Correctional Administrators
Hagerstown, Maryland

August 31, 2015





TABLE OF CONTENTS

Table of Contents.....2

Executive Summary.....3

Section I - Overview.....10

Section II – Scope of Work.....15

Section III – Findings Related to Major Areas of Inquiry.....19

1. Review of the Current Use of Force Policy.....19

Use of Force Policy Recommendations21

2. Findings Related to UOF Procedures and Review Process.....22

Recommendations.....31

Use of Force Unit.....32

Recommendations.....36

3. Cultural Observations at Inspected Facilities.....38

Recommendations.....43

4. Findings Related to Staffing, Staff Accountability and Training44

Recommendations.....48

Staff Development and Training49

Recommendations.....55

5. Findings Related to Institutional Operations57

Medical/Mental Health Providers.....60

Recommendations.....62

Section IV - Summary.....65

Section V - Appendices.....68

Appendix A – Documents Reviewed.....69

Appendix B – Acronyms and Definitions.....73

Appendix C – Employees Interviewed.....76

Appendix D – Project Team.....79



Executive Summary

The scope of work for the project mandated a review in each of these five areas: (1) a **UOF Policy** review to determine if the current policy is consistent with best practices of other state correctional agencies; (2) a review of **Facility UOF Procedures** to determine if the procedures are in line with the current governing policies, the effectiveness of those policies, and whether staff are following the policies; (3) an assessment of **Facility Culture** to determine the formal and informal cultures at the facilities that are selected for review, and also to identify the values, beliefs, and norms of the staff and, if those values, beliefs, and norms are in concert with the agency's mission and core values; (4) a review of **Staffing** to determine if the staffing levels, staff accountability, and staff training are adequate to meet the agency's primary mission of maintaining a safe and secure environment for both staff and inmates; and (5) an assessment of **Security Operations** to include staff and inmate supervision, disciplinary and grievance procedures, searches and contraband control, video surveillance, inmate movement, plant maintenance, key and tool control, and any other operational area for adequacy.

This report answers the questions posed in the five major areas of inquiry as listed in the scope of work for the project.

Question 1: Is the current use of force policy consistent with best practices of other state correctional agencies?

ASCA Review Team Finding: The current use of force policy is consistent overall with widely accepted practices of adult correctional agencies nationwide. The ASCA Review Team made three recommendations for amendments that we feel would further enhance the integrity of the current policy.

Recommendations:

1. Amend Paragraph 9(n)(2) (e) of the Use of Force (UOF) policy. This section does not require video recording when an inmate ceases disruptive behavior after receiving a final order but later resumes disruptive behavior on the same shift. The ASCA Review Team finds it valuable if the disruptive behavior and any organized UOF, including the use of chemical agents, is recorded in compliance with Paragraph (3).
2. Clarify that when an inmate refuses to relinquish control of the cell's food/handcuff port cover or does not allow the staff member to close the



cell's food/handcuff port cover, the event shall be considered an organized UOF and subject any further actions to Paragraph (3) of the policy. This addition would require a video camera to record the events. This recommendation was presented to the ASCA Review Team in the preliminary May 2015 meetings with senior officials of the Florida Department of Corrections. The team studied this proposal and found it to have great merit. This proposal is just one example of how proactive the Department officials are in remediating any use of force issues that could present future problems.

3. Provide a clarification within the UOF Policy by creating a more precise definition of the terms "any self-injury" and "attempts to commit suicide."

Question 2: Are procedures in line with current governing policies, are those policies effective, and is staff following the policies?

ASCA Review Team Findings:

1. The team concluded after extensive review of the relevant procedures that they are in line with current controlling policies. The team did note some common procedural errors in completing the use of force documentation properly.
2. The policies are effective and meet national standards as stated above. Additionally, the team spent a lot of time during the inspection phase interviewing facility administrators, supervisors, and line staff about this topic. The large majority of employees interviewed agreed that the procedures were more than adequate to meet the demands of any situation.
3. The team found that all planned use of force events at the facilities were well documented from start to finish. Most errors that occurred in those events were procedural in nature. Reactionary use of force events are an area for concern because there are times when the event occur in locations that do not have video or audio coverage. Since approximately 75% of the use of force events at the inspected facilities are reactionary, the facility administrator and the supervisory staff must rely on the officer's good judgment and training in dealing with those events. That being said, the ASCA team found no systemic or widespread non-compliance in following the department's use of force policy.

Recommendations:

1. The agency should make complementary procedural changes to accommodate the three amendments to the use of force policy recommended in the prior section.



2. Require the incumbent healthcare providers to document all medical and mental health assessments by using the SOAP method of medical records documentation.
3. Provide instruction and training to correctional staff so their comments on the (DC6-210) contain descriptive accounts of their involvement and observations in a UOF incident. "Boilerplate language" or conclusory statements on the DC6-210 should not be utilized.

Question 3: What are the formal and informal cultural values, beliefs, and norms of the staff at the facilities selected for review, and are those values, beliefs, and norms in concert with the agency's mission and goals?

ASCA Review Team Finding: The ASCA Review Team is confident that the agency's push to positively change the prevailing culture within the facilities is having the desired results. The team made this finding based on extensive interviews and observations at the inspected institutions. Every employee interviewed knew about the mandate from the Central Office to only utilize the least amount of force to gain control of a situation and only when other non-physical interventional methods have failed. The majority of employees interviewed agreed with the mandate and were in full support of the initiative.

The team found no systemic negative subcultures on any of the inspected facilities. Team members reported that a small number of correctional employees interviewed expressed doubts about the agency's initiative. Those doubts were most often characterized by the employees as "coddling" inmates. The few doubting employees should be carefully monitored by facility administrators and line supervisors to ensure that their negativity does not grow into an informal subculture that becomes pervasive among other employees at the institution.

In general, the ASCA team found that the values, beliefs, and norms of the formal and informal cultures at the institutions inspected were in concert with the agency's mission and goals.

Recommendation:

1. Continue to promote a clear and consistent message from the Department executive administration down the chain of command that the agency will have "zero tolerance" for employees who use improper or illegal force or abuse inmates. The agency should reinforce this message at every training session that occurs for correctional and managerial staff.



Question 4: Are staffing levels, staff accountability, and staff training adequate to meet the agency's primary mission of maintaining a safe and secure environment for both staff and inmates?

ASCA Review Team Finding: Both uniformed and non-uniformed staffing positions at the inspected facilities appeared to be less than the ASCA team felt was appropriate. However, completing a comprehensive staffing assessment and making a definitive determination was difficult because the team only reviewed nine of the 49 facilities within the department, every facility was operating under "Level 1" or minimal staffing deployment, and over 600 correctional officers were assigned to non-authorized posts. The team also reviewed the adequacy of staffing for field inspectors and the Use of Force Unit in Central Office since they play a key role in the examination of use of force events. The team came up with the consensus opinion that staffing levels were too low for each of those groups to effectively manage their caseloads.

ASCA Review Team Findings:

1. Staff accountability was gauged by the ASCA Review Team to be good. Accountability was a subject that was discussed with every employee interviewed by the team. Both supervisory and line staff agreed that the chain of command was being followed routinely. A review of the number of employee disciplines and the severity of the charges led the team to concur that each facility inspected was well within an acceptable range given the size and complexity of the institutions.
2. The ASCA team did find some deficiencies in staff training relating to how specialized training was funded, the lack of de-escalation training in both pre-service and in-service curriculums, and the lack of instruction for correctional officers in the specific area of use of force report writing.

Recommendations:

1. The agency should undertake a comprehensive, detailed staffing analysis for all Department facilities and the non-facility departments that support all institutional operations. These studies are highly detailed and require a great degree of roster research, interviews, and the development of a good working knowledge of each institution.
2. It is recommended that the agency receive a specific annual operating appropriation for specialized training expenses.
3. It is recommended that the agency mandate that de-escalation training/techniques be given a high priority for instruction in both pre-service and in-service training programs.



4. The ASCA Review Team recommends that the agency revise the current training curriculum to include specific training in UOF report writing.

Question 5: Does staff and inmate supervision, disciplinary and grievance procedures, searches and contraband control, video surveillance, inmate movement, plant maintenance, key and tool control, and any other operational area meet the standards for adequacy in a state correctional system?

ASCA Review Team Findings:

1. The team found that staff and inmate supervision was adequate given the employee deployment patterns. Disciplinary and grievance procedures were being followed and clearly meet agency and national standards.
2. Searches and contraband control was less than adequate because minimal staffing does not allow for any searches beyond the three cell searches required of each officer on each shift. As a result, the team found that the facilities were experiencing contraband control issues.
3. Video surveillance was found to be adequate in the inspected facilities and getting better. The replacement of the old analog cameras with digital cameras in the high security housing units will provide better coverage and clearer videos for the use of force reviewers. The plan to add audio recording capability to complement the new digital cameras will allow facility administrators and use of force reviewers to gain even better perspective on each incident that occurs in those areas.
4. Inmate movement, plant maintenance, key and tool control, and other operational areas were reviewed and found to be adequate. All of the facilities inspected but one were accredited by the American Correctional Association who spends a great deal of their inspection determining if these areas are in compliance with national standards.

Recommendations:

1. It is recommended that the agency survey all correctional facilities, giving priority to the higher security institutions, for security camera placement on the perimeter fence lines to assist in identification of individuals who may be throwing contraband items over the fence and inmates who may be retrieving the items inside the fence. Other interdiction methods such as more frequent unannounced searches, more frequent canine drug searches, and bolstering the search efforts at vehicle and package entry points should be employed to assist in stemming the flow of contraband into the facilities.



2. Continue the replacement of the outdated and ineffective analog cameras with digital cameras in high security housing units.
3. The agency should continue to install audio recording capable devices in all higher security inmate housing units giving priority to those where UOF events predominantly occur.

This Use of Force Review was conducted from May 2015 to August 2015. The ASCA Review Team began the process by analyzing reports and data provided by the Florida Department of Corrections and interviewing key personnel at the Tallahassee Central Office. The second phase was the on-site inspections that were concluded in July. The last phase of the project was to compile the data and observations collected into a full report that was completed in August. The full report of the ASCA Review Team follows this Executive Summary.



Section I

OVERVIEW



Overview

In March of 2015, The Secretary of the Florida Department of Corrections (Department), Julie Jones, endorsed a previously proposed scope of work for an assessment of the agency's use of force policy and practices, and an examination of the agency's culture. The Association of State Correctional Administrators (ASCA) was selected by the agency to conduct the comprehensive review. Over the last three years, a number of incidents involving excessive use of force on inmates by Department staff have led to serious injuries and, in one case, the death of an offender. As the newly appointed Florida Secretary of Corrections, Ms. Jones has opted to aggressively and proactively seek out solutions to the issues that led to the unwarranted and illegal actions by Department staff.

On May 19, 2015, Wayne Scott, ASCA's designated team leader for the review, and Gary Maynard, ASCA Associate Director and administrative support for the project, met with Mr. Ricky Dixon, Assistant Secretary of Institutions; Richard Comerford, Director of Institutional Operations; and Wes Kirkland, Chief of Security Operations, at the Department headquarters in Tallahassee, Florida to discuss the scope of work and logistics for completing the assessment. Mr. Scott and Mr. Maynard met with Secretary Julie Jones to ascertain her expectations and her timeline for the review.

In addition, Mr. Scott and Mr. Maynard met with the following Department support staff during this preparatory meeting: Kelley Scott, Director of Administration; David Ensley, Chief of Research & Analysis; Ken Sumpter, Deputy Inspector General (IG); Brian Foster, Assistant Chief-Use of Force Unit; Dean Glisson, Senior Inspector-Use of Force Unit; and Debbie Arrant, Supervisor of the Use of Force Unit.

During the initial discussions with the Department executive team, Mr. Scott and Mr. Maynard were presented with a document prepared by the agency entitled, *Use of Force Reduction Efforts 2015*. The document covers detailed use of force reduction strategies, a leadership message from the Secretary's Office that speaks strongly to the department's "zero tolerance" of inmate abuse and excessive force, additional specialized training for staff in de-escalation techniques prior to the application of force, and recommended changes in use of force practice and policy that reinforces the department's aggressive move to ensure staff and inmate safety in all potential use of force situations. These reduction efforts will be discussed in greater detail later in another section of this report.

The ASCA Review Team consisting of Wayne Scott, Team Leader; Bob Bayer; and Kim Thomas met with Department officials on June 9-11, 2015 at their headquarters



building in Tallahassee to begin the interview process with key personnel in the Department administration in an effort to learn the use of force reporting process, view use of force videos, gain greater knowledge of the use of force plan and procedures, and all other relevant information needed to address the areas of inquiry mandated from the scope of work for the project. Our fourth ASCA team member, Reggie Wilkinson, was not present for these meetings. He was subsequently brought up to date with the information learned at these meetings in a series of conference calls with the other ASCA team members. Dr. Wilkinson did participate in all the on-site inspections.

Criteria for the selection of the six prison facilities designated for on-site inspection by the ASCA team

The ASCA team reviewed a significant amount of data regarding use of force at all Department facilities to assist in determining the six institutions that would be selected for on-site inspections. The criteria that the ASCA team relied upon in making the final selections was how each facility ranked over the last eighteen months in the number of uses of force; the complexity, size, and predominant custody level of each facility; specialized inmate housing units at the facility; the geographic location in the state of each facility; and if the facility had been the subject of a high profile use of force event in the last three years. The ASCA team felt that it was important to choose facilities in each of the three geographic regions of the state to compare current use of force practices across the regions and, in particular, for the cultural examination.

Based upon the criteria listed above, the ASCA team chose the following facilities: Santa Rosa Correctional Institution in Region 1; Suwannee Correctional Institution, Columbia Correctional Institution, and Union Correctional Institution in Region 2; and Dade Correctional Institution, and Martin Correctional Institution in Region 3. Columbia, Santa Rosa, and Suwannee had annexes that were located close to the parent facility, so the ASCA team took advantage of that proximity and inspected those annexes as part of the review. The ASCA team believed that these six facilities and three annexes satisfied the selection criteria best and would give the examination team an opportunity to accomplish the goals and meet the requirements listed in the scope of work.

FLORIDA DEPARTMENT OF CORRECTIONS USE OF FORCE ASSESSMENT



Schedule of meetings with Department officials at their offices in Tallahassee – June 9-11, 2015.

The schedule for the ASCA team June 9-11 Tallahassee meetings is listed below:

Tuesday, June 9

Ricky Dixon, Asst. Secretary of Institutions

Meet with IG's Office and the Use of Force Office (UOF) staff to view UOF videos, learn the UOF report process, review UOF reports, and get insight into UOF issues within the Department from their perspective.

Wednesday, June 10

Randy Tiff, Regional Director, Region 3

Eric Lane, Regional Director, Region 2

Sam Culpepper, Regional Director, Region 1

Richard Comerford, Director of Institutional Operations

Wes Kirkland, Chief of Security Operations

ASCA team meeting to discuss information gained and develop strategies of on-site inspections.

Thursday, June 11

Department Training officials to review curriculum for pre-service and in-service training modules relating to use of force.

Department Information Technology (IT) officials to go over previously requested information of the six selected prison sites designated for inspection by the ASCA team.

Ricky Dixon; Richard Comerford; Wes Kirkland; Jeffery Beasley, IG; Dottie Ridgway, Deputy General Counsel; to discuss proposed changes to the use of force policy.

FLORIDA DEPARTMENT OF CORRECTIONS USE OF FORCE ASSESSMENT



ASCA team meeting to discuss final details in preparation for the on-site inspections.



Section II

Scope of Work



Scope of Work

The discussion in the May 19, 2015 meeting centered on the areas of inquiry in the original scope of work for the project: (1) a **UOF Policy** review to determine if the current policy is consistent with best practices of other state correctional agencies; (2) a review of **Facility UOF Procedures** to determine if the procedures are in line with the current governing policies, the effectiveness of those policies, and whether staff are following the policies; (3) an assessment of **Facility Culture** to determine the formal and informal cultures at the facilities that are selected for review, and also to identify the values, beliefs, and norms of the staff and, if those values, beliefs, and norms are in concert with the agency's mission and core values; (4) a review of **Staffing** to determine if the staffing levels, staff accountability, and staff training are adequate to meet the agency's primary mission of maintaining a safe and secure environment for both staff and inmates; and (5) an assessment of **Security Operations** to include staff and inmate supervision, disciplinary and grievance procedures, searches and contraband control, video surveillance, inmate movement, plant maintenance, key and tool control, and any other operational area for adequacy.

The on-site inspections were scheduled and completed as follows:

<u>Wilkinson-Thomas ASCA Review Team</u>	<u>Inspection Dates</u>
Columbia C. I. and Columbia Annex	June 22, 2015
Suwannee C. I. and Suwannee Annex	June 23, 2015
Santa Rosa C. I. and Santa Rosa Annex	June 28-29, 2015
<u>Bayer-Scott ASCA Review Team</u>	<u>Inspection Dates</u>
Martin C. I.	June 22-23, 2015
Dade C. I.	June 24-25, 2015
Union C. I.	July 6-7, 2015

ASCA Review Team members interviewed the warden or acting warden at each facility, the assistant wardens, the colonel, the major, and the captains on duty on each of the two shifts. Also interviewed were IG investigators, training coordinators, and all personnel involved in processing UOF reports. Lastly, the ASCA Review Team spent one-on-one time with lieutenants, sergeants, and



correctional officers on each shift. Many of those employees had previously been UOF participants.

The ASCA Review Team members also spent time observing facility operations and incidentally, had contact with inmates and staff that are not listed as formal interviewees in this report. Staffing documents were reviewed, UOF equipment and supplies were checked and verified as functional, internal facility specific documents that related to the scope of work were studied, surveillance equipment was examined, post orders relating to important security functions were reviewed, and all ancillary support area operations were observed for efficiency and the level of support provided to the institution.

Additionally, time was dedicated to an examination of staffing, both security and support areas, to see if there was a direct correlation between staffing levels and UOF events. It should be noted here that all inmate healthcare services are contracted out to private vendors who are responsible for maintaining appropriate staffing levels and properly credentialed personnel to meet the needs of the specialized populations at each of the facilities inspected.

The ASCA Review Team studied and analyzed a large number of documents prior to the facility visits, while on-site, and as part of the report writing at the conclusion of all the on-site inspections.

Florida Department of Corrections UOF Reduction Efforts

As mentioned previously, the discussions with Department officials at the Tallahassee headquarters centered on the agency's UOF reduction efforts. The agency, in late 2014, began to implement a series of actions that were devised to "push down" to the lowest levels of the agency, the "zero tolerance" stance the department was emphasizing in regards to inmate abuse and excessive or improper force.

In the Fall of 2014, the agency's secretary, deputy secretary, assistant secretary of institutions, and the deputy assistant secretary of institutions visited all Department facilities and met with senior management and mid-level supervisors about staff misconduct and mistreatment of inmates. The purpose of these visits was to strongly reinforce the agency's vision and values and emphasize the department's "zero tolerance" of any inmate abuse or excessive force. This leadership message from the very top leaders of the agency was the first step in trying to cease any and all illegal or improper actions by staff toward the offender population.



Each warden was then responsible for meeting with his/her facility personnel to deliver this message from headquarters and stress the importance of its' adherence by every employee at the institution.

The agency formed a Discipline Action Review Team (DART) consisting of persons representing the Department Executive Leadership Team, Human Resources, and Employee Relations counsel. This group meets weekly to review all punishments recommended for use of force or abuse policy violators. This review team ensures that punishments to staff are dispensed in a consistent and appropriate manner.

In January 2015, the agency's deputy assistant secretary specifically ordered all wardens to instruct staff that when a UOF is imminent and time allows, staff should activate the Incident Command System (ICS) prior to the application of force. Activation of the ICS will bring other security personnel in the area to the scene on an emergency basis in order to show force and reduce the possibility that a UOF event will occur.

In addition, a tracking system was developed to monitor UOF incidents and identify UOF trends at each facility. The three regional directors and each warden review these numbers monthly. The same individuals also screen all allegations of abuse and excessive UOF monthly.

The agency developed and implemented advanced training to security, medical, and mental health personnel that emphasized de-escalation techniques in critical situations. The focus of the training is on interventional personal communication with an inmate(s) prior to any application of physical force.

The ASCA Review Team reviewed each of these reduction efforts and found them to have great merit. The agency should continue to develop these efforts and make them a permanent part of the department's overall goal of eliminating any unnecessary or illegal uses of force.



Section III

Findings Related to Major Areas of Inquiry



Findings Related to the Major Areas of Inquiry

Review of the Current Department UOF Policy

One of the first priorities of this project was reviewing the UOF policy and assessing its' consistency with widely accepted practices of adult correctional agencies nationwide.

The UOF policy of the Department has its origins in Florida statute 944.35, entitled "Authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties." This statute is very prescriptive compared to other states' statutes. It is unique in this regard. Laws in other states tend to give justifications for using force and allow much discretion to the correctional authorities in developing specific rules to fit their jurisdiction, facilities and mission while ensuring the safety of offenders, staff and ultimately-institutional security. Not only does the Florida statute contain the instances where force is authorized, but also it contains the parameters and the criminalization of Custodial Sexual Misconduct.

Specifically, Florida law allows force to be used in the following instances:

1. *To defend himself or herself or another against such other imminent use of unlawful force;*
2. *To prevent a person from escaping from a state correctional institution when the officer reasonably believes that person is lawfully detained in such institution;*
3. *To prevent damage to property;*
4. *To quell a disturbance;*
5. *To overcome physical resistance to a lawful command; or*
6. *To administer medical treatment only by or under the supervision of a physician or his or her designee and only:*
7. *When treatment is necessary to protect the health of other persons, as in the case of contagious or venereal diseases; or*
8. *When treatment is offered in satisfaction of a duty to protect the inmate against self-inflicted injury or death.*

Florida Department of Corrections regulation FAC 33-602.210 is the comprehensive UOF policy for the agency and provides authorizations for the use of reasonable and lawful force. They include:



1. *Defend themselves or others from actions that are likely to cause injury or death;*
2. *Prevent the escape of a convicted felon from the custody of a correctional institution, any facility where an inmate is not permitted to depart without authorization, or as necessary to gain custody of an escaped inmate;*
3. *Prevent the escape of an inmate during transport or while outside a correctional institution or facility;*
4. *Prevent damage to property;*
5. *Quell a disturbance;*
6. *Overcome an inmate's physical resistance to a lawful command;*
7. *Prevent an inmate from inflicting any self-injury or from attempts to commit suicide; or*
8. *Reasonably restrain an inmate to permit the administration of necessary medical treatment.*

In reviewing the policy, other jurisdictions' rules and practices were considered, including, but not limited to Texas, Nevada, Alabama, North Carolina, Minnesota, Ohio, California and the Federal Bureau of Prisons. These policies contain certain common components and guided the ASCA Review Team. Most policies include instructions/directives to staff in a number of key areas including: definitions of UOF, authorization for using force, types of equipment (lethal and less than lethal), proper documentation, tactics for confrontation avoidance and de-escalation, reporting procedures, provision of medical care and methods/procedures for after action review or processes for reviewing the overall UOF in a particular instance.

Comparatively, the Florida policy and the statutory authority, is quite comprehensive, detailed and is sufficiently adequate to inform all staff members of their responsibilities. In many areas, the Florida policy is consistent with widely accepted practices across the country. The one exception would be the overall reliance on the use of chemical agents: however, there are numerous safeguards within the policy to prevent the unwarranted and excessive use of chemical agents. The deliberate use of Crisis Intervention Training (CIT) for Psychological grade 2 (S2) and higher inmates and the commitment to cease the use of chemical agents on inmates with mental health diagnoses are just two examples and are positive steps in safeguarding inmate and staff safety. At all levels of the agency it is readily apparent that a thorough review of the UOF policy is welcomed and there exists impressive commitment to improve the policy and practice of using force legally and appropriately.



It is the conclusion of the ASCA Review Team that the Department Use of Policy, in its current form, is overall consistent with widely accepted practices nationwide.

It is also critically important to stress that in accordance with the instructions of Secretary Jones, the policy is undergoing review to incorporate changes that will improve accountability and raise awareness of "Zero Tolerance" for inmate abuse and excessive force. These changes must proceed in a fashion that complies with Chapter 120, Florida Statutes, and the Administrative Procedure Act (A.P.A.). After conducting interviews with staff, extensive review of documents and thorough site inspections, the ASCA Review Team concurs with the following suggested changes and recommends that the department move forward in codifying these elements into administrative code as soon as practical.

Recommendations

- Defining the term "CIT" as an important skill in dealing with mentally ill inmates.
- Require the officer in charge (confinement lieutenant, close management (CM) lieutenant, or shift supervisor) to determine the Psychological classification grade of the involved inmate. Should the Psychological grade be S2 or greater, a qualified mental health professional shall go to the inmate and provide crisis intervention, attempting to de-escalate the situation and prevent any UOF.
- Require that should the involved inmate be a Psychological Grade 2 or higher and a qualified mental health professional is not available, an officer or staff member trained in CIT shall speak with the inmate and use the training provided in his/her CIT training in an attempt to de-escalate the event and prevent any UOF. This officer or staff member shall be uninvolved in the event(s) that gave rise to the possible UOF.
- Clarify that when an inmate refuses to relinquish control of the cell's food/handcuff port cover or does not allow the staff member to close the cell's food/handcuff port cover, the event shall be considered an organized UOF and subject any further actions to Paragraph (3) of the policy. This addition would require a video camera to record the events. This recommendation was presented to the ASCA Review Team in the preliminary May 2015 meetings with senior officials of the Florida Department of



Corrections. The team studied this proposal and found it to have great merit. This proposal is just one example of how proactive the Department officials are in remediating any use of force issues that could present future problems.

- Clearly specify that an inmate subjected to chemical agents cannot refuse to participate in the decontamination process (i.e., cold water shower).
- Amend Paragraph 12(k) of the UOF policy. This provision requires the Office of the Inspector General (OIG) to notify the warden when any officer is involved in eight or more UOF incidents in an eighteen-month period. Although well intended, the ASCA Review Team does not believe this practice is the most effective way to detect and prevent excessive UOF or events that may lead to an excessive UOF or abuse. The interviews, incident observations, and interactions with staff on all levels indicate that measuring reactionary UOF incidents is a more effective tool and will lead to more effective monitoring of correctional staff.
- The ASCA Review Team concurs with the recommendation for a referral to the warden when any employee is involved in *three* or more reactionary UOF incidents in a *six*-month period of time.
- Amend Paragraph 9(n)(2) (e) of the UOF policy. This section does not require video recording when an inmate ceases disruptive behavior after receiving a final order but later resumes disruptive behavior on the same shift. The ASCA Review Team finds it valuable if the disruptive behavior and any organized UOF, including the use of chemical agents, is recorded in compliance with Paragraph (3).

Findings Related To UOF Procedures And Review Process

The second task for the ASCA team was to discern if the agency's use of force procedures are in line with current governing policies, are those policies effective, and is staff following the policies?

There was significant discussion regarding reactionary versus organized uses of force, the reporting process, compiling the UOF packets and their subsequent reviews, UOF training, the role of IG staff, use of chemical agents, force used on mentally ill inmates, and more.



It was clear to the ASCA Review Team, based on their independent evaluations, that there was no systemic malicious, intentional, or even reckless disregard for the policies relating to UOF that were discernible during our inspections. From interviews conducted at the selected sites, there was not any indication of widespread intentions to use force unnecessarily or improperly.

The following are examples of how the staff is correctly applying the policy in actual events within their facility. The Departmental Policy creates several mandatory safeguards *prior* to the UOF, which are worthy of being discussed and are useful to the process. Initially, prior to any organized use of chemical agents, the security staff is required to determine if the inmate has any pre-existing medical conditions that might be exacerbated or aggravated by the exposure to a chemical agent or another device. The policy requires the shift supervisor to review the "Risk Assessment Use of Chemical Restraint Agents and Electronic Immobilization Device" (Form DC4-650B) prior to the application of any UOF. Regulation 33-602.210(1) is in practice at the facilities; this policy is being adhered to consistently and with great caution. All the staff interviewed revealed that they pulled the inmate file in the Close Management (CM) unit to view the DC4-650B and verified this information by calling the facility health care unit and having the nurse review the most recent form in the medical record.

Team inspectors had the opportunity to be present during a cell extraction at the Union Correctional Institution. The inmate had his cell door window covered and was verbally threatening that "he had steel" and was going to hurt someone. Under normal circumstances, this would have been an initial use of chemical agent scenario for safety reasons. However, staff reviewed the inmate's medical information and based upon a history of seizures they instead chose the option of a cell extraction team. The inmate was removed from his cell, provided with an Emergency Treatment Order (ETO), which is an injection of a depressant, and then moved to an isolation management room, which they refer to as SHOS (Self-Harm Observation Status). This was a good practical example of how the process is supposed to work.

The agency has also been very deliberate in providing specialized training. Crisis Intervention Training (CIT) is being provided to better equip the staff in relating to those inmates with mental health illnesses and aids staff in de-escalating and resolving conflicts.

Florida regulation 33-602.210 (12) (b) calls for a review of facts relating to a Use of Force (UOF) by the respective warden and the Office of the Inspector General (OIG).



This review process is a major component of the UOF policy and was examined closely during the visit to the Department Central Office. Personal interviews of staff within the UOF Unit and the review of UOF packets, including video footage, were helpful in understanding the process.

This process was also closely examined during site visits. Representative groups of staff having a role in completing an Incident Report (DC6-210) and involved in any way in processing the Report of Force Used (DC6-230) were questioned about the process and their responsibility/actions in the process. The reporting, review, and compilation of documents are tedious processes. Regardless, the reports are given considerable attention.

The facility staff's procedures for complying with Paragraph (12) (b) were closely examined and staff were questioned regarding steps taken to ensure a thorough and complete review of UOF incidents. The leadership at the facilities has developed a systematic method of reviewing the forms included in a UOF Packet along with the Report of Force Used (DC6-230), Incident Report (DC6-210), Emergency Room Record (DC4-701C), and Witness Statement (DC6-112C). Commonly, a series of staff review UOF and incident reports as soon as practical following an occurrence: warden, duty warden, assistant warden, colonel, and major. In accordance with the policy, designated staff are carefully reviewing written reports, medical records, documented times events occur and checking these times against the video footage.

Based on the ASCA Review Team's on-site visits, the leadership staff at the visited facilities is aware and cognizant of the need to monitor UOF. They are paying very close attention to the details and want to identify problems at the facility level before it gets to the IG's office. The leadership staff appears genuine in wanting to handle their problems. This is creating an environment where staff knows performance and compliance with policies are being reviewed carefully. This level of review does not appear to be affecting the performance of their job, but it is clear to staff that they will be punished for excessive UOF and other security violations. As an indicator of the completeness of the contents of the UOF packets, investigators have confidence that the UOF packets are complete and contain the necessary videos to assist in the evaluation/investigation of an incident.

In the interest of getting a better snapshot of the types of UOF incidents and injuries, the ASCA Review Team examined 41 UOF packets provided by the Santa Rosa facilities.



Several observations about the review of these packets are noted below. These observations are made to enable the appropriate staff member to review these practices and determine the frequency of these occurrences and any corrective action they deem is necessary. These observations are:

Medical records: "Emergency Room Record" (DC4-701c) forms are required to be attached to Form DC6-230, "Report of Force Used." (See generally 33-602.210 UOF rule.) The warden is also required to "ensure that Form DC4-701C, Emergency Room Record, and Form DC4-708, Diagram of Injury, are included in the review of all uses of force and also forwarded with the rest of the required documentation to the OIG - UOF Unit." In reviewing UOF incidents at the facilities, staff stressed the importance of comparing the details described in the "Report of Force Used" forms and the "Witness Statement Form" (Form DC6-112C) to the video footage from available fixed wing cameras and any hand held camera. Another crucial step is to analyze the details described by those involved in the use of physical force to those injuries documented by medical personnel and also consider any claims or allegations made by the inmate, either verbally or in writing. In this review, the quality of the medical examination and the documentation associated with this care is critically important.

In reviewing UOF packets, most of the DC6-112C "Emergency Room Record" (DC4-701C) do not contain or follow the more traditional SOAP format for documenting assessments. The acronym SOAP means Subjective Data, Objective Data, Assessment, and Plan. For example, the use of the SOAP format is recognized, described and utilized in areas of mental health treatment within the Department. Specifically, Technical Instruction No. 15.05.18, entitled Outpatient Mental Health Services provides these guidelines for the writing of SOAP notes:

"Subjective data: The reason for the clinical encounter, for example, Inmate was seen at his request or Inmate seen by referral of medical staff for HIV counseling. Subjective data may also include what the inmate says that leads to identifying a problem, assessment of progress, or establishing a need for treatment or other action.

Objective data: What the clinician observes (hears and/or sees) that leads to identifying a problem and its severity, ruling out a problem, assessment of progress, or establishing a need for treatment or other action. This includes but is not limited to inmate behavior, symptoms,



relevant history, verbal and written reports from other staff, i.e., what others observe. Any clinical encounter that is intended to monitor or evaluate an inmate's mental status must result in observations being made under O in, at least, the following areas:

1. Appearance
2. Behavior
3. Orientation
4. Mood/affect
5. Perception
6. Thinking (including suicidal/homicidal ideation)
7. Vegetative functions (e.g., number of meals eaten per day; number of hours of sleep per night; bowel function)

Included in this section is information pertaining to lab tests and reports, an assessment of response to treatment (e.g., improvement of target symptoms), and documentation of any side effects of medications (whether these were noted by the clinician or were reported by the patient) as well as any education provided by the mental health practitioner.

Assessment: A judgment of subjective and objective data by the clinician, which includes a specific diagnosis, if indicated, comparison of current status with previous status relative to problems and goals (if reporting progress on the ISP) verification of a specific problem, or ruling out a problem.

Plan: What the clinician did to resolve the problem, if it was resolved during the session, and/or what the clinician will do to help resolve the problems/needs, issues pending for the next therapy session(s), a listing of medications prescribed linked to their respective target symptoms, lab tests requested, and referrals made to other providers shall also be included.



The SOAP method of documenting healthcare assessments is a key component to accurate record keeping in a correctional setting. This method allows any reviewer, especially in this litigious environment, to see and feel the medical complaints presented, to be able to follow the treatment plan ordered, and know the nature of the complaint. It best enables the reviewer to know the complete set of medical facts.

In reviewing UOF packets, the "Emergency Room Record" form itself provides little freedom to follow the SOAP method. This form requires the medical personnel to provide a "description of occurrence." They provide little subjective information about the inmate's own comments/statements concerning the cause of his injuries or the nature/extent of injuries. For example, this portion of the assessment form, "description of occurrence" most frequently states, "UOF/spontaneous" – "I/M became combative & was placed on floor" – "S/P Chemical U of F." The records reviewed appear to be comments made or information conveyed by correctional staff to medical personnel when presenting the patient for treatment/care. Recordings of subjective information with history or testimony of feelings in the patient's own words were not in the records reviewed by the team. Subjective data should also include what the inmate says that leads to identifying a problem, assessment of progress, or establishing a need for treatment or other action. As mentioned above, "subjective data may also include what the inmate says that leads to identifying a problem, assessment of progress, or establishing a need for treatment or other action." Such recordings are essential in piecing together the puzzle of whether a UOF was excessive. In addition, the courts have routinely examined "the extent of injuries inflicted" as one of the factors in deciding if the level of force was unconstitutional. These medical records forever record the "extent of injury."

Paragraph 12(a) of the policy requires "all inmate statements (subjects and witnesses) shall be made in writing using form DC6-112C, Witness Statement." Although the policy does not require a time limit to complete these statements, in several instances these statements were not completed in a timely manner (occurring in 13 of 41 files reviewed). In one instance, the witness statement was dated thirteen days after the incident. Admittedly, there will be instances where mentally ill inmates and inmates engaged in self-harm are not capable, stable or it would be inappropriate from a medical or mental health standpoint to write a statement.



Secondly, from the UOF packets reviewed, inmates frequently declined or refused to provide a written statement on the form provided (DC6-112C, Witness Statement). This is true even in instances where the inmate verbally alleged excessive UOF on camera.

The provision for the inmate to provide a statement is an important component of the policy. With some improvements, it can be another avenue for inmates to present their grievances and complaints to officials at the facility level, and beyond. It has the ability to contribute to a healthier institutional environment. This is mentioned merely to raise the question as to whether the inmate population is aware of the opportunity to write a statement and their degree of knowledge about the review process. It raises the question as to whether inmates feel safe in describing the incident, even in scenarios where they may share some culpability. Also important, is for inmates to know the importance of providing their rendition of the incident to those officials involved in the UOF review process. The inmate population should recognize this process as a trustworthy method for airing their complaints and an important step in developing confidence in the staff or "the system" to fairly and fully investigate their allegations. Timely submission of written statements by inmates and other inmate witnesses is an essential part of the review process. These statements should be completed in a timely manner so that the warden and other critical staff can appropriately evaluate them in their overall analysis of evaluating an incident.

Statements from other employees or officers who witnessed or participated in the application of force are important documents to be considered in the evaluation process. These statements can substantiate the need for the UOF, describe the amount of force as compared to the need for force and support the officer's account of the incident. In reviewing UOF packets, nearly all of the witness statements (recorded on DC6-210) show little, if any, more detail about the sequence of events, need for the UOF, or the actions taken by those involved. Most witness statements included vague statements such as, "I witnessed the UOF but did not participate." These statements do not provide any details or inform the reader what the witness personally observed. Such statements do not corroborate any version of facts and are not the best method of documenting a witness' personal knowledge of an incident. A more descriptive account of an event is of greater value for an incident that might be legally questioned years from the event.

In reviewing UOF packets, the Shift Supervisor's/Department Head's comments were evaluated. There appeared to be frequent use of "boilerplate language" that was conclusory and provided little insight into their personal observations. These



statements lacked a descriptive narrative of their personal actions during the UOF, especially in organized UOF incidents when chemical agents were applied or an extraction team was utilized. Comments such as "only the minimal amount of force was used to quell the disturbance and overcome inmate John Doe's physical resistance to a lawful command." Likewise, written statements on the Incident Report (DC6-210) of the shift supervisor were frequently conclusory. One in particular read, "This UOF was utilized to overcome Inmate Doe's physical resistance to a lawful command. Proper UOF and cell extraction procedures were followed." Plain, descriptive language is more helpful.

The Florida Department of Corrections regulation 33-602.210(10) (g) authorizes officers to apply lawful and reasonably necessary physical force to "prevent an inmate from inflicting any self-injury or from attempts to commit suicide."

According to the 2013-2014 Report of the IG's UOF Unit, they reviewed 7,379 cases and 935 of those were for "preventing suicide." In 2012-2013, 907 of the 6,357 UOF cases were for preventing suicide. These numbers indicate that instances, labeled by correctional staff as "attempted suicide" or "self-injurious behavior", are occurring frequently. Interviews of staff indicated the frustration of dealing with inmates who engage in acts of self-harm and also the difficulty in determining whether the behavior is actually "attempted suicide." For instance, at Santa Rosa Correctional Institution, a DC6-230 described an incident as follows:

"alone in assigned cell...was being issued a final order on video to submit to restraints for reassignment to a different dormitory when he tied his shirt around his neck, stood on the toilet, and tied the shirt to the sprinkler head in an attempt to hang himself...inmate _____ was ordered to cease his actions. Inmate _____ refused and continued his attempts at self-harm."

Following two applications of the chemical agent, the inmate ceased his actions of self-harm and force was discontinued.

In another incident at Santa Rosa, chemical agents (OC) were administered when an inmate in his assigned cell was "beating his head on the rear wall. Inmate ____ was issued several orders to cease his actions of self-harm and he refused all orders given." After the incident, the inmate wrote on the "Witness Statement" (DC6-112C) "I was beating my head on the wall because I want to be mobbed" (sic.)

It is recognized that these two incidents alone are not a representative sample. They serve as examples of scenarios where the lines between self-harm behavior



and attempted suicide are blurred. These incidents also reflect the difficulty for staff in responding to an inmate inflicting “any self-injury” or an attempt to commit suicide. The Director of Mental Health Services, Dr. Dean Aufderheide, expressed a concern for situations where it was difficult to determine whether force was used to overcome a resistance to a lawful command or to prevent self-harm. For instance, what is the case when an inmate had a sheet tied around his neck and the other end of the sheet in his hand? Typically, it appears this type behavior would be labeled as an attempted suicide in the MINS system, possibly increasing the number of incidents classified as “suicide attempts”.

Secondly, it would justify the correctional staff to use force because of a resistance to a lawful command or to prevent the harm.

The ASCA Review Team has some concern over the practice of using reactionary UOF to prevent self-harm or attempts at committing suicide, particularly for those with mental health issues. After conducting site tours, staff interviews, and the review of documents, including Survey Reports from the Florida Correctional Medical Authority, the ASCA Review Team defers on making any recommendations for major change to the policy of using chemical agents on those who are engaged in acts of self-harm or are attempting to commit suicide. Concerns regarding the level of staffing currently dedicated to providing mental health services and the difficulty in recruiting and retaining staff, particularly psychiatrists, are the primary reasons for this concern. Staffing issues frequently impact essential mental health services, such as conducting interviews of S2 and S3 inmates within one business day of the UOF incident to evaluate a higher level of care needed, (upgrade to psychological grade), maintaining accurate healthcare documentation, core competency of staff and administration/documentation of psychotropic medication and non-compliance.

One exception would be for the ASCA Review Team to recommend a clarification and greater definition within the UOF policy to the term “attempts to commit suicide.” Additionally, clearer guidelines for when self-harm behavior rises to the level of justifying reactionary less than lethal force would be beneficial. These minor modifications could be stressed in upcoming in-service training sessions.

Prior to implementing changes to the UOF or Suicide and Self-Injury Prevention policy (404.001), the ASCA Review Team believes it is essential to properly quantify and collect better data on incidents of self-harm and the UOF. With a better understanding, responsive policy and practice changes can be made to decrease instances of self-harm and impact the number of UOF instances.



Recommendations

- Require the incumbent healthcare providers to document all medical and mental health assessments by using the SOAP method of medical records documentation.
- Require DC6-112C form "Witness Statement" to be completed by the inmate within a specified time frame from the actual UOF incident (possibly three working days). Should justifiable circumstances exist that prevent a statement from being given, documentation should exist for the reason for the delay.
- Provide or ensure there is proper education to the inmate population of their ability to provide a written statement following a UOF and how this statement will be considered by the warden and others. This education can be included in the orientation to the facility or even the CM units.
- Provide instruction and training to Shift Supervisor's/Department Head's so their comments on the (DC6-210) contain descriptive accounts of their involvement and observations in a UOF incident. "Boilerplate language" or conclusory statements on the DC6-210 should not be utilized.
- Witnesses who have personal knowledge of the events surrounding the incident should be required to describe their observations in detail. Merely stating they "witnessed but did not participate in the use of force" is not helpful in any post event review or helpful in aiding the witness (or a fellow officer) should they be required to refresh their recollections years after an event.
- Provide a clarification within the UOF Policy by creating a more precise definition of the terms "any self-injury" and "attempts to commit suicide."
- Provide clearer guidelines for when self-harm behavior rises to the level of justifying reactionary less than lethal force would be beneficial.
- If such changes are incorporated, provide detailed training instruction on these areas within the "UOF" Instruction or lesson plan on "The Role of Security in Mental Health Inpatient Units."



The Use Of Force Unit

Established in 1999, the UOF Unit is responsible for reviewing all incidents involving the UOF at state and private correctional facilities, and those involving probation officers, to ensure compliance with established rules, procedures and statutes. When this unit was established, two field officers were transferred into the OIG to establish UOF Unit. Since then, one additional investigator position has been approved. At the time of the interviews, there were two vacancies in the unit that required one individual to complete a comprehensive final independent review of all UOF incidents submitted throughout the system.

To accomplish this mission, the UOF Unit independently reviews and evaluates all UOF incident reports, associated documents and videos as required from each correctional facility or office. Evidence indicating possible procedural violations, inmate abuse, excessive/improper/unauthorized force, or battery by staff is referred to Investigations. This review is based upon receipt of a completed Management Information Notification System (MINS) report (see below) that is usually generated by the institution, but can also be the result of a grievance that is filed by an inmate that will also automatically generate a MINS report. Because of the ability for more than one person to generate such a report, there are instances of duplication of investigative efforts since only those who file the report can view it below the UOF Unit, and they cannot search for a case file since the IG's Investigative & Intelligence System (IGIIS) automatically generates a case number based upon each MINS it receives.

The Department began the development of the Management Incident Notification System (MINS) in FY 1999/2000. The purpose of this system is to give management timely information on incidents while providing details not reflected in the initial report to the Emergency Action Center (EAC) outlined below. MINS replaced an inefficient e-mail system that had been used for reporting incidents to the OIG. Unlike the e-mail system, MINS also has a data system feature to allow for the retrieval and data reporting of incidents in a data file. The following chart reflects UOF incidents reported to the Unit in Fiscal Year 2013-14 (retrieved from the OIG Annual Report) and demonstrates the kind of data that can be extracted from the MINS data files that are now maintained in the OIG:

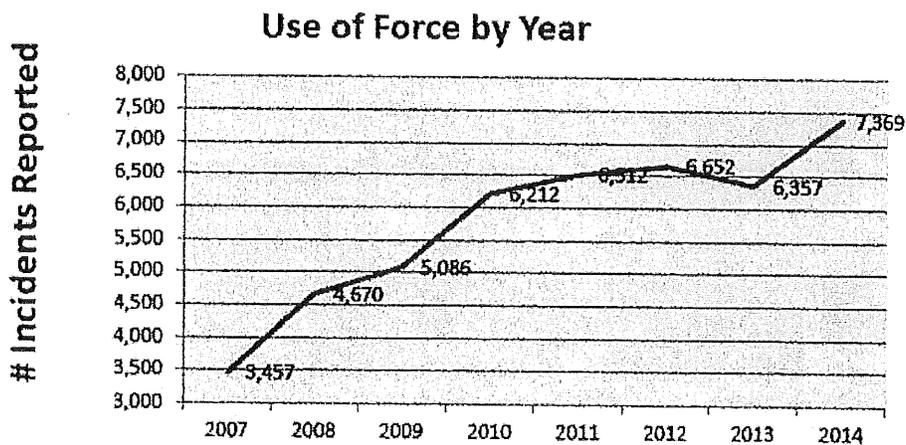
FLORIDA DEPARTMENT OF CORRECTIONS USE OF FORCE ASSESSMENT

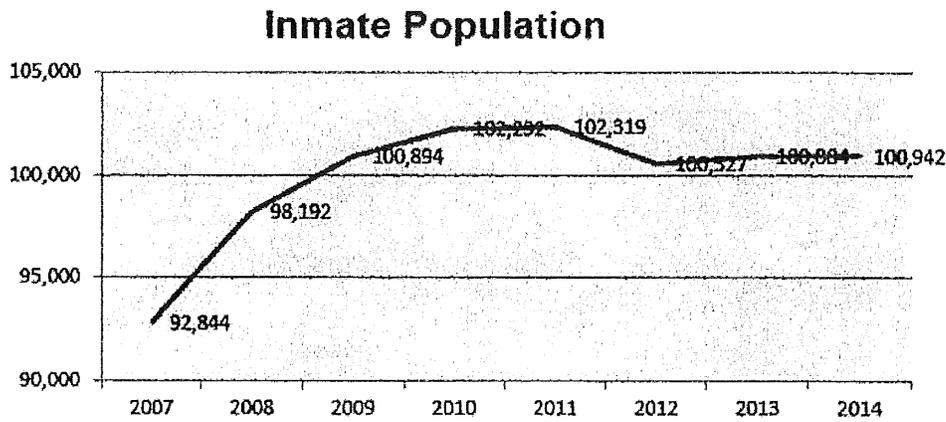


Classification	Reason Force Was Used	Number
27A	Self Defense	733
27B	Escape/Recapture	4
27C	Prevent Escape During Transport	3
27D	Prevent Property Damage	144
27E	Quell a Disturbance	2,402
27F	Physical Resistance to a Lawful Command	2,831
27G	Prevent Suicide	935
27H	Restrain Inmate for Medical Treatment	48
27I	Cell Extraction	215
27J	Mental Health Restraint	9
27K	Probation & Parole Handcuffing	0
27O	Other	45
TOTAL		7,369

Source: MINS for 07/01/2013 to 06/30/2014

The number of UOF incidents reported increased between 2007 and 2012, rising more than 90% in five years, along with the increase in inmate population. The number of UOF incidents decreased by 4.4% in Fiscal Year 2012-13. *The reduction in the UOF incidents was a result of change in Florida Administrative Code. Effective December 16, 2012, Chapter 33-602-210, F.A.C. no longer required four/five point medical restraints without force to be reported as a UOF incident.*





As illustrated by these two charts, UOF incidents increased approximately 16% in the Fiscal Year 2013-14, while the inmate population increased less than 1% in the same period. The department identified some precipitating factors perceived to contribute to this rise including the closing of nine facilities, mandatory increased vacancy rates for institutions, increases in TEA recruits, and a rise of inmate on inmate, and inmate on staff assaults.

The team reviewed UOF policy and procedure as well as actual documentation in active MINS reports. The team also reviewed a number of video disks that were forwarded as part of several MINS packets.

A brief description of the MINS coding itself is relevant to this discussion. The MINS is a reporting process that was developed in-house using the Disk Operating System (DOS) that was written for the x86 IBM-compatible computers from 1981-1995. There were other iterations including adaptations for Windows 95/98/ME, but it is safe to say that DOS is an extremely old computer programming system that was phased out of the industry before many of the correctional staff were born. It is not compatible with Windows, and that is a crucial element to be discussed later.

The report itself has a series of data fields and all the staff has to do to complete the report is fill in each required data field. The report contains the basic information from the incident report including the date of the incident and boxes to check to demonstrate that each element of the Department policy was followed. The fact that the report must be typed and that there is a simplified acknowledgement through



checked boxes explains to some degree why there is concern that the reports are a "boilerplate" response.

Concurrently, a video disk is also "burned" from the handheld cameras if it is a planned UOF and from the fixed wing cameras located within the institution. These disks accompany the MINS report and the report is signed each step of the process. There are tight time frames associated with the reporting structure as outlined in the policy and evidence suggests that staff take this very seriously and meet the reporting requirements.

The Emergency Action Center (EAC) is defined in UOF policy 33-602.210 as "the unit located in Department Central Office charged with receiving reports regarding serious incidents such as riots and escapes from all Department facilities and reporting the information to the proper authorities. This unit also receives requests for criminal histories, warrant confirmations, and offender location requests from law enforcement agencies throughout the United States." A referral to the UOF Unit (MINS) can also begin with information received by the EAC.

Assembling, reviewing, and finalizing the UOF reports is a time consuming process. It represents a significant commitment from the Department and is seen as essential in the assurance that progress will be made to 1) reduce the UOF incidents, and 2) determine appropriate administrative steps when inappropriate UOF is determined. Having said that, every effort needs to be taken to further streamline the process to free staff to be more productive in other areas of their employment. Wardens and assistant wardens need to have time to lead and manage and cannot increasingly be required to review lengthy case files and video tapes.

During onsite interviews, several common themes surfaced with the inspector staff:

1. The rapidly increasing caseload was comprised of many cases that staff knew from the outset would not be accepted for prosecution. They were simply cases that would go nowhere but still had to be taken through every step of the investigative process. There was no definitive way to discriminate between serious cases, and in those cases where all the facts were already known would not result in administrative action.
2. The number of MINS investigations is increasing based upon cases that inspectors think should not go forward.
3. Inspectors provided example after example of cases that could, and should, be finalized without going through the entire process over and over. These



- "administrative investigations" are cases where the inspector knows the answer but still has to go through the entire investigative process.
4. The current data entry system was cumbersome and repetitious requiring a lot of retyping, cutting and pasting of documents from the MINS reports, etc. The files get copied along with the disks at a number of different points in the process and this repetition of efforts is a serious source of frustration for field inspectors.
 5. The inability to focus in on local cases that needed resolution, such as contraband control.
 6. Duplication of efforts is also a concern. In one inspector's discussion, he was aware of 24 duplicate investigations that are going on with just his caseload.
 7. Caseloads have increased dramatically in the last four-to-six months. In one district, the average inspector had 20-30 cases pending resolution and currently the average is above 300%. There is a concern that the inmates have realized they can overload the system and this is resulting in MINS reports and CIG# letters for investigations.
 8. Although a congenial relationship seemed to exist between the inspectors and the wardens, there was actually very little sharing of information that went on. Thus, institutional staff was almost always ignorant of investigations, the status of investigations, etc.
 9. The inspectors do not receive annual specialized training. They attend the 40-hour block of recertification training required by the FDLE of all certified correctional staff and in most instances that is the extent of their ongoing training unless they are willing to spend their own money for special training they feel they need to enhance their future chances for promotion.

In trying to assess the effectiveness of the UOF reporting process, and its relationship to the staff acceptance of the message the Department is trying to get out, there was a constant concern that not only had the message gotten out to all the staff but that there were fears that staff might be putting themselves in some physical danger as a result of their hesitancy to use force for fear of disciplinary action or losing their job.

Recommendations

The team recognizes that some of the recommendations made in this section will have a significant fiscal note. Therefore, the overall recommendation would be for the Department to prioritize these recommendations and consider implementation as part of the long term strategic plan as funding is available.



- The UOF Unit is insufficiently staffed as a result of the changing demands from the increased focus on force reporting and an expansion on what kinds of UOF need to be formally reviewed to a final resolution. MINS data documents that the UOF incidents has risen 90 % in the last five years. In a single reporting year, 2014, the increase approximated 16%. Unless there are changes made regarding how the Department handles the documentation and definition of UOF incidents, it is clear that the present staffing of the investigators who review the reports must be augmented. Accordingly, the ASCA Review Team recommends two additional FTE positions for this unit. Currently, the unit has three authorized FTE positions and based upon last fiscal year's data, this unit reviewed approximately 7,500 incidents.
- The MINS system needs to be rewritten in a Window's based environment that is user friendly and scalable. The MINS report could be incorporated as a section in the IGIIS system since that system has to generate the case number. Credentials should be controlled to insure that only the MINS report could be entered and an automatic case number generated. Then there would be no need to retype the original information into the IGIIS. If that is not an acceptable solution, merely updating the DOS based MINS system to a Windows based program would allow a much wider range of adaptability, exception reports, compression of data, etc.
- Reconsider how UOF incidents are reported. There appear to be many examples of UOF that are minor in terms of merely meeting basic criteria without any substance or policy issues present. Issues that are procedural in nature (noncompliance) or where facts are known could be handled without a complete investigation. At some administrative level (perhaps the warden), there should be some mechanism to assign a lower priority to insure that the extensive reporting process does not need to be followed to administrative exhaustion. This would reduce the considerable amount of valuable supervisory and investigative time spent on what one investigator referred to as "investigations to nowhere".
- New audio/video technology needs to be developed to allow the storage, access, and transfer of entire MINS reports through digital media. Currently the video clips must be downloaded to disk and in some cases that can be a minute for minute time transfer. Presently, the UOF packets including the disks have to be sent via FED EX from institutions to the UOF unit at a



significant expense. Last year there were 7,500 cases. The savings from this expense could significantly fund changes in video transfer technology.

- Currently there is great emphasis on tracking the UOF but no evidence of data being maintained to document how often de-escalation techniques (CIT, etc.) work to avoid the UOF. Successful intervention statistics would help emphasize utilization and justify further efforts and training in de-escalation.

After a comprehensive review of the use of force procedures, the ASCA team concluded that the agency's use of force procedures were in line with the controlling policy, the policies were effective, and staff was routinely following the policy. The team did note some common procedural errors in completing the use of force documentation properly. The ASCA team also observed that in instances where staff committed violations of the policy, the facility administrators were handing out punishments commensurate with the violation.

Cultural Observations at the Inspected Facilities

One of the more challenging aspects of this review was to look at the culture of the Department as a whole. While it's clear that the agency has a Hierarchy or Bureaucratic dominant culture, the real test was to look deep into the lowest levels of the organization to try and identify subcultures that may be having a negative impact on meeting the agency's goals, mission, and vision. Specifically, is a subculture present within the agency that would lead certain employees to believe that they could abuse inmates with impunity? Additionally if that subculture exists how does the Department identify and eradicate it?

The Hierarchy Culture is best described as a highly structured work environment. All state criminal justice agencies are para-military in nature so it makes sense that the Department would also fall into this category. Prevailing laws, policies, procedures, and protocols really govern the decision making process in a highly bureaucratic organization such as this one.

With all this structure in place, how does the ASCA Review Team go about discovering any negative subcultures that are present within the agency. We began this task by interviewing the executive level administrators of the agency and worked our way down the chain of command to the most newly hired correctional officers at the institutions we inspected. The Department executive team and



Secretary Jones voiced very clearly their vision and goals toward making the agency a model of how to appropriately use (or not use) force in crisis situations. A series of unwarranted and illegal actions by certain employees that resulted in serious inmate injuries and one death has led the agency to take a critical look at their operations and how they can effectively change the organization to eliminate future employee malfeasance in any UOF event.

The agency's first move to effect this change was to create a strong message that incorporated the department's vision and goals. This message has since been carried by the executive leadership team to the regional directors and wardens. The regional directors and wardens were then tasked with the responsibility of taking the message to the rank-and-file employees at each of their respective institutions. The message was delivered down the chain of command in a very clear and concise manner that allowed little room for misunderstanding.

In fact, when the ASCA Review Team questioned all employees that were formally interviewed about Secretary Jones' message, every employee acknowledged that the message was delivered. However some employees thought the agency had gone too far and were "coddling" the inmates. However, the large majority of employees embraced the message and agreed that it was the right direction for the agency to move.

It is very important for the Department executive administration to continue to push this message in a positive way. Hearing the message from the very top administrators within the agency allows employees to gain an understanding that this new way of doing things is not going away. By utilizing the top administrators as "change agents" on a frequent basis, the agency can have assurance that the message will remain a top priority among all institutional staff.

Recently, Secretary Jones met with a group of captains in a training session and spoke directly to them about her message. The ASCA Review Team applauds this action. Her direct delivery of the message unfiltered by anyone in between on the chain of command is the best method for demonstrating the importance of compliance in this critical operational area and the priority she places on it.

At this point in time, with all the scrutiny from the media, the legislature, and the secretary's office of the Department any employees who are part of a negative subculture and would act with impunity against inmates are concerned, at the very least, that they will lose their jobs; and at the very worst, they will be prosecuted for a felonious act. The high level of scrutiny on this issue will probably make those



negative subcultures dormant until such time as they feel free to act again. It will be a challenge for the agency to identify potentially abusive employees and remove them from service. The agency can continue to neutralize improper or illegal actions by these employees by keeping the scrutiny level on this issue at a very high level.

Consistent and appropriate disciplinary sanctions administered to employees who violate the UOF policy or have been found guilty of inmate abuse is another important step in eradicating negative subcultures that might exist. A Discipline Action Review Team (DART) composed of executive level Department officials was created by the agency to do a weekly review of all punishments recommended for UOF or abuse policy violators. This review team ensures that punishments to staff are dispensed in a consistent and appropriate manner. If rank-and-file employees observed unequal or disproportional sanctions, it could breed mistrust and suspicion in the system and diminish the impact of the positive changes that the Department is striving to achieve.

The DART reviews accomplish two goals. First, the institutional employees recognize that abuse and UOF violators will come to the attention of the top administrators of the agency, and secondly, the consistently applied disciplinary sanctions will allow the employees to gain trust in the system.

With a geographic region as large as Florida, moving the institutional culture in a positive direction is difficult. Frequent changes in leadership at the warden and secretary level have contributed to these difficult challenges. At the Columbia facility, there have been four wardens in the last two years. While inspecting the Suwannee, Martin, Dade, and Santa Rosa Correctional Institutions, the ASCA Review Team discovered that each facility had experienced a warden change in the last twelve months.

Warden changes, especially on a regular basis can be a cause for concern. Having to second guess what the "new" warden requires can be challenging for rank-and-file employees. In addition, frequent change in leadership has an impact on the culture of the facility and the ability for staff to grow cohesively toward common goals. Thirdly, frequent changes at the warden's level increases the probability that informal subcultures among the correctional officer, sergeant, lieutenant and captain ranks develop separate and apart from the leadership of the facility. Stability at the warden's rank will increase the opportunities for advancing a positive culture and one in line with the mission and direction desired by the Department executive administration.



Another important factor involved in establishing a culture within a specific facility is how stressful the work environment is on a daily basis. Staff at each of the facilities inspected generally disclosed to the ASCA Review Team concern regarding the high concentration of special needs populations; i.e., , CM, psychiatric, and protective management at specific institutions. These populations, especially in high concentrations, are the most difficult groups to manage. These groups also account for the highest probability of potential UOF events. Senior supervisory personnel at the CM facilities fell short of saying they felt they were being “dumped on,” but it was clear, without additional staff, they believed their duties were being made more difficult.

The facilities selected for inspection were chosen because they had higher UOF rates than other facilities within the department. When facilities are densely populated with predominantly the highest security inmates in the system, staff that become stressed and need relief from that high pressure environment have few or no options to be reassigned to other areas of the facility that are generally less stressful. The ASCA Review Team noted that 107 correctional officers at the Suwannee Correctional Institution and 110 correctional officers at the Union Correctional Institution met the threshold of having participated in eight or more uses of force in the last eighteen months. These numbers are staggeringly high when compared to the overall total number of authorized positions allocated to each facility. At the Union C. I., 28.8% of the staff of 382 met the threshold, and the Suwannee C. I. had 32.8% of 326 staff meeting the threshold.

These high-pressure assignments, without a break to decompress, results in frustration and negative feelings among the staff that are constantly being called upon to participate in UOF events. These frustrations and negative feelings lead to the establishment of a negative subculture within an institution. It should also be noted that many of the male correctional officers expressed resentment that female officers making the same pay got the less stressful job assignments while the males were always called upon to do the “heavy lifting” for the facility. A review of the daily staffing documents confirmed that the correctional staff assigned to be on the emergency response teams for the shifts was almost exclusively male. As previously noted, these resentments can cause negative feelings to root and grow into a negative subculture.

A telling example of how correctional staff will go to great lengths to avoid being assigned to high pressure, stressful work posts was found by the ASCA Review Team at the Union Correctional Institution. The facility had seven vacancies for sergeant



that the warden was having trouble filling. When highly-tenured, experienced correctional officers were interviewed by the ASCA Review Team, the correctional officers said without reservation that they would not apply for promotion to sergeant because it meant an automatic assignment to the in-patient psychiatric unit (U and V Dorm) where the inmates were considered very difficult to manage and the large majority of UOF events at the facility occurred in those two housing units.

The ASCA Review Team recognizes that the shift captain is a critical position within the facility and often sets the tone for his/her shift. Captains are shift commanders with a lot of responsibility. Captains are the direct link between the agency and facility administrators, and the line correctional staff. They are the best positioned individuals to influence the line correctional officers in a positive way and to recognize those staff members that might abuse their authority.

One innovative method used by the agency to develop appropriate leadership skills for these captains is the creation of a "Captains' Academy." As of June 2015, approximately 190 of the over 300 captains had received this leadership training. This type of training is perfect for the secretary and her core leadership team to meet mid-level supervisors in small groups, interact, and stress the important initiatives of the secretary's office. These specialized training sessions are a great opportunity to get a critically important individual with a lot of influence with correctional officers to "buy in" to the secretary's message. Captains that are supportive of the new initiatives regarding UOF and abuse are much more likely to use their influence with the staff in a positive way. Conversely, if the agency detects that a captain is not supportive, he/she should be removed from service before they can have a negative impact on the culture of the institution where they are assigned.

In addition, sessions on leadership and fundamentals of correctional supervision can be taught and discussed openly. Because of the critical duties of the shift captains, particularly, at high security prisons, standardizing a Captains' Academy could be significant in preparing them to better manage their shifts and later, promotion opportunities. Assigning staff to posts, maximizing communications, completing required paperwork, counseling and evaluating staff (especially TEAs and other newly hired), assigning teams such as cell extraction and CIT could be skills an "academy" for them could enhance.

After completion of our analysis, the ASCA Review Team is confident that the agency's push to positively change the prevailing culture within the facilities is having the desired results. The team made this finding based on extensive interviews and observations at the inspected institutions. Every employee



interviewed knew about the mandate from the Central Office to only utilize the least amount of force to gain control of a situation and only when other non-physical interventional methods have failed. The majority of employees interviewed agreed with the mandate and were in full support of the initiative.

The team found no systemic negative subcultures on any of the inspected facilities. Team members reported that a small number of correctional employees interviewed expressed doubts about the agency's initiative. Those doubts were most often characterized by the employees as "coddling" inmates. The few doubting employees should be carefully monitored by facility administrators and line supervisors to ensure that their negativity does not grow into an informal subculture that becomes pervasive among other employees at the institution.

In general, the ASCA team found that the values, beliefs, and norms of the formal and informal cultures at the institutions inspected were in concert with the agency's mission and goals.

Recommendations

- Stabilize the frequent transfers at the Warden's level.
- Serious consideration should be given to reducing the density of the higher security populations at the facilities where they occur in order to give the wardens more opportunities to reassign staff experiencing burnout to other less stressful posts for a decompression period, and at the same time, make the institutions easier to manage.
- Facility administrators should mandatorily rotate correctional officers out of high stress assignments on a pre-scheduled basis.
- Provide a formalized training/leadership program for newly appointed Wardens. Recognizing and dealing with cultural change should be a major emphasis of this training.
- Continue to promote a clear and consistent message from the Department executive administration down the chain of command that the agency will have "zero tolerance" for employees who use improper or illegal force or abuse inmates. The agency should reinforce this message at every training session that occurs for correctional and managerial staff.



Findings Related to Staffing, Staff Accountability, and Training

The ASCA Review Team spent time at each of the selected facilities looking at uniformed and non-uniformed staffing positions. The team reviewed master and daily staffing rosters to determine how well each facility was able to operate with the staff allocated. Interviews were also conducted with senior-level administrators at each facility that were knowledgeable about the daily staffing routines. The ASCA Review Team was informed at the preliminary meetings with senior Department officials in Tallahassee prior to the inspections that all facilities were operating

[REDACTED]

Level 1 staffing was confirmed at each of the sites that were inspected. When all of the Level 1 staffing slots could not be filled, the wardens were authorized to pay overtime to fill the vacant slots. Some facilities were able to manage overtime through volunteers while others used a combination of volunteers and mandatory overtime. Mandatory overtime is exactly what it sounds like. Officers were mandated to work overtime without volunteering to do so. The facilities that utilized mandatory overtime did so from a rotational list so that no officer worked more mandatory overtime than any other officer of equal rank. The ASCA Review Team did not note any excessive use of overtime by the wardens at the selected sites.

The ASCA Review Team also learned in the preliminary meetings in Tallahassee that the agency has approved and designated more than 600 correctional officers to work in posts at the facilities that were not part of the authorized staffing component at the institutions. Most of the 600 plus correctional officers working in non-authorized positions are in these posts:

ACA/PREA Coordinator,
Disciplinary/UOF Coordinator,
K-9 officer,
Lock & Key/Arsenal Officer,
Motor Pool Officer,
Recruiter,
STG Officer,
Entrance/Exit Search Officer,



Tool Control Officer,
Security/Administrative Support Officer, and
Program Security Officer.

The ASCA Review Team acknowledges that these posts are necessary to maintain an efficient operation, as well as a safe and secure environment for the inmates and staff. However, each one of these officers that work in a full-time, non-authorized post takes away from the warden's ability to utilize those employees in staffing the authorized positions.

Determining appropriate levels of uniformed and non-uniformed staffing needs at any institution is a lengthy and complicated process. The staffing assessment team must understand the specific mission of each institution as a basis to begin the evaluation. The assessment team must account for every required activity and accurately gauge the amount of staffing needed to safely carry out each of those functions. The assessment team must ensure that staff coverage is adequate for every security post within a particular institution each day on a 24/7 basis. More intensive staffing levels are required for higher security/custody inmates.

For instance, it matters a great deal whether the facility has a specialized population with higher security needs than other lower security level institutions may require. Specialized populations that have high security needs are CM, in-patient psychiatric, death row, and all segregated groups. Minimal staffing levels at facilities that have specialized populations requiring higher degrees of supervision is not a recipe for success.

The sites selected for this UOF review all had specialized populations. The ASCA Review Team noted with concern that the staffing levels in these facilities on both shifts were lower than the team felt comfortable recommending. The ASCA Review Team spoke to many of the officers working in these specialized housing units and found them to be frustrated, burned out, and weary of working in such stressful conditions. Officers with those characteristics often make poor decisions in times of crisis.

In-patient psychiatric housing units are very difficult to manage under the best of circumstances. The inmates that are housed in those units are generally impulsive and act out, sometimes physically, against the staff and other inmates. It is critically important that the employees who work with this specialized group of offenders understand that often times the mental illness of a particular inmate drives the action that the untrained correctional officer mistakes for violent acting out against



staff. For that reason, it is imperative that all employees working with this population undergo specialized training in managing this group to better understand how to cope and successfully balance each inmates' treatment needs with the overall order and security of the institution. The ASCA Review Team is satisfied that the Department has in place a curriculum of specialized training for security staff assigned to the mental health housing units. Assigning untrained staff to work in this very special environment is dangerous and can lead to undesired results.

Temporary Employee Authorization status employees (TEA's) are used extensively in the institutions that were visited. A TEA is an employee who is still pending formal hire once the Basic Recruit Training (BRT) is completed and the prospective correctional officer passes the State's FDLE corrections examination for competence. They are also referred to as "non-certified employees" in some policy statements. In addition to the BRT, these TEA employees are required to complete a formalized New Employee Orientation (NEO) training for 40 hours. The annual in service training requirement of 40 credits is prorated as to when they are hired and those training credits are completed as well. A discussion with staff from the Bureau of Staff Development & Training indicated that the TEA's receive their NEO as soon as they are hired and then they immediately go to their BRT. In some cases, they go to the BRT and then attend the NEO immediately upon return to the facility.

Currently there is an aggressive effort to fill every position. In the previous years, institutions had to maintain vacant positions in order to transfer salary savings to institutional maintenance. Secretary Jones has changed that practice and the institutions now have institutional maintenance funding in their operational budget that frees the institutions to reduce the vacancy gap. As a result, there will be times when the TEA's do not receive their BRT for a number of weeks. As an example, a review of the Union C.I. roster information shows 29 TEA's in the BRT academy with 25 TEA's waiting to be scheduled. The TEA's awaiting training are placed into positions that do not require weapons or are in positions that do not allow contact that would result in the UOF. This is particularly important since they have not yet completed any defensive tactics training. Certainly, having a backlog of untrained staff is not the perfect situation. However, when institutions are operating at level 1 staffing, every resource must be utilized. The institutions are doing their very best to comply with Department policy and create a safe environment for both staff and inmate.



At many levels, additional staffing would increase the productivity and efficiency of the operation. The OIG is just one example. In addition to more resources needed in the UOF Unit, additional Inspectors are needed. At one facility with a difficult mission, a high concentration of Psychological Grade 3 inmates and concerns with contraband, there is an open Inspector position. At three facilities (Columbia, Suwannee and Santa Rosa) all Inspector caseloads have suddenly grown. At Columbia, caseloads have increased within the last 4 to 5 months from 6 or 8 to 46 open cases. With an increase in the number of Inspectors, they could be more proactive than reactive. They would have time to search out and conduct intelligence gathering instead of working high caseloads of "inquiries."

There has long been a debate among correctional experts as to whether an 8-hour shift or a 12-hour shift works best in a correctional setting. Many state correctional systems have partially or totally converted to 12-hour shifts for line staff working in prisons. Some years ago the State of Florida transitioned all of their adult correctional institutions to 12-hour shifts. The advantage for 12-hour shifts for line staff is the shorter work week and every other weekend off. This schedule is very popular with a large percentage of correctional workers. The 12-hour shift schedule is also appealing to state correctional administrators and legislators because of the staff savings that are accrued by eliminating the difference in the positions it takes to staff three 8-hours shifts versus two 12-hour shifts.

The ASCA Review Team took an in-depth look at how the 12-hour shift schedule might impact the number of UOF events at the facilities that we inspected. The ASCA team noted and observed that the agency supplemented the line staff in the high security housing units during peak hours. Every ASCA team member came away from the inspection tours thinking that the 8-hour shift might be a better option for the Department executive administration to consider. This conclusion was reached independently by each inspector based on personal observations and interviews with staff working in the CM or in-patient psychiatric housing units. In our interviews with staff working in the "pressure cooker" environments of CM or psychiatric in-patient housing units many admitted to being stressed, weary, and frustrated on a daily basis. Many of these employees are required to routinely participate in multiple planned UOF events as well as some reactionary events. Cumulatively, these pressures build up in staff and can cause impaired judgment resulting in bad events that may directly contribute to that officer or another officer or inmate being exposed to injury. The agency should also consider the long-term effects on the health of the line staff constantly working in this environment. It is logical to assume that staff that is experiencing burnout will make poorer decisions resulting in more UOF events.



The agency may wish to look at only transitioning to 8-hours shifts on the facilities that are densely populated with difficult to manage inmates and keep the other facilities on the 12-hour shift schedule. With a number of Department facilities within close proximity of each other, staff would have an option of working at a facility with 8-hour shifts versus one on the 12-hour shift schedule.

Both uniformed and non-uniformed staffing positions at the inspected facilities appeared to be less than the ASCA team felt was appropriate. However, completing a comprehensive staffing assessment and making a definitive determination was difficult because the team only reviewed nine of the 49 facilities within the department, every facility was operating under "Level 1" or minimal staffing deployment, and over 600 correctional officers were assigned to non-authorized posts. The team also reviewed the adequacy of staffing for field inspectors and the Use of Force Unit in Central Office since they play a key role in the examination of use of force events. The team came up with the consensus opinion that staffing levels were too low for each of those groups to effectively manage their caseloads.

Staff accountability was gauged by the ASCA Review Team to be good. Accountability was a subject that was discussed with every employee interviewed by the team. Both supervisory and line staff agreed that the chain of command was being followed routinely. A review of the number of employee disciplines and the severity of the charges led the team to concur that each facility inspected was well within an acceptable range given the size and complexity of the institutions.

Recommendations

- The agency should undertake a comprehensive, detailed staffing analysis for all Department facilities and the non-facility departments that support all institutional operations. These studies are highly detailed and require a great degree of roster research, interviews, and the development of a good working knowledge of each institution.
- Place a priority in filling the vacant inspector positions and increase the number of Inspectors.
- It is recommended that the 600 plus non-authorized positions currently being utilized as temporary assignments be made permanent with specific funding to support those posts. The ASCA Review Team understands that



this is a legislative function and cannot be unilaterally decided by Secretary Jones.

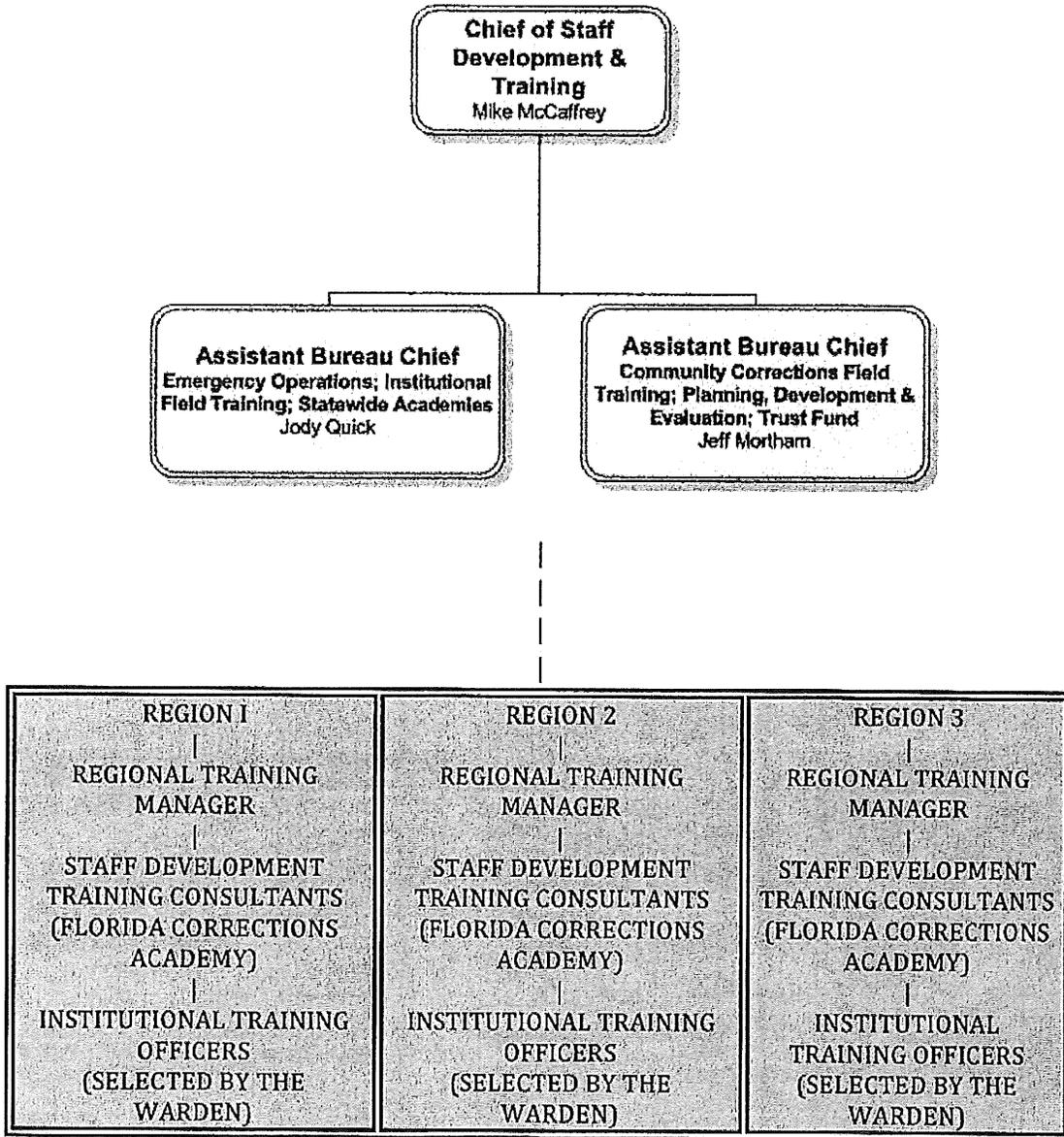
- The agency should give serious consideration to reverting back to 8-hour shifts on facilities that are densely populated with high security/custody inmates. The ASCA Review Team is concerned at the levels of stress observed from the staff working in those areas. The transition back to an 8-hour shift from the current 12-hour shift could make a significant difference in the overall quality of each officer's work.

Staff Development and Training

The ASCA Review Team had the opportunity to spend two hours with Bureau Chief Mike McCaffrey and Assistant Bureau Chief Jeff Mortham during the three days of interviews at the Department central office in Tallahassee. In reviewing the training capacity and effectiveness of a correctional system, there are three key elements to assess: Department policy, Department training in the policy, and the front line supervision efforts to insure that there is consistency between the policy, the training, and the actual ongoing practice in the facilities. In doing so, it is crucial that there is a complete understanding of the training process between the Department Central Office and the institutional staff.



The organizational chart for the Bureau is represented below:





This chart identifies three regional training manager offices that correspond to the three Department institutional regions. Each regional training manager's office supervises regional Florida Law Enforcement academies in each of the Department regions, which are supervised by a regional training manager. Each academy is staffed with a number of staff development training consultants and this level of staffing provides the interface with the Florida Department of Law Enforcement (FDLE). As relayed by both a training consultant and a training sergeant, any institutional training issues are sent to the regional office for discussion and subsequent reference to the Bureau for a decision. This regional staff also has access to the FDLE's Automated Training Management System, so they can input the participation of staff in all of those training efforts tracked and sponsored by the FDLE. This academy provides BRT as well as any specialized training funded by the Criminal Justice Standards and Training Commission Trust Fund (TCTF). The institutional training officers participate in quarterly training advisory meetings at the regional office and communicate with each other and the administration through these sessions.

The Bureau of Staff Development and Training is funded through the Criminal Justice Standards and TCTF as well as some departmental funding. The fund can only be used for advanced and specialized training, excluding the BRT that lasts eleven weeks and the annual in-service training (IST) that includes 40 credits of training.

Any training that is paid for out of the trust fund must be tied to learning objectives provided by the FDLE. That is another limitation to the development of emerging policy issues that require immediate training reinforcement. Any training supplies (e.g. defensive training mats, defensive weapons, training manuals, etc.) that are purchased for TCTF funded advanced and specialized classes are not supposed to be used for BRT or in-service training that results in the wide practice of sharing training supplies between institutions as needed.

As a result, during the last fiscal year anything that could not be paid for with TCTF fund dollars was paid for out of general revenue from one of the other program areas (primarily institutions). All training schools (which are what correctional training schools are considered) previously received \$67 per certified staff. This approximates \$1.2 million that is only used for advanced and specialized training. This does not include basic recruit or in-service training.

According to Mike McCaffrey, during fiscal year 2013/2014, this funding was reduced to \$40 per officer or \$715,000. This fiscal year funding has returned to \$67. Each year the Department works with institutions and community corrections to



determine their training needs and then a Master Plan is published for the year. The training is delivered through a combination of Department staff from the institutions, private vendors, and Bureau staff. Currently, this trust is funded through a very unstable source of court assessments (speeding tickets and other non-criminal traffic violations). According to Chief McCaffrey, the legislature has approved a special four million dollar supplement this year that resulted in the increase to \$67.

E-Train (Employee Training Records and Instruction Network) is a relational Web-based learning management system that replaced the existing mainframe STARS training records management system in 2005. According to the Department Annual Report 2005-2006, this new relational database was supposed to be "a more versatile application than its predecessor by providing both an on-line training course delivery environment and a training scheduling, tracking, and completion component. It also provides robust relational reporting features to assist staff in compiling and analyzing training- and instructor-related data."

Another aspect of this program is that some staff is allowed to take the actual training classes "online" over the intranet rather than having to attend the class itself. While this element of the program can be very helpful to deliver training in a cost efficient manner, there are also potential problems in terms of what classes are allowed to be taken online. UOF retraining is an example. UOF is one of the classes that upper level staff can complete via computer access and the individual can just skip to the test and get credit for the class. This is one of the reasons why In Service Training is documented in credits rather than actual training hours. In at least one academy, the students can also just read the module that is on the intranet and then take the exam when ready. Since this training module has not changed for a very long time, interviews indicated that many staff would just skip to the test and finish that portion of the training. The team feels that UOF retraining is so important to the agency mission that it should not be relegated to any form of online recertification. If it is presented in person, the lesson plan can be easily updated to insure that staff receive the latest vision of the Department and ensure that only the most current policies are reviewed and tested for understanding.

Corrections students cannot be employed as a correctional officer in Florida unless they complete a BRT course and subsequently pass the FDLE certification exam. The BRT can be done by private vendor (community colleges) or by the Department staff through in-house academies. The content, however, must be identical.



The total hours for this private vendor training was compared to the Department training offered at the Florida Correctional Academy in Suwannee and the total hours for each line item of training were identical. It is noted that the testing for each of the training topics is included in the total hours of instruction. Following the 11 weeks of BRT, the trainees are then returned to the institution for the new employee training reflected in the private academy schedule as 60 hours of "Return to Duty Station" training.

In addition to the basic training provided to new hires and the 40-hour new employee training, staff is required to complete a mandatory of 40 credits of in-service training (IST) each year. There is also a Field Training Officer (FTO) 40-hour program that exists in a variety of training structures from institution to institution. In reviewing the available documentation at the institutions, the Department is doing an exceptionally good job in assuring that all staff with the exception of those unavailable (on extended family leave, etc.) has completed their required FDLE training needed to maintain certification. There is significantly less participation in a bona fide FTO program, which is probably the result of all of the facilities operating at level 1 staffing, the minimum accepted staffing level to operate a facility. This level of staffing is a result of ongoing budget constraints and the historical difficulty in hiring and retaining staff.

There appears to be some disconnect in communication from top-level staff down to the training officer. For example, one training officer was not even aware of the name of the Chief of Staff Development and Training Bureau. This institutional training officer was additionally unsure of whether the staff at the Florida Corrections Academy was a Department employee, an FDLE employee, or a private contractor. This lack of understanding was what precipitated a phone interview with one of the regional training staff. In reviewing lesson plans it was noted that in one facility the NEAR lesson plan (*Neutralize, Empathize, Actively Listen, and Resolve*) was an active course, while the training officer at another facility indicated that it was no longer on the active Master Training Plan. All of the lesson plans are written by Central Office staff and then distributed down the chain of command and identified in the Master Training Plan.

Specialized training is funded by a special Criminal Justice Standards and TCTF. CIT is a bright star in the specialized training efforts of the Department in response to UOF training and de-escalation. There are also two additional programs associated with this CIT certification that are notable: 1) the "Two Second Drill" which is a two hour block offered subsequent to the basic CIT training, and 2) "Hearing Voices" which includes actual scenario training which simulates what a psychotic inmate



might hear while trying to deal with the reality that we observe externally. This training is done by mental health staff and coordinated with the institutions. The training goal is that 100% of the staff in the ten institutions that contain mental health units will complete this training. This is an admirable and aggressive goal and currently there is sufficient staff in the mental health units to provide CIT trained staff on most shifts for the institutions.

There are incident report writing classes included in the BRT and also provided in the in-service-training; but there is no specific training in how to write effective UOF reports that adequately let those who review the reports gain a clear understanding of the events that occurred.

This two-credit block does not require any competence in actually completing a report and does not specifically address how to write the UOF reports that are at the heart of this inquiry. One of the criticisms from the IG's staff is that the reports are all "boilerplate" responses written in correct "legalese" that addresses the department's policy and procedural requirements without really giving the reviewer a good picture as to what actually happened.

The current scenarios in the training plan are not inclusive enough. For example, the use of chemical agents if someone is threatening to self mutilate ("cut") is more effective to review in scenario training. It is difficult, at best, to prepare the officers simply by providing a narrative to read, study and test on. Currently, the UOF training for IST can be simply taken on a computer (read) and then tested through a series of online questions. In some in-service training programs, the staff is allowed to do the same thing but in a classroom situation. They read the material and simply do the test. Although in some instances these classes require what was referred to as "cheeks in the seats" attendance vs. online testing; training staff also indicated that in some institutions they merely show up, read what would have been read online via the intranet, and then take the completion test for credit. Again, this is why the in-service training portion of the requirements is expressed in credits and not training hours that suggest physical attendance and participation.

The department conducts a Captain's Academy for shift supervisors from across the state. This academy contains a component on use of force training presented by a regional director. The goal of the agency is to reach 100% of the supervisors at this level. Two additional classes are scheduled this fiscal year. Additionally, there are plans for lieutenants to also attend this academy. Some of the captains interviewed at the selected facilities were aware of this training effort and some were not. One



full-time training sergeant could merely indicate that she had "heard of it" and both field teams conducting separate interviews confirmed this scenario.

There is a Master Training Plan that lists the current fiscal year training topics and lesson plans. It is noted, however, that there are elective classes that institutions may or may not select for training. For example, there is a required course "Incarceration Management and Suicide Prevention" that some staff inappropriately refers to as "Osterback Training" because it arose from the settlement of the Osterback v. Moore litigation. Currently, this class is properly referred to as "CM/TCU Training" and the content includes responses to suicide attempts, self-mutilations, asphyxiations, etc. It is only required for Suwannee C.I., Union C.I. and Florida State Prison.

Staff training officers seemed to vary widely in their knowledge of the training function, their skill levels, and their training and institutional responsibilities. In some cases, the officers were full-time training staff; and in others, they balanced the training responsibility with institutional assignments as needed. Some facilities listed the training officer on the staff roster while others did not. (Compare Martin to Dade as an example). There were facilities with dedicated training areas and other facilities that did not have the luxury of that space. Some officers were unaware of how individuals were selected for training and none seemed to be cognizant of how the entire training function worked from Central Office to the front line. This lack of communication, policy and procedure implementation, and overall program design result in an inability to provide effective and efficient training department wide as discussed in the first paragraph of this section.

Recommendations

- The Bureau of Staff Development and Training is not organizationally positioned within the agency structure for maximum efficiency and effectiveness.

The ASCA Review Team recommends that the training function be given a higher profile and positioned closer to the top-level decision making and routine management discussions that occur in upper level meetings. Training needs to be at the front of policy decisions to insure proper policy implementation.

- It is recommended that the Bureau receive an annual operating appropriation for specialized training expenses either in addition to the



unpredictable court assessments or in lieu of that revenue stream, which would completely remove the unpredictability of funding for training. This would enable the Bureau to offer a more varied option of specialty training that would be more responsive to immediate policy needs on a year-to-year basis. This funding strategy would also allow the Department to purchase supplies that could be more widely used for other classes.

- Funding should be provided to ensure that the E-Train system can properly provide exception reports such as completed training requirements, scheduling, etc. that can be a result of input and output. This could simply be resolved by the creation of additional sub-routines in the program or it could require a more significant expense.
- Use Of Force training should be taught in a classroom setting by a live instructor. The curriculum should be updated whenever a change occurs to the use of force policy or the accompanying procedures.
- It is recommended that any certification training such as this be periodically refreshed through additional training on a pre-determined schedule (annually, every three years, etc.).
- It is recommended that the agency mandate that de-escalation training/techniques be given a high priority for instruction in both pre-service and in-service training programs.
- The ASCA Review Team recommends that the agency revise the current training curriculum to include specific training in UOF report writing. This revision should include a writing skills evaluation for each employee who takes the training. This revision should also emphasize that UOF participants write their reports in plain, descriptive words and phrases and not utilize or rely on "boilerplate" language that comes directly from the UOF policy. The training should also stress that when multiple officers participate in a common UOF event, each officer should independently write their report to preclude any suggestion of collusion.
- It is recommended that the "Captain's Academy" training be continued as a formal part of the training program with a well-defined training goal in mind.



- Managerial staff should be required to attend a refresher course in UOF training that is decidedly different from the yearly requirement for ongoing FDLE recertification. It should address those issues that are unique to management including legal issues, MINS, training responsibility, CIT, etc. The distinction between authorized UOF and necessary force, coupled with the concept of objective reasonableness, needs to be reinforced to those in the decision-making authoritative positions; and this will serve to more effectively change the institutional culture to embrace the new policy directions.
- It is recommended that the agency include more scenario-based UOF training on situations that correctional officers are likely to face routinely throughout their regular tours of duty.
- It is recommended that sufficient staffing be in place to insure that all new officers complete the full FTO program and that program be formalized to specify the program goals, objectives and specific skills to be learned.

As noted above the ASCA team did find some deficiencies in staff training relating to how specialized training was funded, the lack of de-escalation training in both pre-service and in-service curriculums, and the lack of instruction for correctional officers in the specific area of use of force report writing. The other deficient training areas noted in the report should be analyzed by the agency and given proper consideration for adoption.

The agency should move forward with the belief that for the new initiative on "zero tolerance" on illegal or improper UOF and abuse to take root and become ingrained as part of the basic culture of the department that training will be one of the most effective methods of instilling this message. Training touches every employee in ways that face-to-face meetings with employee groups cannot. Employees on their days off, on vacation, on sick leave, etc. miss the opportunity to attend the group meetings; and therefore, do not hear the message that the executive team wants and needs them to hear.

Findings Related to Institutional Operations

The ASCA Review Team spent time on each on-site inspection reviewing institutional policies and practices, post orders, disciplinary and grievance records/data, search practices for contraband control, video surveillance capabilities, key and tool control measures employed by the facility, armory



operations and armory equipment and supplies, and daily inmate movements activities. The ASCA reviewers found that the individual facilities inspected met national standards in all of these areas. For instance, post orders were detailed and customized to each individual post at the facility. The post orders were also reviewed on a schedule that allowed them to remain current with any changes directed at the facility, regional, or agency level.

Key and tool control measures were found to meet the agency's guidelines and provided adequate protections from these items falling into an offender's hands. The armories were well stocked with supplies and the inventories were current. All gas supplies were clearly marked with expiration dates and the armorers had records to indicate the safe disposal of expired products.

All institutional policies and practices surveyed were found to be in compliance with the controlling agency policies and practices. Once again these policies have frequent scheduled reviews to accommodate any updates that need to be incorporated. The ASCA team looked at inmate disciplinary and grievance processes/data and found those functional areas to be operating within the prescribed agency policies. Mass movements of inmates were observed by the ASCA teams. The movements were orderly and well supervised by staff.

The consensus opinion of the ASCA Review Team was that contraband control was weak within the institutions inspected with large amounts of cell phones, tobacco, and K-2 spice being the most often discovered items. Although less prevalent, currency and weapons are other contraband items that cause facility administrators great concern. Fights over cell phones, aggressive behavior when inmates are under the influence of K-2 spice, and drug overdoses that put lives at risk are all potential outcomes of contraband in the facilities.

Cell phones in prisons, especially high security institutions, can be very dangerous. The recent escape from a high security prison in New York State was partially facilitated by in-prison cell phone use. It was noted by the ASCA Review Team that Dade C. I., in particular, had an unusually high amount of cell phones within the compound. The facility administration believed that the contraband items were being thrown over the compound's double perimeter security fence and being picked up and distributed by inmates at the facility that had access to the areas where the contraband was being tossed over. The other facilities had contraband issues also, but seemingly not to the level of Dade C. I. The ASCA Review Team



██████████ both the persons throwing the contraband items over the fence and those inmates retrieving the items.

Although inmates are banned from having any access to any tobacco product, staff is not. They are allowed to bring tobacco through the Central Control Room, but are limited to one pack of cigarettes. Leadership staff admits that if inmates have cigarettes they probably got them from staff even though it is disallowed. One staff person indicated that one cigarette might sell for as much as ten dollars.

At times, there are mass shake downs of cell blocks to search for contraband articles. There is little doubt the impact of inmates possessing contraband can have on the orderly operation of a prison.

The ASCA teams noted that the number of searches by staff met the minimum requirements set out by agency policy, but in our opinion the search procedures did not do enough to successfully interdict the flow of contraband items into the institutions. This is an area that can be improved with additional staffing that would allow more searches to occur and improvements in technology that would assist the staff in identifying weak spots where contraband could be introduced. The searches entering the front entrances of the facilities were thorough and gave little opportunity for anyone entering through this portal to introduce contraband items.

Plant maintenance was found to be operating as well as could be expected with the budgetary limitations that the function experiences on an annual basis. It was relayed to the ASCA Review Team that until recently, correctional officer positions were intentionally left vacant to use those unused salary funds for institutional maintenance purposes. The agency was hopeful that the new state budget would remedy the maintenance budget shortfall and restore the dollars to a level that was adequate to manage the function without resorting to utilizing other budget lines.

It is important to note that the American Correctional Association (ACA), the nationally recognized accrediting body for state correctional systems, accredited all of the facilities inspected except for Dade. The ACA sends out a team of experts every three years to accredited institutions for reaccreditation purposes. Their inspectors judge every operational aspect of a facility's operation against national correctional standards. Dade C. I. is scheduled for an ACA inspection in August 2015 and fully expects to meet the accreditation thresholds.



ACA accreditation is important because it further substantiates the ASCA Review Team's opinion that these facilities meet and often exceed national standards in most of the institutional operational areas that were subject to this review.

Correctional officers are provided with a body alarm that must be activated by the officer, a portable hand-held radio, and either a MK-4 or MK-9 gas canister that is worn on the belt. [REDACTED]

The ASCA Review Team discovered that most of the correctional officers liked the hand-held radio assigned to them. However, the radio batteries have to be changed up to three times each shift to maintain operability. Some of the radios also had problems with the belt clip breaking. This caused the officers to either hold the radio or put it in their pocket. Neither of those options would be considered optimal in a high security prison where the officers need their hands free at all times.

Considerable discussion regarding equipment took place during the inspection visits. Conversations regarding video was the most concerning to prison staff. Presently, [REDACTED] analog cameras throughout the institutions inspected are referred to as "fixed wing." In addition to poor screen definition, they do not currently record audio. Of the facilities inspected only Dade C. I. had the audio feature installed in the high security inmate housing units. Both Dade administrators and the UOF Unit at the Department Central Office were highly complimentary of the audio feature and how helpful it was when reviewing UOF events for appropriateness. The audio feature added critical context for the reviewers that is missing in video-only UOF packets.

Medical/Mental Health Providers

One area of institutional operations that was formerly administered by the Department and is now a contracted service is the provision of medical and mental health care. The two contracted medical and mental health service providers are Corizon and Wexford. Prior to fully implementing the private contract for medical/mental health services, the Department employed 2,562 full-time employees to manage this function. Of the 2,562, approximately 2,400 were assigned to facilities to provide direct inmate care.



In 2013 the agency fully privatized all inmate medical/mental health care by awarding contracts to Corizon and Wexford. Corizon now deploys 1,714 full-time positions and Wexford has 410 full-time positions to manage the direct delivery of medical/mental health services to the offender population. Combining the Corizon and Wexford direct care employees, 2,124, and comparing that number to the 2,400 formerly deployed in direct care at the facilities leaves a reduction of 276 positions.

The ASCA team interviewed each warden about this topic and was told generally that the reduction in staff was not well received. The biggest complaint was that the private providers not only provided less staff, but they were very slow to fill vacant positions. The ASCA team learned that there was no financial disincentive for the private providers to fill vacancies in a timely manner. Most contracts for the provision of privatized services in correctional systems build in a fine structure if positions are not filled within a certain specified time period. These contracts lacked that provision so the private service providers in this case were not motivated to fill the vacancies.

The lack of the appropriate number of full-time medical/mental health direct care providers is a matter of concern. The ASCA Review Team experienced an opportunity to view the direct care mental health providers while inspecting the Union C. I. The warden at Union C. I. disclosed to the ASCA team that she felt the reduction in mental health staff had negatively impacted her facility.

Union C. I. has four housing units that have psychiatric in-patients. S Dorm is a residential treatment unit and accounted for 3% of the UOF events in a twelve-month period ending in May 2015. T Dorm, a CSU, accounted for 13% of the UOF events during the same time period. U and V Dorms, TCU, had 40% and 29% of the uses of force during that same year. During the aforementioned twelve-month period the inmates in these housing units had a combined 85% of the total uses of force for the entire institution.

The extremely high UOF rate in the psychiatric in-patient housing units at Union C. I. points to a problem with few good resolutions. U and V Dorms were constructed to house dangerous, high-security inmates that would have little programming because of their overriding security needs. Consequently, these two housing units have very little program space for the mental health workers to conduct any out of cell treatment programming. The intensive programming that these inmates require is very difficult if not impossible to achieve because of the physical design of



the structure. Clearly, these two housing units were not built nor designed to be occupied by in-patient psychiatric inmates.

The environment inside U and V Dorms was very chaotic and extremely noisy with the inmates constantly pounding on their doors for attention. When the ASCA Review Team later interviewed staff that worked in those two dorms, the staff admitted to high levels of stress and frustration. Most of the mental health workers worked regular business hours, 8:00 a.m. to 5:00 p.m., with weekends and holidays off. This left the staff to deal with this difficult to manage population without the benefit of having the mental health staff on site for extended periods of time.

Recommendations

- It is recommended that the agency survey all correctional facilities, giving priority to the higher security institutions, [REDACTED] of individuals who may be throwing contraband items over the fence and inmates who may be retrieving the items inside the fence.
- The agency should review the policy of allowing employees to bring tobacco into the secure compounds. It is a given that as long as this policy exists tobacco will be available to be obtained by the inmates. Any contraband item of high value such as tobacco can create a conflict situation that could result in a physical UOF event.
- The agency should critically examine the current personal body alarms carried by all employees for true functionality and adequateness.
- It is recommended that the agency review the type of replacement batteries currently being purchased for the hand-held radios. The broken belt clip issue should also be reviewed for a permanent resolution.
- The agency should give consideration to relocating the psychiatric in-patients from Union C. I. to a facility that is more conducive to their treatment needs.



- The agency should give consideration to cancelling the current contracts for medical/mental health services and reissue a Response for Proposal to service providers in the marketplace that would agree to contractual arrangements that would mandate certain staffing levels, certain levels of credentialed personnel, and penalties for non-compliance in the event positions that are vacant are not filled in a specified time period.



Section IV

Summary



Summary

In May 2015 representatives of ASCA met with Department officials, including Secretary Julie Jones, to discuss the logistics and time table for assessing and producing a report on the department's UOF policy, the procedures developed from the policy, and any cultural impact that may negatively affect how force is used by correctional staff at the agency's facilities. The agency also required the ASCA team to make a comparison of the current UOF policy and accompanying procedures against national standards. The department's desire was to have a group of experts review those areas and make recommendations that the agency could then use, coupled with their already ongoing initiatives, to eliminate to the greatest extent possible any further illegal, improper, or unnecessary force against the offender population.

Over the last five years the department has been the subject of intense media and legislative scrutiny and criticism because of several high profile UOF events that had very bad results. In the fall of 2014, the department began to take definitive actions that resulted in better tracking of every UOF event that occurred. This action really elevated UOF actions to the highest level of governance within the agency. With real-time concrete numbers and trends at their disposal, the executive administrators of the agency could act swiftly if they became cognizant of any developing UOF problems in the field. The regional directors and wardens also analyzed these numbers and trends in real time.

CIT was introduced to promote de-escalation of UOF events before physical force measures would be employed. Procedural changes were made to put more accountability in the review process. The Department executive team traveled across the state and met with all the wardens, regional directors, and other supervisory/managerial staff in the field to emphasize that the agency was adopting a "zero tolerance" policy toward staff found to be abusive and acting outside policy and procedural guidelines.

In early 2015, Secretary Jones authorized the agency to aggressively fill all the vacant correctional officer positions. She, along with her key executive staff, created a strong, clear message around the "zero tolerance" policy and have proceeded to ensure that the message continues to be pushed down to the lowest levels in the agency. It has been made clear to the ASCA team that this initiative is the agency's number one priority and they are resolute in changing the dynamics that allowed past abuses to occur.



Armed with that information the ASCA Review Team selected six facilities within the department for inspection. The criteria that the ASCA team relied upon in making the final selections was how each facility ranked over the last eighteen months in the number of uses of force; the complexity, size, and predominant custody level of each facility; specialized inmate housing units at the facility; the geographic location in the state of each facility; and if the facility had been the subject of a high profile UOF event in the last three years. The ASCA team felt that it was important to choose facilities in each of the three geographic regions of the state to compare current UOF practices across the regions and, in particular, for the cultural examination.

In June and early July 2015, six facilities and three annexes (Dade C. I., Columbia C. I., Columbia Annex, Martin C. I., Santa Rosa C. I., Santa Rosa Annex, Suwannee C. I., Suwannee Annex, and Union C. I.) were inspected by the ASCA Review Teams. Every operational aspect at each facility was examined, policies and post orders were reviewed, personal observations were recorded from touring the facilities, and many employees up and down the rank structure were interviewed. On one occasion, the ASCA Review Team got to observe a cell extraction at Union C. I. Every warden that hosted an ASCA team was very professional and provided the team members data specific to the institution. All employees interviewed were aware of the emphasis being placed on proper and accountable UOF methods. Most employees that we interviewed expressed agreement with the changes. Almost all employees that we interviewed had been to the CIT and had used the techniques learned at that session to de-escalate a potential UOF event. Those employees who had not personally used the CIT techniques had observed other staff successfully defuse potentially explosive situations by using the lessons learned through CIT training.

Each of the facilities inspected were clean, sanitary, orderly, and well maintained. Searches of the ASCA team members were thorough and in compliance with the department's search policy. Every employee that the ASCA team members came into contact with was courteous and professional. Many expressed pride in their job and looked to make corrections a career.

At the conclusion of the inspections, each inspector reported his findings and observations to the ASCA project team leader, who used that information to draft the report with recommendations. The report is structured along the lines of the major areas of inquiry listed in the original scope of work for this review. All recommendations are listed under each major area so the reader can refer to the text on the subject area for ease of clarification



The ASCA team recognizes that some of the recommendations require legislative approval or funding. The ASCA team further suggests that the agency prioritize the recommendations that can be implemented with current resources and agency authority. Other recommendations may need to be delayed because of fiscal restraints or other complicating obstacles.

Lastly, any reader of this report will find discussions of similar topics in more than one location. For instance, training is discussed in different portions of the report because it touches on all major areas of inquiry.

The Association of State Correctional Administrators wishes to thank all who participated from the Department in the development of this report. We wish the Department great success in their endeavor to change the dynamics within department to ensure that past abuses will not be a problem in the future.



Section V

Appendices

- Appendix A – Documents Reviewed
- Appendix B – Acronyms and Definitions
- Appendix C – Employees Interviewed
- Appendix D – Project Team



Appendix A

Documents Reviewed

- 33-103.001 Inmate Grievances – General Policy
- 33-103.002 Inmate Grievances – Terminology and Definitions
- 33-103.003 Inmate Grievances – Training Requirements
- 33-103.004 Inmate Grievances – Staff and Inmate Participation
- 33-103.005 Informal Grievance
- 33-103.006 Formal Grievance – Institution or Facility Level
- 33-103.007 Appeals and Direct Grievances to the Office of the Secretary
- 33-103.008 Grievances of Medical Nature
- 33-103.009 Grievance Relating to Admissible Reading Material
- 33-103.010 Grievances Regarding Lost Personal Property
- 33-103.011 Time Frames for Inmate Grievances
- 33-103.012 Grievance Records
- 33-103.013 Classification of Grievance
- 33-103.014 Reasons for Return of Grievance or Appeal Without Processing
- 33-103.015 Inmate Grievances – Miscellaneous Provisions
- 33-103.016 Follow Through on Approved Grievances
- 33-103.017 Inmate Grievances – Reprisal
- 33-103.018 Evaluation of the Grievance Procedure
- 33-103.019 Inmate Grievances – Forms (Repealed)
- 33-601.301 Inmate Discipline – General Policy.
- 33-601.302 Inmate Discipline – Terminology and Definitions.
- 33-601.303 Reporting Disciplinary Infractions.
- 33-601.314 Rules of Prohibited Conduct and Penalties for Infractions.
- 33-601.800[1] Close Management.doc
- 33-602.101[1] Care of Inmates.doc
- 33-602.203[1] Control of Contraband.doc
- 33-602.204[1] Searches of Inmates.doc
- 33-602.210[1] Use of Force.doc

FLORIDA DEPARTMENT OF CORRECTIONS USE OF FORCE ASSESSMENT



108.002 Contraband Interdiction.docx
 602.003 Use of Force Devices, Agents, and Munitions.docx
 602.004 Forced Cell Extraction.docx
 602.009 Emergency Preparedness.docx
 602.018 Contraband and Searches of Inmates.docx
 602.024 External Inmate Transportation.docx
 602.028 Special Management Spit Shield.doc
 108.002 Contraband Interdiction.docx
 602.003 Use of Force Devices, Agents, and Munitions.docx
 602.004 Forced Cell Extraction.docx
 602.009 Emergency Preparedness.docx
 602.018 Contraband and Searches of Inmates.docx
 602.024 External Inmate Transportation.docx
 602.028 Special Management Spit Shield.doc
 602.030 Security Staff Utilization.docx
 602.033 Video Cameras-Segregation Housing Unit.docx
 602.037 Tools and Sensitive Item Control.docx
 602.038 ICS Simulations and Response Plan Drills-Exercises.docx
 602.039 Key Control and Locking Systems.docx
 602.044 Internal Inmate Movement.docx
 602.049 Forced Hygiene Compliance.doc
 602.054 Escort Chair.doc
 Agency Statements.doc
 Chemical_Agents-2014-2 In-Service.pdf
 DC2-930 In-Service Defensive Tactics Proficiency.docx
 DC4-650B Revision Draft 05-14-15.docx
 Defensive Tactics Basic Recruit Training.pdf
 Defensive_Tactics_Lesson_Plan_CO_and_LEO_2015-1.pdf
 Office of the Governor Executive Order # 15-102.pdf
 Supporting Correspondence.pdf
 The Role of Security in Mental Health Inpatient Units 2015
 UOF Participant Advisory Review Draft.doc
 UOF Reduction
 Use of Force DRAFT 8 Cell Extraction and Chemical Agent May 12
 USE_OF_FORCE_TOPICS-2014-1 In-Service.pdf
 602 033 Video Cameras.pdf
 2015-05-22 UOF Incidents 11-2013 - 04-2015 by facility
 2015-05-31 assault and uof data
 AD0347.pdf
 AD0348.pdf
 Chemical_Agents-2014-2.pdf
 Crisis_Intervention_Training_Instructor_Guide_2014-3.pdf
 Defensive_Tactics_Lesson_Plan_CO_and_LEO_2015-1.pdf
 Lake - Dade Profile.pdf
 Martin CI - Hardee CI Profile.pdf
 NWFRC-Columbia CI Profile



NWFRCAnnex - Columbia-Annex Profile.pdf
 Suwannee CI Admin June 9, 2015_2015_06_11_13_55_36_577.pdf
 Suwannee CI Administrative 2015_2015_06_11_14_00_53_654.pdf
 Suwannee CI Annex Day-B June 2015_2015_06_11_14_03_19_706.pdf
 Suwannee CI Annex Night -D 2015_2015_06_11_14_04_26_533.pdf
 Two_Second_Drill-CIT_2_2015-1.pdf
 DADE CI REQUESTED INFORMATION.docx
 Dade TCU SECURITY_POST_CHART-3972379.pdf
 DadeCI SECURITY_POST_CHART-3972372.pdf
 DAILY_ROSTER-6-24-15.pdf
 OIC Meeting Agendas.pdf
 UOF Breakdown June 2014 to May 2014.xlsx
 Use of Force Log - Dade CI Main Unit - Warden copy.xlsx
 #01 - General Post Order March 17 2015 (2).docx
 2015_Master_Training_Plan_2015-7_(4-29-15).pdf
 Basic_Report_Writing-2014-1.pdf
 BRT High Liability
 BRT Instructor Guide FL.pdf
 Copy of A Team ICS DART Responses.xlsx
 Copy of UOF Participant Advisory - Cocco, Michael.xlsx
 DAILY_ROSTER-3971414.pdf
 DAILY_ROSTER-3971416.pdf
 DAILY_ROSTER-3971426.pdf
 Facility Tracker - March 2015.xlsm
 ICS-DART.pdf
 Martin In-service 2015 (3).xlsx
 SECURITY_POST_CHART-3971420.pdf
 uof brief.docx
 USE_OF_FORCE_TOPICS-2014-1.pdf
 COLUMBIA CI--9-24-14
 COLUMBIA-Annex-3-3-15.xls
 DADE CI 6-13-12.xls
 Dade TCU 3-9-15.xls
 FSP-MU-05-16-12 1.xls
 FSP-WU-06-10-2013.xls
 MARTIN WC 11-4-14.xls
 MARTIN-CI 08-2-12.xls
 Santa Rosa Work Camp Add Staff from Annex Barrydale-Century2.xls
 Santa Rosa-CI-04-02-12.xls
 Santa Rosa-CI-Annex Move Staff to WC 9-9-14.xls
 Suwannee Annex 8-21-2012 8 Hour 12 hour.xls
 Suwannee MU 10-1-14 -YO.xls
 Suwannee WC 8-1-13 hour.xls
 #01 - General Post Order March 17 2015.docx
 #10 - Housing Sergeant Officer (Confinement) March 17 2015.docx
 #11 - CM Sergeant-Officer March 17 2015.docx

FLORIDA DEPARTMENT OF CORRECTIONS USE OF FORCE ASSESSMENT



#57 - CSU TCU MHTF March 18 2015.docx
PREA Status Report 5-11-15.xls
Allegations of Physical Abuse and Excessive Force.xlsx
Officer Of The Inspector General.pdf
Incidents UOF 052014-051915.xls
info for ASCA psych grade UOF.xls
sample uof model - cm institutions.xls
2015-04-30 assault and uof data.xlsx
2015-05-22 UOF Incidents 11-2013 - 04-2015 by facility.xlsx



APPENDIX B
ACRONYMS and DEFINITIONS

A.P.A.	Administrative Procedures Act
BRT	Basic Recruit Training
CARP	Computer Assisted Reception Process
CCTV	Closed Circuit Television
CIT	Crisis Intervention Training
CM	Close Management
CJSTCTF	Criminal Justice Standards and Training Trust Fund
CSU	Crisis Stabilization Unit
DART	Discipline Action Review Team. (Abuse of force used to be reviewed at the Wardens level. This was changed to DART (Disciplinary Action Review Team) 4 months ago. Now any allegations get reviewed at central office instead of the Warden by legal representation and a leadership team appointed by the Secretary. The results are then discussed with the Warden via phone and the Warden takes appropriate personnel action. By statute, only the Warden can make this recommendation.
DART	At the institutions this is the Designated Armed Response Team.
DVR	Digital Video Recorder
EAC	Emergency Action Center (2005: Emergency Action Center (EAC) staff responded to over 24,000 calls, teletypes and other requests for assistance from institutions, community corrections, other law enforcement, corrections agencies and the general public. EAC staff conducted approximately 1,305 NCIC/FCIC criminal background checks for various Central Office, institutional and community corrections staff.)
E-TRAIN	A computerized training program resident on the intranet for online training of LT and above.
ETO	Emergency Treatment Order (an injection...usually a depressant)

FLORIDA DEPARTMENT OF CORRECTIONS USE OF FORCE ASSESSMENT



F.A.C.	Florida Administrative Code
FTO	Field Training Officer
FDLE	Florida Department of Law Enforcement
ICS	Incident Command System
IGIIS	Inspector General's Investigative & Intelligence System.
Level 1 staff	This is also referred to as "critical" staffing level that an institution cannot function below. There are three levels of staffing and almost all facilities are operating at level 1 staffing.
MINS	Management Incident Notification System
NEO:	New Employee Orientation training.
OBIS	Offender Based Information System
NEAR	Neutralize, empathize, actively-listen, and resolve
OIG	Office of the Inspector General
pdf	A computer file format that is not intended to be edited further.
PREA	Prison Rape Elimination Act
RRT	Rapid Response Teams
S-1 to S- 5	Mental Health Classification levels (S-1 is general population and S-2 through S-6 is diagnosed. The higher the level, the more severe the diagnosis).
SHOS	Self-Harm Observation Status (the inmate is placed in an Isolation Management Room)
STG	Security Threat Group
TCU	Transitional Care Unit
TEA	Temporary Employee Assistant

FLORIDA DEPARTMENT OF CORRECTIONS USE OF FORCE ASSESSMENT



UOF Use of Force

UOFAS Use of Force Advisory System managed by the OIG to track and notify each warden of those staff who are involved in 8 use of force incidents within an 18-month period. This policy will be changed to a 3 in 6 month involvement in only spontaneous use of force incidents.



**Appendix C
Florida Department Of Corrections Employees Interviewed During The Course
Of The Use Of Force Study**

Julie Jones	Secretary of Corrections
Ricky Dixon	Assistant Secretary of Institutions
Richard Comerford	Director of Institutional Operations
Wes Kirkland	Chief of Security Operations
Kelley Scott	Director of Administration
David Ensley	Bureau Chief of Research & Data Analysis
Michael McCaffrey	Chief, Staff Development & Training
Eric Lane, Sr.	Regional Director of Institutions-Region 2
Dean Aufderheide, Ph.D.,M.P.A.	Director of Mental Health Services
Randy Tiff, III	Regional Director of Institutions-
Region 3	
Sam Culpepper	Regional Director of Institutions-Region 1
Jeff Mortham	Assistant Chief, Staff Development & Training
Vicki Newsome	Assistant Bureau Chief of Classification Management
Dottie Ridgway	Deputy General Counsel
Jeffrey Beasley	Inspector General
Ken Sumpter	Deputy Inspector General
Brian Foster	Assistant Chief, Use of Force Unit
Dean Glisson	Senior Inspector, Use of Force Unit
Debbie Arrant	Supervisor, Use of Force Unit
Alan McManus	Bureau Chief of Policy Management & Inmate Appeals

Dade Correctional Institution Employees

Marvin Clemmons	Warden, Dade Correctional Institution
Jose Lugo	Assistant Warden, Operations
Glenn Morris	Assistant Warden, Mental Health
Alfredo Picanol	Mental Health Counselor
Victor Barber	Colonel, Dade Correctional Institution
Rod Nowell	Major, Dade Correctional Institution
Travis Donaldson	Captain, Dade Correctional Institution
Philip Lebowitz	Captain, Dade Correctional Institution
Latoyia Butler	Correctional Officer, Dade CI
Shanice Ward	Correctional Officer, Dade CI
Arian Caballero	Correctional Officer, Dade CI
Darrell Johakin	Correctional Officer, Dade CI
Jonathan Clark	Sergeant, Dade Correctional Institution
Magnus Seneque	Sergeant, Dade Correctional Institution
Inez Martin	Sergeant, Dade Correctional Institution



Jonathan Fanfan Institution	Sergeant, Dade Correctional
Randy Moles	Sergeant, Dade CI Training
Laquetta Thompson	Investigator, IG's Office
Victor Sakay	Sergeant, Dade CI
Dalton McDonald	Correctional Officer, Dade CI
Rejinald Patterson	Correctional Officer, Dade CI
Hian Cobas	Correctional Officer, Dade CI

Martin Correctional Institution Employees

Robert Hendry	Warden, Martin Correctional Institution
Ernest Reed	Major, Martin Correctional Institution
Domingo Guzman	Captain, Martin Correctional Institution
Jose Morales	Correctional Officer, Martin CI
Kristofer White	Correctional Officer, Martin CI
John Lytell	Sergeant, Martin Correctional Institution
James Yearby	Sergeant, Martin Correctional Institution
Geoffrey James	Sergeant, Martin Correctional Institution
Dana Swiderski	Acting Armorer, Martin CI
Nicholas Gorman	Sergeant, Lock & Key, Martin CI
Jarian Walker	Correctional Officer, Martin CI
Ashley Rodriguez	Correctional Officer, Martin CI
Johnny Riegal	Captain, Martin Correctional Institution
Jimmie Reese	Assistant Warden, Operations
Scott Thomas	Senior Inspector, Martin CI
David Colon	Colonel, Martin CI
Wilfrid Lazarre	Behavioral Health Specialist, Wexford
Michael Coccaro	Lieutenant, Martin CI Training

Suwannee Correctional Institution Employees

Freddie Mock	Assistant Warden-Programs
Richard Lukens	Colonel
Michael Carlton	Captain (Suwannee Annex)
Janet M. Martin	Captain
Jason Vann	Inspector
Sherry Rucker	Training Sergeant
Kevin Sievers	Sergeant-H Dorm

Columbia Correctional Institution Employees

Greg Drake	Warden
Ronnie Woodall	Assistant Warden-Operations
Randall Polk	Assistant Warden-Programs
Chris Lane	Colonel



C.E. Norman	Major-Columbia Annex
Bennie Harper	Captain
Bennett Kilgore	Captain-Columbia Annex
Eric Hall	Captain-Columbia Annex
Peter Lindboe	Inspector
James Hansen	Training Sergeant
Shannon Hughes	Training Officer

Santa Rosa Correctional Institution Employees

James Coker	Warden
Michael Booker	Assistant Warden-Programs
John F. Kolodziej	Colonel
Donnie R. Ealum	Major-Santa Rosa Work Camp
Alan B. Jackson	Major-Santa Rosa Correctional Institution
David Dunlap	Major-Santa Rosa Annex
Michael Burch	Captain-Santa Rosa CI
Doug Harris	Captain-Santa Rosa Annex
K. Torres	Lieutenant-Santa Rosa CI(F-Dorm)
Brandon Turner	Sergeant-Santa Rosa CI(G-Dorm)
Robert Olson	Sergeant (Use of Force Coordinator)
Roderic Stovall	Training Officer
Maurice Radford	Inspector

Union Correctional Institution Employees

Diane Andrews	Warden, Union Correctional Institution
Torrey Johnson	Assistant Warden-Operations
Stephen Rossiter	Assistant Warden-Programs
Stephanie Crawford, Ph.D	Assistant Warden-Mental Health
Kevin Box	Colonel, Union CI
Timmy Robinson	Captain, Union CI
Stanley Peterson	Major, Union CI
Rex Bailes	Captain, Union CI
John Thomas	Sergeant, Union CI
Keegan Gray	Correctional Officer, Union CI
Edward Bennett	Correctional Officer, Union CI
Millard Bell	Sergeant, Union CI
Jamie McDaniel	Correctional Officer, Union CI
James Crow	Correctional Officer, Union CI
Joe Aretino	Inspector General Supervisor
Kevin Lingis	Inspector
Sabrina Cox	Training Officer
Rhonda Horler	Word Processing Systems
Rose Odom	Staff Dev & Training Consultant



APPENDIX D - PROJECT TEAM

The project team represents a highly experienced set of correctional practitioners, who have served in line, supervisory, and management positions in their respective jurisdictions. The team members are Wayne Scott, Lead Consultant; Bob Bayer, consultant; Kim Thomas, consultant; Reginald Wilkinson, consultant; and Gary Maynard, Project Manager. George Camp, Co-Executive Director of ASCA, will provide oversight. Each member of the Project Team has participated in similar studies in their own jurisdictions or as consultants to other public and private correctional agencies. Team member biographies are appended to this report.

WAYNE SCOTT, TEAM LEADER

Wayne Scott is a senior associate with MGT. He served more than 30 years with the Texas Department of Criminal Justice and the Texas Board of Pardons and Paroles. Wayne began his career in corrections in 1972 as a correctional officer and rose through the ranks to serve as Executive Director of the Texas Department of Criminal Justice (TDCJ). During his six-year tenure as Executive Director he was responsible for the confinement, care and supervision of over 600,000 adult felony offenders, the management of over 40,000 employees, and the administration of a biennial budget of \$4.6 billion. He also supervised the construction of five high-security facilities and the building of twenty trusty camps. Wayne implemented major policy reforms during his tenure as Executive Director, including systems that managed financial and contract operations, the consolidation of the TDCJ legal department and the establishment of the Advisory Council on Ethics. Wayne has been recognized for his achievements in the field of corrections. He was given the Dr. George Beto Hall of Honor Award, the Texas Corrections Association President's Award, and was honored by Sam Houston State University as a Distinguished Alumni. The Texas Board of Criminal Justice has recognized his service by naming a Texas prison for him in Angleton.

Mr. Scott's correctional consulting experience includes: Consultant on a four-man team of security experts to review all agency policies and security procedures in the aftermath of a high profile escape; Consultant on a comprehensive assessment of staffing needs for the Detention Command of the Harris County Sheriff's Office, Texas; Consultant on an Immigration and Customs Enforcement contract to provide support in administering and conducting the Detention Compliance Management Plan; Consultant on a comprehensive assessment of the administration and operations of the Massachusetts Department of Correction; Consultant on a justice system review for Tyler County, Texas; Consultant on a



comprehensive performance review of the Oklahoma Department of Corrections and its related programs; Consultant on a criminal justice system and jail population study for Bexar County, Texas; Consultant on an agency-wide operational analysis for the Florida Department of Corrections; Consultant on an assessment of the New Mexico Department of Correction's policies, procedures, and practices as they relate to the deployment of its correctional staff; Consultant on a project for the Cook County Judicial Advisory Council to develop an approach to assessing security staffing needs at the Cook County (Chicago, Illinois) Jail.

ROBERT BAYER

Robert Bayer held the position of Director of the Nevada Department of Corrections from 1995--- 2000. He began his career in corrections as a Correctional Classification Counselor in the mid--- 1970's for the Nevada Department of Corrections. He was promoted through the ranks to Statewide Substance Abuse Program Director, Department Training Manager, Training/Internal Affairs Administrator, Inspector General, Correctional Captain and then to Associate Warden of Operations.

From 1992 to 1995, he worked as the Operations Supervisor with the special assignment of statewide responsibility for parole revocation procedures and policies as well as all out---of---state parole caseload. From 1994 to 1995 in his capacity with the Peace Officer Standards and Training Academy, he was borrowed from the Parole and Probation Department for special assignment to develop and implement a new statewide corrections academy for a rural detention center and police/sheriff staff, and to set up computerized state police/peace officer training.

Dr. Bayer holds Ph.D. degrees in Political Science/Public Administration and Policy, and English Literature from the University of Nevada, Reno. He also earned a M.P.A. in Political Science/Public Administration and Policy, a M.A. in English Literature and a B.A. in Liberal Arts. He continues his contributions to the field of corrections by serving on the National Advisory Council, Justice Management Program at the University of Nevada. While Director, he was an active member of ASCA and in addition to serving on several committees, he also served as its Treasurer. After retiring, he has remained active with ASCA as an associate member and as a trainer of new users of the Performance Measures System

KIM THOMAS



An interest in criminology and corrections led Mr. Thomas to study at Marshall University in West Virginia where he earned a Bachelor of Science Degree in 1983. Upon graduation, he relocated to Alabama and began his career with the Alabama Department of Corrections, graduating with the Correctional Academy Class 83-10.

Following graduation and eleven years and half years in Corrections, he rose through the ranks as a Correctional Officer, Correctional Sergeant, and Classification Specialist at a maximum security facility. While employed with the Department, Commissioner Thomas attended the Birmingham School of Law and received his Juris Doctorate in 1993. In April 1995, he was given the privilege of representing the Alabama Department of Corrections in the Legal Division as the Assistant General Counsel. For six years, under Commissioners Campbell and Allen, he served as General Counsel to the Department; and was appointed Commissioner of the Alabama Department of Corrections in January 2011. Commissioner Thomas retired in January 2015.

REGINALD A. WILKINSON, ED.D.

Dr. Reginald A. Wilkinson is the Executive Director of the Ohio Business Alliance for Higher Education and the Economy. The Business Alliance is an independent, nonpartisan 501(c)(3) organization, affiliated with the Ohio Business Roundtable. We are committed to serving as a catalyst, mediator and advocate for an enhanced and more strategic role for Ohio's colleges and universities as contributors to Ohio's economic growth. Wilkinson is the Vice-Chair of the Cleveland Scholarship Programs and serves on the board of the Ohio College Access Network.

Reggie Wilkinson recently retired as the Director of the Ohio Department of Rehabilitation and Correction (DRC): a position he held since 1991. At the time of his retirement, after 33 years with state government, he was the longest serving director of corrections in the nation. In addition to director, he was also Director of Training, Warden, and Regional Director of Prisons.

Wilkinson's academic background includes B.A. and M.A. degrees from The Ohio State University. He was also awarded the Doctor of Education degree from the University of Cincinnati. Reggie is a Past President of both the Association of State Correctional Administrators and the American Correctional Association. He has recently stepped down as the President and Executive Director of the International Association of Reentry as well as Vice Chair for North America of the International Corrections and Prisons Association.



He has received many awards from organizations such as the National Governors' Association, the Volunteers of America, the Association of State Correctional Administrators, and the American Correctional Association. Wilkinson, furthermore, has had numerous journal articles and book chapters published on a variety of correctional topics.

GARY D. MAYNARD

Gary Maynard, Project Manager, was the primary point of contact for the Department, leading both the initial meeting with Florida DOC staff and the final closeout meeting where the final report will be presented. Gary will play a significant role in the review of documents and data and in the writing and review of the initial report documents and final report documents submitted to the Department.

Gary Maynard has served as an Associate Director of ASCA since 2013. Gary has more than 35 years of experience in prison, jail and parole and probation operations at the state level. His experience at the facility level includes institutional parole officer, case manager, case manager supervisor, and deputy warden. He has experience as warden at both medium and maximum-security institutions. He previously served as a psychologist for the federal Bureau of Prisons. He has served as director/secretary for four state correctional systems, including the states of Oklahoma, South Carolina, Iowa and most recently, Maryland.

As Secretary of the Maryland Department of Public Safety and Correctional Services, he oversaw 22 prisons, Baltimore City Booking and Detention complex, 65,000 individuals under parole/probation, a budget of \$1.2 billion and 11,000 both uniformed and civilian staff members. Upon his arrival in Maryland, Gary tackled the enormous task of overseeing the closure of the Maryland House of Correction due to safety issues. During his tenure as Secretary, he significantly raised awareness of gang violence issues by bringing together a meeting of over 50 criminal justice stakeholders. As a result of this collaboration, key information-sharing protocols were introduced leading to the identification of gang members both entering and exiting the system. He focused much of his efforts to improving safety and security, both inside the prisons as well as in the community, by identifying drug treatment, education and health care as the building blocks for inmates' ultimate success.



As a member of the Association of State Correctional Administrators since 1987, Gary has chaired the Information Sharing Committee, as well as served on the Executive Committee and acted as the Southern Directors President. Gary has been a member of the American Correctional Association since 1974. He is a past President of ACA and served as a member with ACA's Commission on Accreditation for Corrections and the Standards Committee.

GEORGE M. CAMP

George M. Camp, Co-Executive Director of the Association of State Correctional Administrators, will provide oversight of this Project. He has been engaged in several ASCA initiatives including the expansion of the Performance-Based Management System (PBMS); Reducing Racial Disparity within Corrections; Providing Training and Professional Development Opportunities for Correctional Administrators; and Developing Guidelines for the Operation of Long-Term Segregation Populations.

George has served the public sector from 1962 to 1977 in a variety of positions that included Director of the Missouri Department of Corrections; First Deputy Commissioner of the New York State Division of Criminal Justice Services; Assistant Commissioner of the New York City Department of Correction; and Associate Warden of the Federal Prison in Lompoc, California and the U.S. Penitentiary in Marion, Illinois.

He has a Bachelor's degree from Middlebury College, a Master's degree in Criminology and Corrections from Florida State University, and a Doctorate in Sociology from Yale University.

NATIONAL INSTITUTE OF CORRECTIONS

**Technical Assistance Report
Florida Department of Corrections**

15P1032

Meg Savage and Russ Savage

August 31-September 4, 2015

Table of Contents

Executive Summary	1
Background and Circumstances Leading to the Request	3
Description of the Problem.....	3
Schedule.....	3
On-Site Activities.....	4
Site Visits	5
Roster Management System.....	9
Special Assignments	10
Secondary Duty.....	12
Staffing Level Guidelines.....	14
Twelve and Eight Hour Shifts	17
Shift Relief Factor	19
Temporary Employment Authorization (TEA's)	22
Recruitment and Retention	23
Comprehensive Staffing Analysis	25
Conclusion.....	30
List of Attachments	32
DISCLAIMER.....	33

Executive Summary

In accordance with the Scope of Work provided by the National Institute of Corrections for this project, the following areas were examined through the process of interviews, document review and observation of routine activities at three locations comprising six different facilities. It is important to note that all three of these topics are closely related and have impact on one another and therefore should not be considered discretely or separately.

Evaluation of Staffing Adequacy

Consultants reviewed the staffing levels in the facilities visited as well as statewide based on document review. It is our opinion that several related issues have occurred to create systemic understaffing throughout the Florida Department of Corrections. This is the result of several converging elements.

Until 2012, the Department had operated with the traditional 8-hour shift schedule with a relief factor prescribed by the legislature. The conversion to 12-hour shifts with its commensurate reduction of positions and exacerbated by the simultaneously diminished relief factor has resulted in depletion of staffing resources throughout the department. This chronic understaffing results in facilities falling below safe staffing levels on a daily basis which in turn causes rampant overtime usage. It also causes supervisors to resort to creative scheduling which is primarily manifested in the use of Special Assignments and Secondary Duties just to maintain safe staffing levels.

Determine Appropriate Relief Factors Consistent with National Best Practices

The current relief factor for 12-hour shifts was not calculated in a manner consistent with national best practices and at face value is considerably lower than any other state agency reviewed by consultants. The national standard requires that 12-hour relief factor be calculated by taking the approved relief factor for 8 hour shifts multiplied by 3 and divided by 2. In Florida's case that would result in a 12-hour relief factor of 2.49 whereas the actual relief factor being utilized is 2.35.

Also contrary to best practices, it was found that the actual training hours were significantly under-reported as were several other categories of typical data points in a relief factor calculation to include special assignments, light duty assignments and imposed vacancy rates.

When calculated across the entire workforce, it amounts to a sizable shortfall of positions needed to staff facilities safely. Exacerbating this effect is the use of 12-hour shifts which does not in itself save money or resources, and in fact by its very nature requires maintaining 100% staffing in order to work properly.

Review of the Agency's Use of Special Assignment Allocations

In order to accomplish the myriad of unstaffed mandates imposed on the institutions over the past decade or so, institutions have stripped housing unit and compound staffing to dangerous levels, hoping that serious incidents do not occur in these locations. Unfortunately, but not surprisingly, statistics show that the number of assaults both inmate-on-inmate and inmate- on-staff has progressively increased during this time frame.

The manipulation of approved post charts through the daily utilization of thousands of man hours of Special Assignments and Secondary Duties is fully documented in the Roster Management System. A comprehensive statewide staffing analysis will reveal which of these positions should be converted to permanent posts - especially those that have been manned for years as Special Assignments. Further, the use of Secondary Duty categories should be re-examined in light of this analysis and should result in new Post Orders that include routine activities as a component of permanently established posts as opposed to Secondary Duties.

Recommendations for Moving Forward

Specific steps for the agency to move forward have been framed and are contained in the Chapter on Comprehensive Staffing Analysis and are summarized in the conclusion. This review should be considered simply a snapshot of the serious and many-faceted problems facing the Florida Department of Corrections with regard to staffing. However, there are means by which the issues can be clarified and resolved, but they will require a significant commitment of attention and resources and the fortitude to make tough decisions.

We would like to thank the Florida Department of Corrections for this opportunity to work with their dedicated professionals and appreciate the candor and enthusiasm expressed during the time spent with them.

Background and Circumstances Leading to the Request

On July 9, 2015 Florida Governor Rick Scott issued Executive Order Number 15-134 which includes the provision to review staffing at the Florida Department of Corrections. It states in part *“In the interests of improved institutional oversight and reform, I hereby direct the Secretary to engage the National Institute of Corrections and the Association of State Correctional Administrators to perform an external, independent audit and analysis of Department policies, practices, processes, needs, and performance related to staffing levels and organization. The audit and analysis shall contemplate how changing Department staffing can positively affect safety, security and inmate rehabilitation.”*¹

Description of the Problem

The National Institute of Corrections subsequently received a request to provide assistance to the Florida Department of Corrections specifically providing an evaluation of staffing adequacy, the application of appropriate relief factors consistent with national best practices and a review of the agency’s use of special assignment allocations. Technical Resource Providers Meg Savage and Russ Savage were selected to conduct the review during the week of August 31-September 4, 2015. It was agreed that the review was limited in scope and not a comprehensive or complete staffing analysis, but would provide recommendations relative to the three topics noted above through document review, interviews with key staff and site visits to three separate institutions.

Schedule

The Technical Assistance included the following elements taking place during the week of August 31-September 4, 2014:

Preparation	Review of provided documents in preparation for visit
Monday, August 31, 2015	Meeting at Central Office and briefing with key staff, data analysis, interview on staffing issues
Tuesday, September 1, 2015	Conduct site visit: Apalachee Correctional Institution East and West
Wednesday, September 2, 2015	Meet with designated staff at Central Office. Site visit at Wakulla Correctional Institution, Wakulla Annex and Wakulla Work Camp
Thursday, September 3, 2015	Site Visit: Jefferson Correctional Institution
Friday, September 4, 2015	Final document review and interview with key staff and out briefing with executive staff

¹ State of Florida Office of the Governor Executive Order Number 15-134, July 9, 2015.

On-Site Activities

Activities taking place during the site visit to the agency included;

- Review of Agency Staffing Policies
- Review of Shift Relief Factor data
- Site visits to three designated facilities
- Meet with executive staff to determine staffing issues, review post charts, observe automated staffing programs, discuss special assignment allocations, and discuss identified staffing deficiencies.

On Monday August 31, 2015 at consultants met with Secretary Julie Jones, Deputy Secretary of Institutions Ricky Dixon, Director of Institutional Operations Richard Comerford, Bureau Chief of Security Operations Wes Kirkland and Correctional Services Administrator Marie Ritter. During this meeting we were briefed as to the major issues and expectations for the project. The remainder of the day was comprised of meetings with key staff, clarification of documents already reviewed, review of additional documentation and an introduction to the function and capabilities of the Roster Management System with Marie Ritter. The team also met with Jason Hoskins to discuss the correlation of the Incident Command System and with Kristine Dougherty of the Bureau of Research & Data Analysis to obtain information on the calculation of the shift relief factor.

On Tuesday September 1, 2015 the team proceeded to Apalachee Correctional Institution and conducted an overview of operational staffing procedures, reconciling post charts with daily rosters and discussing staffing concerns with key personnel.

On Wednesday September 2, 2015 consultants met in the Central Office to update administrators on progress and request additional information from Kristine Dougherty and then proceeded to the Wakulla Correctional Institution.

Thursday September 3, 2015 was spent at the Jefferson Correctional Institution.

On Friday September 4, 2015 consultants returned to Central Office to complete the collection of analysis data and meet with representatives from Human Resources and Research. At 1:30 p.m., consultants provided an out brief to designated key staff members to include Chief of Staff Stacy Arias, Deputy Secretary of Institutions Ricky Dixon, Director of Institutional Operations Richard Comerford, Bureau Chief of Security Operations Wes Kirkland and Correctional Services Administrator Marie Ritter.

Site Visits

The site visits conducted during this review gave us insight into the actual operational practices that are mandated and tracked through the Post Charts and Master Rosters we reviewed in preparation for the project. While the time we had dedicated to the three facilities did not allow us an opportunity to conduct a full-scale staffing analysis, several issues observed deserve commentary in this report.

This review involved reconciliation between operational practices and the approved post chart and master roster, along with a review of the Special Assignments and Secondary Duty assignments in light of the request for additional post list provided by Central Office and consistent with our scope of work we visited three correctional facilities. Limited time allocated to this function eliminated the ability to conduct a full staffing analysis so in seeking the most productive use of time, a reconciliation of post charts and daily rosters to actual practices was undertaken at each location.

Each facility visit started with a meeting that included the Warden, Deputy Wardens, Chief of Security and other staff invited by the Warden. The meeting agenda included introductions, the purpose of our visit, a discussion of the mission of the facility, discussion of problems experienced by the administration relative to staffing and specific questions regarding posts that had been requested as well as the current post chart. During this meeting our questions were pointed and specific and the answers were frank and candid.

Next was a tour of the facility to include each area of the institution where correctional officers were assigned. While each building on site was not toured, prototypical housing units, confinement housing, kitchens, infirmaries and programming spaces were examined.

During the tour we specifically engaged correctional officers, sergeants, lieutenants, and captains where we found them. We asked questions about their work and assignment and discussed with each employee their duties and issues or problems that they were experiencing. Post charts were reconciled with each employee by asking their name and referring to the daily assignment sheet and their post which was located on the post chart. Finding an employee in an area where they were not originally assigned or conducting a duty that took them away from an assigned post, reconciliation was pursued with the administration or shift commander.

Specific care was taken to seek out individuals that either did not appear on the roster or post chart or were identified as special assignments officers. These individuals were for the most part visited on their posts.

Apalachee Correctional Institution East and West

ACI is comprised of two separate facilities and represented the oldest non-prototypical facility visited. Consistent adherence to the Approved Post Chart with a few minor exceptions was noted at both locations. It was noted that staff have been pulled from shift to conduct all the activities cited on the proposed additional staff listing, and in fact are being used for even more functions than are cited in the list. For instance, the STG officer is also responsible for FTO, UA, Inmate Orientation, Legal Mail and Phone Monitoring duties. It was noted at this facility that the times for shifts at this facility may cause some overtime issues in that the 12-hour shift starts at 7 a.m. and the swing shift starts at 8 a.m.

The following is a list of each of the special assignment posts that are under consideration for allocation at ACI that were reviewed during the course of the tour to include interviews with each of the incumbents available at the time of the visit.

- Colonels Clerk
- DR Investigator
- K-9 Assistant
- Infirmary
- Lock and Key officer
- Motor Pool officer
- Recruiter
- Tool officer
- STG
- Training officer
- Caustics officer

Jefferson Correctional Institution

The post chart staffing levels for the confinement units in this facility are inadequate for any type of routine activities. A standard throughout the country and in FDOC policy is that two officers must be present when a confinement door is open. The assignment of one sergeant and one officer does not allow for any routine activities in the building such as showers or recreation without the need to pull officers from other assigned areas to assist in the work. There were also a number of mental health watches underway during our visit.

The following is a list of each of the special assignment posts that are under consideration for allocation at Jefferson that were reviewed during the course of the tour to include interviews with each of the incumbents available at the time of the visit.

- Metal Detector
- ACA/PREA officer
- Caustics/clothing officer
- Paperwork Officer
- DR Coordinator
- Grievance Coordinator
- Maintenance Officer
- Motor Pool Officer
- Tool Officer
- K-9 assistant
- Recruiter

Wakulla CI, Wakulla Annex, Wakulla Work Camp

Wakulla is comprised of three separate units that share some services, making certain duties as Arsenal and Tool Control a larger, more time consuming job. They also house an academy which also regularly used a number of staff for training instructor duties.

The following is a list of each of the special assignment posts that are under consideration for allocation at Wakulla that were reviewed during the course of the tour to include interviews with each of the incumbents available at the time of the visit.

- ACA/PREA
- Caustics officer
- Security Paperwork
- Education officer
- Infirmary
- K-9 Assistant
- Laundry officer
- Maintenance officer
- Recruiter
- Tool Control

General Observations

We appreciate the candor and hospitality provided by all three facilities, and offer these observations in an effort to support the overarching need for additional resources to support their respective missions.

In all three facilities we found staff assigned to PREA, ACA, STG and Discipline. In no post chart were there any posts designated for any of these purposes. While the amount of time designated to each of these functions will differ based on size, type and mission of each facility, these are all duties that must be accomplished and should be reflected in some manner on the post charts in every facility. In most instances a capable officer from shift is pulled from yard or housing posts to accomplish these tasks, resulting in a shortage in critical areas in the facility.

While a more comprehensive statewide review will be needed to verify the equitable distribution of new positions, it is important to reiterate that we observed no postings or utilization of staff that appeared to be extraneous, superfluous or inappropriate during our visit. Further, in all facilities we observed good adherence to a standardized Daily Roster usually maintained in the main Control Room and generally consistent with the approved post chart.

That said, while our visits to the facilities did not reveal any inappropriate assignments or use of employees that we perceived as questionable or inconsistent with a normal operation, what our tour demonstrated was that a routine visit by central office staff would go a long way toward correcting and improving the use of the daily assignment roster and post chart.

We would caution that there is a possibility that we found no questionable use of staff because there are so few staff on site. In the future if there are posts added it will be key to good operations that the assignments are reviewed and post charts regularly reconciled to ensure that the infusion of resources is utilized in the areas intended from a statewide prioritization standpoint. The old adage is "past performance does not indicate future results."

Roster Management System

The Florida Department of Corrections houses 100,873 inmates in its 56 state prisons including seven private prisons. The Department employs approximately 20,965 employees, the majority of whom are Correctional Officers or Correctional Probation Officers (17,064).² The agency manages the facility staffing patterns at the central office through the utilization of a Roster Management System that requires each facility to report actual staffing patterns on a continual basis. For a number of years, this system has been relied upon to provide oversight and consistency throughout the agency to ensure compliance with staffing policies, statewide post charts and master rosters.

It was learned that in recent years, roster audits have been primarily conducted electronically based on inputs to the Roster Management System to the Central Office. After reviewing the system from the Central Office perspective and then reviewing actual practices in the facilities, it became apparent that while the principles and requirements of the system were being followed, local officials had the ability to manage adherence to the system through sophisticated interpretation of parameters in order to obtain resources needed to operate. This will be discussed in detail especially with regard to Special Assignments and Secondary Duty, and ironically, this tracking system has become so demanding and complex there are currently security resources in the facility dedicated to the tracking and input of these assignments.

We cannot overstate the importance of reinstating the practice of centralized oversight of the staffing process. Further it is imperative that on a routine basis on site visits to review actual utilization of resources be conducted. Even more importantly, there must be a viable methodology to review and approve or deny requests from the field for adjustments to post charts. In the absence of such a process it appears that wardens have staffed vital posts through ongoing use of Special Assignments and Secondary Duties. In one instance we interviewed a staff member who had been filling a special assignment post for eleven years.

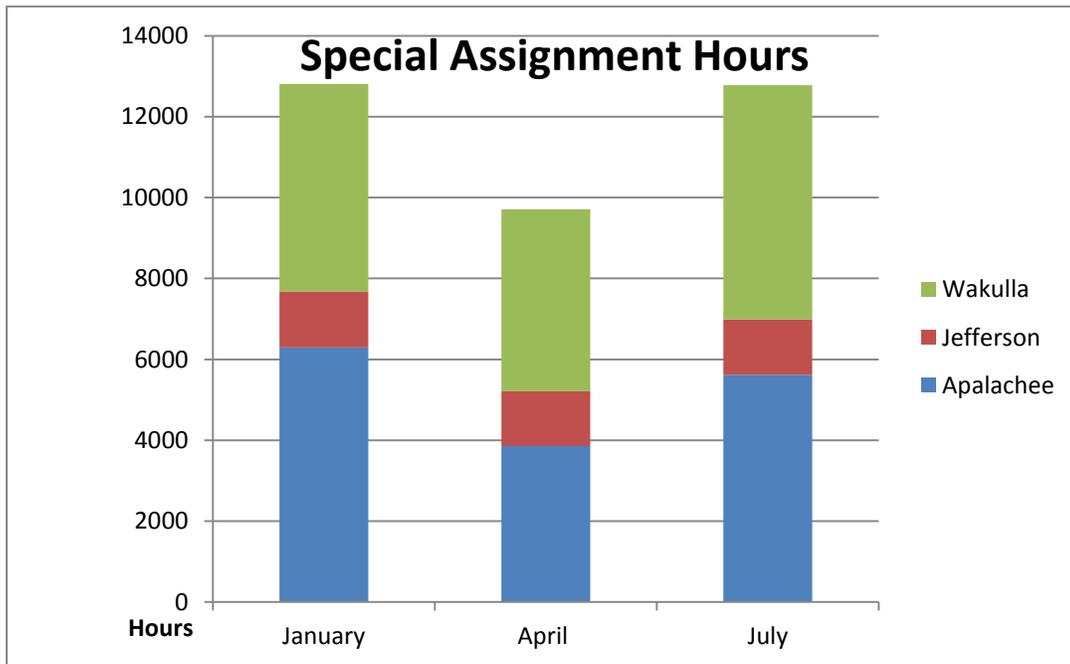
With no specific operational scrutiny of the system, other than a review of whether the inputs to the system are correct to include overtime use, wardens are left to their own devices to prioritize posting decisions.

² <http://www.dc.state.fl.us/oth/Quickfacts.html>

Special Assignments

One of the most significant issues reviewed was the use of Special Assignments. Current procedures state that the term Special Assignments as “*the assignment of an officer to security duties or tasks on the daily roster for which there is no post. This assignment will be for a period of eight (8) hours for the swing and administrative shifts and twelve (12) hours for the twelve (12)-hour shifts and may continue for a period of sixty (60) days.*”³

Data provided to consultants regarding the use of Special Assignment hours is reflected on the following chart for just the facilities visited.



It is important to note that these assignments were for duties such as internal security, control rooms, perimeter, clinic, suicide watches, outside hospital duty and only cover three facilities for three months and amounts to 35291 hours. The statewide extrapolation would be considerable.

Extended Special Assignments: According to the Department’s Security Staff Utilization Procedure, the term Extended Special Assignment refers to “*the reassignment of an officer to the administrative shift to perform other security related duties or tasks for which there is no post. This assignment will be for a period of sixty (60) days to 365 days.*”⁴ A review of a compilation of statewide Extended Specialist Assignments by Parent Institutions dated from 4/1/2015 to 7/31/2015 contained 160 separate entries.

³ Florida Department of Corrections PROCEDURE NUMBER: 602.030 SECURITY STAFF UTILIZATION Rev. 6/2/2014 p.4.

⁴ Ibid. p 2.

During our site visits it was not uncommon to see a staff member on an Extended Special Assignment post doing up to five or six essential duties unassisted, not to mention the fact that the individual assigned had been pulled off an established post to fill a position that did not exist on the post chart. Another staff member we interviewed stated he had been on a Special Assignment post for eleven years and many indicated that they had been assigned for three or more years.

It is our conclusion that the use of these types of assignments occur to a far greater extent than anywhere we have seen in the dozens of states in which we have reviewed staffing patterns throughout the country. Further, it is clear that the facilities could not operate without use of these assignments just as they could not safely operate without the use of considerable amounts of overtime. The only proper way to legitimize these assignments is to add them to the post charts where it is deemed they are needed.

Request for Special Assignment Positions: The document utilized during the site visit review reflects that 615 posts are being requested for mostly eight hour Special Assignments posts. It is recommended that steps be taken to validate them as critical and make them a permanent part of the post charts.

It was noted that while some of these posts could be accomplished by civilian classifications such as ACA, COS clerk, grievances, laundry, motor pool, maintenance etc., others are posts which are obviously security posts that can legitimately be added to the post charts. However, in the absence of civilian positions, we saw no special assignments that were not validated as necessary during this cursory review. In saying that, however, it is critical that each of these posts be individually validated in the context of agency mission and individual institution needs.

Finally, it appeared that a number of the post titles used, especially for the administratively driven posts were less than specific in terms of usage. It is recommended that these titles be carefully reviewed and accurately portray the duties they would assume. Examples of titles that would correlate with the duties we saw being performed by the staff we interviewed included:

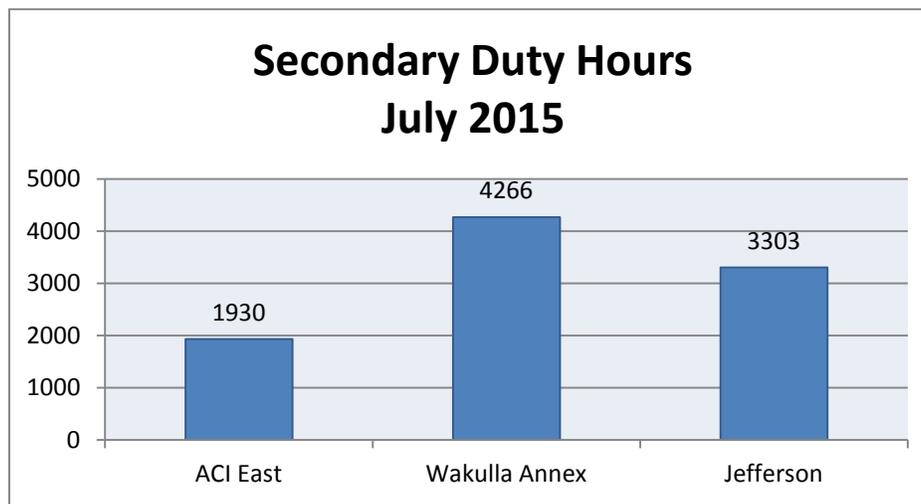
- **ACA/PREA/IBAS Coordinator-Monitor:** These duties expand and contract as PREA and ACA audits near, however, many of the duties are ongoing. Further some facilities have a larger workload than others, but these should be consolidated where feasible.
- **Supply/Clothing/Caustics Officer:** This is listed on the sheet as Caustics. All staff we interviewed in this position did several other functions throughout the course of the day which should be attributed to the post when it is created.
- **Colonel's Clerk/Investigator Discipline/Use of Force/Grievance:** In some places this was a Disciplinary Investigator/tracker, in some cases they were doing grievances, some were tracking other critical security paperwork. These duties should be evaluated and the post made consistent statewide.

Secondary Duty

The use of Secondary Duty posts in Florida is a unique phenomenon driven by the fact that there are not enough posts established at facilities to accomplish the rudimentary functions necessary in a prison, most likely as a result position cuts and an insufficient relief factor. These assignments, as opposed to Special Assignments are intended for less than a full shift, and are performed by individuals on posts reflected on the post chart pulled for other specific activities.

According to the Department procedure “When a staff member is used to perform a security duty not related to her/his post assignment for a period of one-half (1/2) hour to less than eight (8) hours or twelve (12) hours, it will be recorded in the section titled “secondary duties”⁵

Below is a chart of Secondary Duty assignments for the month of August 2015.



As an example of the breakdown categories used, Apalachee Correctional Institution East attributed hours to duties such as Perimeter, Searches, Canteen Supervision, Chapel Security, and Dorm Search, with the majority of hours attributed to:

- Escort (408 Hours)
- Mess Hall Supervision (345 Hours)
- Post Coverage (325 hours)
- Roving Perimeter (142 hours)
- Wellness Security (124 hours)

⁵ Florida Department of Corrections PROCEDURE NUMBER: 602.030 SECURITY STAFF UTILIZATION Rev. 6/2/2014 p.6.

None of these assignments, taken in conjunction with existing approved staffing levels were seen to be excessive or superfluous. In fact, the majority of the Secondary Duty posts observed being utilized in the facilities we visited was for vital functions on any prison yard. These categories are all essential to the daily operation of a prison, such as Mess Hall Supervision which is a duty required every day three times a day. In Florida, one of the dorm officers leaves the building and escorts the inmates to the mess hall and remains there while they eat, escorting them back to the dorm.

This is not an unusual methodology, and in some prisons this assignment is accomplished by utility or escort officers reporting to the mess hall during meal times. The question raised here is why it is being identified and recorded as a secondary duty rather than just captured in the post orders as a function for one of the housing unit or escort posts.

The answer may well be that the facilities are generally operating on such bare bones staffing levels that many of the posts normally used for these functions do not still exist in the staffing patterns and just completing these basic operational tasks is bringing the housing unit and compound areas of the facility to critical operating levels.

We suspect that the recording of these secondary duties as such, as opposed to just including them in a standing post order is a method to document these shortfalls in the event an incident occurs and a question arises as to why the facility was pulling staff from critical posts.

It is recommended that once sufficient staffing levels become available that the duties be incorporated into an appropriate post order and the recording of secondary duties becomes unnecessary.

Staffing Level Guidelines

Florida uses levels 1 through 3 to determine staffing priority. The levels match approximately the national standard of levels as listed:

Florida Department of Corrections	NIC Prison Staffing Manual
<p>Level I Critical: The minimum number of security staff required to operate an institution in a restricted mode. At this level only inmate movement necessary to facilitate basic facility operations should occur. Programs or activities that require security staff for supervision may be temporarily suspended. Mandatory services necessary to maintain facility operations and to provide for basic inmate population needs, i.e., meals, medical attention, etc., will be accommodated. Off-post utilization of critical positions is limited to brief periods for such functions as supervising meals, emergency escorts/response, etc. Operation at this level should extend for no longer than one continuous week. Overtime authorization is valid to insure this critical level of staff is on duty at all times. These are the first priority posts filled on each shift.</p>	<p>Mandatory/critical complement (cannot be left unfilled without jeopardizing safety and security) A post/job that is critical to maintaining safety or security or to accomplishing mandated activities/operations of a facility. Designation of the priority the post carries in staffing the facility on a given shift.</p>
<p>Level II Essential: The level of staffing required to maintain those activities and inmate services associated with minimal normal operations. Programs and industrial activity may take place although it may be scaled down from full operation if necessary. Operating at this level is less than ideal and should not be extended for longer than one continuous month. These are the second level posts to be filled on each shift. In the absence of available Level III - important level post officers, these officers may be pulled to accommodate special assignments, i.e., medical trips, vehicle and/or visitor escort, etc., from the lower priority posts within this level. These posts are pulled, if necessary, to ensure all Level I - critical posts are filled.</p>	<p>Essential (needed for normal operations but may be temporarily interrupted without significant impact; recommended for staffing at least 75 percent of the time). Example: visiting room. A post that is required for normal facility operations and activities but that may be temporarily interrupted without significant impact (e.g., visiting room). Designation of the priority the post carries in staffing the facility on a given shift.</p>
<p>Level III Important: The level of staffing that allows for full delivery of services, programs, and facility operation. The time frame is unlimited, and the staffing would allow for maximum facility operation. Overtime consideration is not authorized to obtain this staffing level. These are the third priority posts to be filled and may be pulled as necessary to accommodate special assignments required for facility operation, i.e., visiting, escorts, medical transports, etc., or to ensure Level II - essential and Level I - critical posts are filled.⁶</p>	<p>Important (coverage on an irregular basis does not adversely affect facility operations; recommended for staffing at least 50 percent of the time). Example: second officer in a dormitory, fifth officer in mess hall during peak hour(s). A post which, when opened, serves an important purpose, but whose duties are not critical/essential for normal facility operations and for which coverage on an irregular basis does not adversely affect facility operations and activities.⁷</p>

⁶ Florida Department of Corrections, STAFFING LEVEL DEFINITIONS, 2015

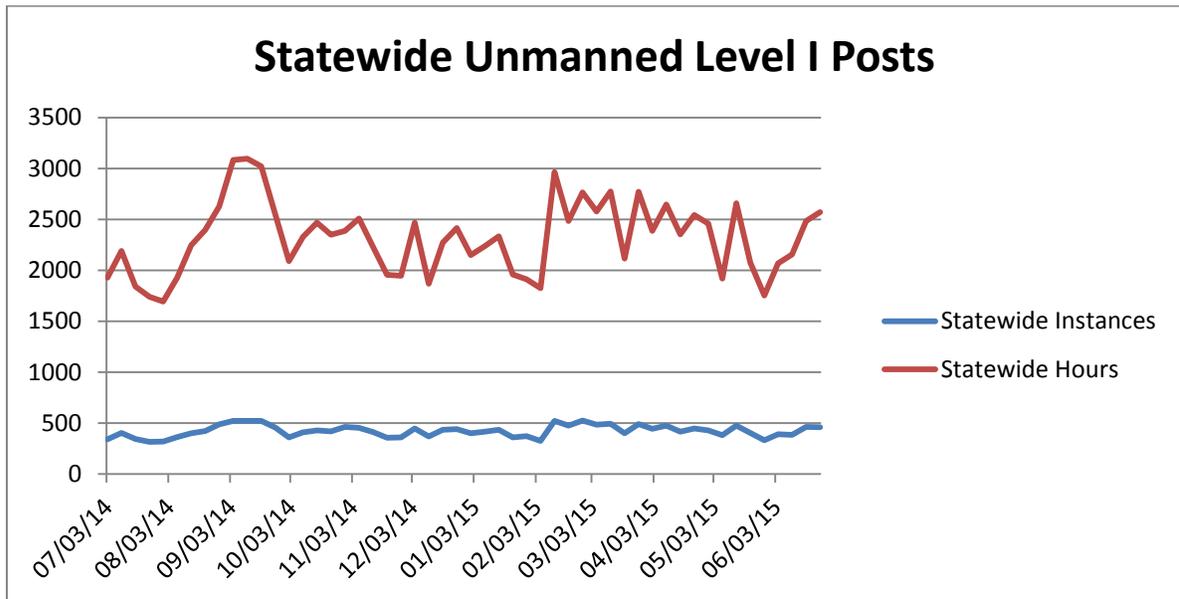
⁷ Camille Graham Camp, "Prison Staffing Analysis: A Training Manual," U.S. Department of Justice National Institute of Corrections, December 2008.

Using the definition prescribed in these levels, it is clear that operating at Level I requires limited activity and minimal or emergency services only. The concept would be the level of activity normally allowed at 2 a.m. when all inmates are locked down and movement is for emergency circumstances only.

In current practice, Florida Level I staffing allows for all routine activities including education, recreation and yard movement contrary to their own definition that “operating at Level I may include limiting certain activities such as recreation or work squads.” As such, it is clear that operating even at the level defined by Florida is risky, considering that the department actually allows what can only be called “normal operations” while in a Level I staffing status is potentially dangerous.

According to the policy, “Under no circumstances will a shift begin below Level I staffing or be allowed to go below this level except in emergencies.”⁸ Therefore, falling below Level I is an emergency and should theoretically be addressed as an emergency. However, current practice is that when the facility falls below Level I, the only additional action taken is to submit a weekly report rather than curtail any activities.

And facilities fall below Level I routinely as shown in the chart below. The number of times that institutions have reported being below Level I staffing between July 3, 2014 and June 25, 2015 was reported 21,986 times for a total of 120,572 hours.⁹



The Florida Department of Corrections facilities currently attempt to staff the facilities at least to Level I, but obviously oftentimes cannot accomplish that goal. The department defines falling below Level I staffing as presenting a danger to the public, staff and

⁸ Florida Department of Corrections PROCEDURE NUMBER: 602.030 SECURITY STAFF UTILIZATION Rev. 6/2/2014 p.9.

⁹ Unmanned Level I FY14-15, Florida Department of Corrections 2015

inmates. Further, the requirement for activation of the Incident Command System for Corrections practiced by the Florida Department of Corrections is for any instance that is outside the normal and routine that requires additional resources.¹⁰

Falling below Level I staffing for corrections is the definition of emergency and always results because additional resources are needed and therefore it is our recommendation that the Florida Department of Corrections takes immediate action when the staffing levels below what Florida defines as Level I by activating and using Incident Command until the staffing emergency passes.

The rationale for this viewpoint is as follows. Careful effort is made to establish the Level I staffing compliment within each facility, and then the agency makes it clear that operating under Level I creates a danger to the public, staff and inmates. It follows that operating an institution at Level I staffing without taking significant measures to correct the deficiency, even for a very short period of time is a risk management crisis. Any significant incident occurring when the facility is below Level I may offer up the agency to significant liability since in virtually any critical incident (riots, escapes, murders etc.) the first inquiry is if the facility was adequately staffed

Activating Incident Command will not only validate the seriousness of the emergency caused by falling below Level I staffing it will also assist the department in obtaining resources. Each facility has employees that have committed to respond during emergencies and who will be able and willing to respond during staffing emergencies. Further, inmates who would take advantage of understaffing emergencies to commit crime or riot can be better managed and controlled by the one site employees under the Incident Command structure.

¹⁰ *Preventing and Managing Riots and Disturbances Using the Incident Command System for Corrections*, Meg Savage, Russ Savage, Eugene Atherton; American Correctional Association 2014.

Twelve and Eight Hour Shifts

There are many state correctional agencies that have either partially or wholesale converted to twelve hour shifts over the past decade. Many have made do and improvised to make the 12-hour shift marginally successful, but many agencies have abandoned the practice or dispensed with it after an unsuccessful pilot. Most found that while younger officers tend to like the shift older officers and administration would far prefer eight hour shifts because of the difficulty in successfully managing proper shift coverage. As a result, we are unable to provide a single example of an unqualified successful transition to 12- hour shifts within state correctional agencies nationally.

An example of these complexities is described in the hesitation to expand a 12-hour shift pilot being conducted at the Prairie du Chien Correctional Institution last year in Wisconsin's Department of Corrections:

“State corrections officials have put on hold for now a proposal to make prison officers work 12-hour shifts at a second facility. A Department of Corrections study last year determined more than \$950,000 a year could be saved at Waupun Correctional Institution by moving to 12-hour shifts. But the analysis noted that would happen only if all security positions were filled. State prisons, however, often face significant staff shortages that result in increased overtime. In practice, the effects of the longer shifts on the budget remain unclear. Compared with the same five-month period in 2013, overtime costs this year are up \$90,000 at Prairie du Chien.”¹¹

One state with a long history of using 12-hour shifts is South Carolina. Notwithstanding riots that have been directly attributed to too few staff (Lee Correctional Institution) and a special assignment pay increase this fiscal year intended to address vacancies, South Carolina has one advantage over Florida in that their relief factor is 2.97 for a 12-hour post.¹²

Comparing this relief factor to Florida, using the Department's procedure on shift relief factors, a "sample facility" calculation for 77 posts results in 181 officers needed using the 2.35 shift relief factor. When using the South Carolina relief factor of 2.97, the needed officers would be 229 - a difference of 48 officers. This kind of infusion of staff in Florida would certainly remedy staffing issues, but is not realistic when extrapolated to a statewide increase in FTE's.¹³

The simple truth about 12-hour shifts in state correctional facilities is that they do not save money, they encourage vacancies and they are never adequately operated because of the constant and sometimes extreme vacancies rates that corrections experiences.

¹¹ Milwaukee-Wisconsin Journal Sentinel, "Wisconsin corrections officials stall plan to expand 12-hour prison shifts," Patrick Marley, Sept. 3, 2014

¹² South Carolina Department of Corrections, Correctional Officer Positions, Shift Relief Factors, Rev. 1-14-14.

¹³ Florida Department of Corrections PROCEDURE NUMBER: 602.030 SECURITY STAFF UTILIZATION Rev. 6/2/2014 p.9.

Added to this mix is the reality that prisons operate on a 16 hour day, not a 12-hour one. There is a different level of staffing needed for overnight and a lower number of staff needed for weekends and holidays. The 12-hour shift just does not fit the typical activities schedule in a prison and that is why private corrections hires part timers, and why Florida has added the 8-hour AM and PM “swing” shifts. These posts were intended to supplement the 12-hour shifts during the hours of higher activity based on the reality that 12-hour shifts do not adequately staff “business hours.”

The result operationally, however is that these posts are being cannibalized to ensure minimal staffing levels for the 12-hour shifts rather than their designations on the post chart. Further, since these are eight hour shifts, they are the ones most heavily relied upon for overtime since they can work doubles and still remain within guidelines.

There are other operational issues with 12-hour shifts. Varying shift times result in about half of the assigned staff having no clear connection to a specific supervisor. This has been addressed by making assignments to supervisors on 12-hour shifts but the eight hour swing (am and pm) are often interacting with and being given assignments by several different supervisors.

Elimination of briefing time is also a serious problem, but with 12-hour shifts this problem is magnified. An officer working 12-hour shifts can take two days off and enjoy seven consecutive days off. When taking time off is paired with training or special assignments the returning employee has a serious lack of awareness about incidents or activities that have transpired. This deficit can be compounded by taking multiple days off during a month resulting in employees that are dangerously unaware of critical information that is needed for them to conduct their duties.

The final word on the matter comes from the NIC Prison Staffing Analysis Manual:

“Many jurisdictions have adopted two 12-hour shifts with varying degrees of success and satisfaction. Although it may initially appear that fewer staff are needed to provide coverage, this is not true. Whether deploying staff for 8- or 12-hour shifts, the same number of staff hours is needed for complete coverage. A 12-hour shift configuration may seem less demanding because staff are scheduled for fewer shifts, but the overall math—and corresponding costs—will not change.

Some jurisdictions moved to 12-hour shifts in response to chronic problems with scheduling staff for 8-hour shifts. Shortages prompted mandatory assignment of staff to extra shifts, often resulting in a 16-hour workday when a staff member was required to work two consecutive shifts. Staff often support 12-hour shifts because they eliminate the option of working two consecutive shifts. When considering 12-hour shifts, administrators must weigh all of the issues and should involve staff in the decision-making process.”¹⁴

¹⁴ Camille Graham Camp, “Prison Staffing Analysis: A Training Manual,” U.S. Department of Justice National Institute of Corrections, December 2008, p. 86

Shift Relief Factor

When the department converted from eight to 12-hour shift several years ago, the change corresponded with a loss of approximately 700 positions throughout the state.¹⁵ At that time post charts were changed accordingly and the relief factor was recalculated to correspond with 12-hour shifts.

The computation of the relief factor is contained in the Florida Administrative Code and states:

“33-602.602 Relief Factor for Staffing Security Posts.

The formula contained in this section will generate a “relief factor” which is to be used in the department’s budgets and operations to determine the number of correctional officer positions needed to staff approved security posts.

(1) The formula is: the workdays required annually to staff a security post divided by the workdays available annually per correctional officer equals the “relief factor”.

(2) The formula’s components are:

(a) The workdays required annually to staff a security post 5 days per week total 261 days;

(b) The workdays required annually to staff a security post 7 days per week total 365 days;

(c) The workdays available annually per correctional officer are 365 days, less 104 normal days off, less authorized holidays, and less the average leave and training days used by correctional officers during the preceding year.”¹⁶

The calculation methodology described above is consistent with national best practices and principles contained in the National Institute of Corrections Manual on Prison Staffing Analysis used as the foundation for this review. Based on the manual, the method to calculate 12-hour shifts is to multiply the relief factor for 8 hour shifts by three and divide by 2.

According to Florida Department of Corrections Procedure 602.030,

“The current funded relief factor for major institutions is 0.660 for eight (8) hour shifts and 1.35 for twelve (12) hour shifts. The current funded work release center relief factor is 0.573. For example, a correctional institution’s approved post chart indicates a need for seventy-seven (77), seven (7)-day, Correctional Officer posts. The resulting equation is $0.660 \times 77 = 50.8$ (rounded to 51) relief positions needed. Therefore, $51 + 77 = 128$ total positions are needed to staff the posts. The equation for twelve (12)-hour shifts would be $1.35 \times 77 = 103.95$ (rounded to 104) relief positions needed. Therefore, $104 + 77 = 181$ total positions needed.”¹⁷

¹⁵ Twelve Hour Post Savings Phases A through D Plus Pilot Institutions.

¹⁶ Rulemaking Authority 944.09 FS. Law Implemented 944.09 FS. History—New 4-29-86, Amended 6-19-90, Formerly 33-4.008, Formerly 33-208.201.

¹⁷ Florida Department of Corrections PROCEDURE NUMBER: 602.030 SECURITY STAFF UTILIZATION Rev. 6/2/2014 p.9.

This calculation is inconsistent with the national model as cited in the Prison Staffing Analysis Manual which requires that the 12-hour relief factor be calculated by taking the approved relief factor for 8 hour shifts multiplied by 3 and divided by 2. In Florida's case, there is no corresponding mathematical relationship between the relief factor for 8-hour and 12-hour shifts.¹⁸

Even more important, it appears in reviewing the data inputs for the existing relief calculation, critical categories of time away from post were not included.

According to the Prison Staffing Analysis Manual, "*Many agencies that determine averages of the actual utilization of leave when calculating the average number of days staff are available to work make the mistake of limiting their data to leave specified by policy (e.g., vacation and sick, military, and bereavement leave), thereby overlooking the types of absences over and above the leave normally taken. In Staffing Analysis Workbook for Jails, Liebert and Miller remind the analyst of other categories of time off that should be taken into account:*

- ***Preservice and in-service training time.***
- *Long-term medical disability.*
- *Provisions of the Family and Medical Leave Act of 1993.*
- ***Light-duty assignments required for injured staff.***
- *Leave without pay.*
- ***Time away from the job while on special assignment.***
- ***Time needed to fill a vacancy.***
- *Jury duty.*
- *Workers' compensation time off.*
- *Use of compensatory (comp) time.*
- *Unexcused absences.*¹⁹

The highlighted areas above are categories not currently used in the Florida calculation, and could result in a significantly different relief factor should they be considered. These categories include:

- Correctional Officer Academy
- New Employee Orientation
- Outside Hospital Assignments
- Non-Contact Assignments
- Loans and Special Assignments

Below is an example of the impact of including some of these elements in the relief factor as calculated by Kristine Dougherty of the Department's Bureau of Research & Data Analysis.

¹⁸ Camille Graham Camp, "Prison Staffing Analysis: A Training Manual," U.S. Department of Justice National Institute of Corrections, December 2008. Page

¹⁹ Dennis R. Liebert and Rod Miller, *Staffing Analysis Workbook for Jails*, 2d ed. (Washington, DC)

Leave and Training Hours Used per Correctional Officer During FY2014-15			
Average Leave Days Used	14-15 Shift Days	12 Hr Shift Days	14-15 8 hr Shift days
Annual		5.42	8.12
Sick Leave		6.67	10.01
Compensatory Leave		4.11	6.16
Administrative Leave (including Military Leave)		1.58	2.37
Disability Leave		0.40	0.60
General Leave without Pay		1.93	2.89
Holiday Leave-actual		7.59	11.39
Academy (from eTrain)		4.33	6.50
NEO (from eTrain)		0.86	1.29
Other training (from eTrain)		3.33	5.00
Hospital OT Hrs (8374 annual hours)		0.05	0.07
Staff assigned to no contact (70 people avg per day)		1.10	1.65
Loans and special assignments (145 avg per day)		2.28	3.42
<i>Total Leave, Other, and Training Days Used</i>		<i>39.65</i>	<i>59.47</i>
Work hours/days available			
365 days in a year		365	365
less scheduled days off		182.5	104
less average leave and training days used		39.65	59.47
total work days available		142.85	201.53
Relief Factor			
Annual Staffing for each 7-day post			
365 work days required/ workdays or hours available		2.56	1.81
alternate NIC calculation for 12 hour (8*3)/2		2.72	
Annual Staffing for each 5-day post			
261 workdays required/workdays available			1.30

Other potential categories that could be included in the relief factor as they consist of time away from or limitations on assignment to any given post include:

- Additional In-Service and Specialty Training to include CERT and K-9
- Alternate Duty
- Vacancy Lapse Time and Imposed Vacancy Rates
- Instructor Time for Academy and In Service Training
- Suicide and Mental Health Watches

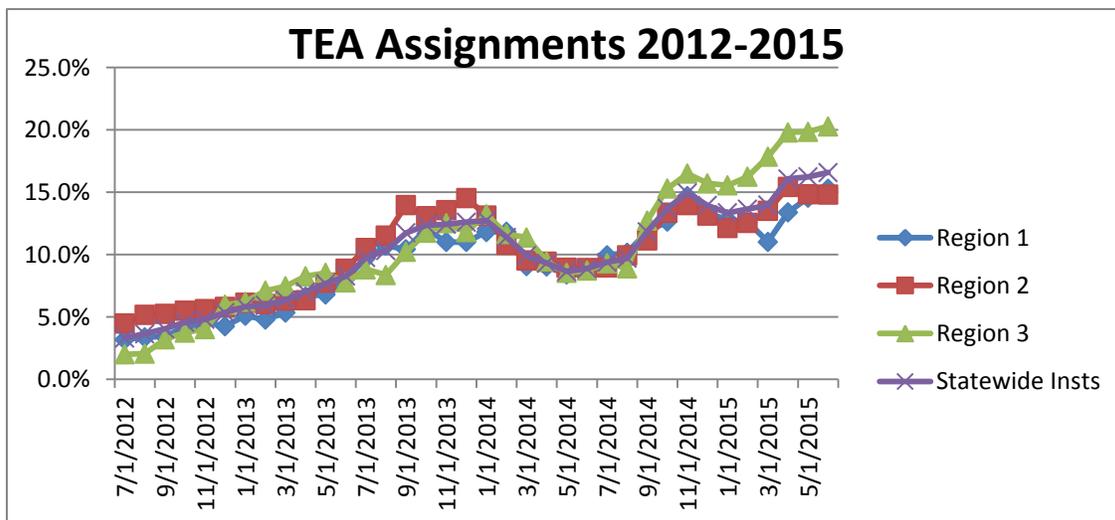
Temporary Employment Authorization (TEA's)

Newly hired correctional officers are permitted to work in some posts throughout the facility. While this is considered helpful in getting new recruits on the job as quickly as possible, it does not necessarily offer a full time position fully available to work any post.

As stated in policy: “WORK RESTRICTIONS: An officer in TEA status will not be permitted to perform the duties of an officer unless supervised by another individual who holds the rank of at least Correctional Officer in an institution or Correctional Probation Officer in a probation office. Correctional Officers in TEA status in an institution will not be placed in the following posts/assignments under any circumstances:

- tower/vehicle/stationary perimeter posts;
- vehicular gates (may assist in searches of in-coming work squads under the supervision of a certified uniformed employee of at least the rank of Correctional Officer);
- outside work squads (public work squads, Department of Transportation work squads, institutional work squads);
- outside inmate transport/medical escort;
- medical isolation/self-harm observation status;
- special housing units;
- canine; or
- death row. ²⁰

Whether or not these designations should be included in the relief factor is offered for consideration, however the impact of having personnel not fully able to assume a number of posts certainly skews the apparent number of staff available. This is not an insignificant number especially in some regions. As of May 1, 2015, the number of officers in this category statewide was 16.6%, and in Region 3 was over 20%.²¹



²⁰ Florida Department of Corrections PROCEDURE NUMBER: 208.016 PROCEDURE TITLE: OFFICERS IN TEMPORARY EMPLOYMENT AUTHORIZATION (TEA) STATUS October 8, 2014

²¹ Trainees 3FY, Florida Department of Corrections

Recruitment and Retention

Beyond the direct impact that failing to fill vacant positions has on the Department and the corresponding unfavorable working conditions required to cover the vacant positions operationally, problems and delays during the recruitment process adds to the retention problem.

Candidates for correctional officer who make application begin to judge the department from the start of the process. Some of them become dissatisfied and deselect themselves by dropping out of the recruitment process. Others while equally dissatisfied with the process and how there are being treated continue the process with a mental caveat being that if the circumstances don't improve they plan to quit.

A huge problem is generated when the assumption of recruitment is that applicants for corrections officer are similar to recruits that apply to police departments. While the general umbrella of law enforcement is assumed to have a correctional component the two recruits are fundamentally different. Motivation is key in recruits in the two different occupations.

A police recruit generally has a career in mind and may well have spent substantial time and personal energy invested in becoming a police officer. A correctional officer recruit on the other hand is more likely looking for a job that can either provide immediate support or provide a needed stepping stone to another job. Because of this difference the police recruit sees delays in the hiring process as a legitimate way to ensure only the best applicants while the correctional applicant sees delays as evidence of incompetence.

Delays in the Hiring Process: The time the Department requires from the submission of application to the first day on the job is, according to recruiters interviewed, a minimum of 60 days up to four months. This is far too long for the process and ways must be found to drastically reduce the amount of time taken to accomplish the task. The consultants believe that the entire time from application to first day on the job should take no more than six weeks especially considering the fact that they are not waiting for an academy slot to open up to start work.

Medical Test Reviews: The department needs to establish a single threshold for medical tests where the medical vendor only provides testing results. There is no need for a doctor conducting an exam to insert personal observations of the ability of the applicant to do the job once the criteria has been established by the Department.

Communications: The use of technology should not limit the applicant. Making an applicant use a fax or requiring an e-mail simply eliminates potential candidates. Accommodations should be provided to ensure quick communication and eliminate any potential delays.

Critical Path: The new system being discussed should be focused primarily on insuring that critical path issues are moved to the front of the process. Whatever choke points are identified should be mitigated or eliminated.

Criminal History Checks: Making criminal history checks more realistic to the needs of the agency and less of a hunt into the past will also speed up the process and not de-incentivize applicants. This especially should be considered for honorably discharged veterans who should not be exposed to delay of hire pending criminal checks in various overseas and stateside posts.

Exit Interview information needs to be collected on as many staff as possible, and there should be a requirement that executive level institutional staff personally interview all departing employees to determine if there is potential to retain them.

Comprehensive Staffing Analysis

It is highly recommended that the agency undertake a full scale staffing analysis as prescribed in the NIC manual that is available from the NIC website at <http://nicic.gov/Library/022667>. This analysis should be conducted by a small team of experienced staff who are assigned strictly to the task and have a full time commitment to the project.

As stated in the manual, “Orchestrating an agency staffing analysis for the first time is a detailed, time-consuming process, but the effort required will serve the analysts well once the facility analyses are underway. Once a system is in place, subsequent analyses will require much less preparation time. The first step in planning is to determine the reason for conducting the analysis.”²²

Below are steps to consider for a statewide analysis in Florida:

1. Secretary Authorizes the Analysis
2. Assistant Secretary Selects Staffing Unit Leader and Analysts
3. Staffing Unit Schedules and Orchestrates Analysis
4. Training is Conducted as to Process and Instruments
5. Team and Leader Assembles Documents and Instruments
6. Team Arranges Logistics
7. Staffing Analysts Conduct Facility Work
 - a. Institutional Profile
 - b. Activities Schedule
 - c. Post Plan (worksheets)
 - d. Post Charts
8. Assistant Secretary Proposes New Relief Factor
9. Team Reconciles Statewide Reports to include New Post Charts, Consistent Titles and Post Designations and Potential Additional/Realigned Positions
10. Team Finalizes Reports and Submits to Assistant Secretary
11. Reports to Secretary for Approval of Statewide System and Relief Factor
12. Staffing Unit Monitors Staffing Implementation
13. Staffing Unit Schedules Regular On Site Evaluations

The following information describes the particulars to consider in conducting a staffing analysis including recommended instruments for use in the process.

²² Camille Graham Camp, “Prison Staffing Analysis: A Training Manual,” U.S. Department of Justice National Institute of Corrections, December 2008. p. 21.

Staffing Analysis Steps Described in Detail in NIC Staffing Manual

The Prison Staffing Analysis Process Steps described in detail in the manual include:

- Learning the Agency and Facility Factors That Influence Staffing
 - Institutional Profile Document
- Learning What Goes on Regularly in the Facility
 - Daily Activities Chart Document
- Evaluating Posts and Proposing a New Post Plan
 - Review existing rosters and reconciliation with Post Plan document provided in training
- Determining the Availability of Staff to Work
 - Calculate the Shift Relief Factor
- Performing Staffing Calculations
 - Develop Post Plans for each facility
- Development of Reports for Routine and Special Use
 - Develop Recommendations and Report Out
- Implement Recommendations and Monitor Results
 - Ongoing audits performed by Staffing Unit

The Training Manual entitled “**Prison Staffing Analysis**” was published by NIC in December 2008 and was used as a companion textbook to the classroom component of the Prison Staffing Analysis program conducted by NIC.

In summary, the manual provides a step-by-step methodology for an agency-wide staffing analysis program as:

“Prison Staffing Analysis presents achievable models for establishing a staffing function at both the agency and the facility levels. It demonstrates a thorough staffing analysis process built on sound policy and procedure and structured analytical methods. The manual also offers detailed guidelines for developing and evaluating posts and special guidelines for staffing housing units. It will serve as a substantive training tool and valuable reference for prison administrators and officials who are responsible for assessing and analyzing their facilities’ or systems’ staffing requirements.”²³

²³ Camille Graham Camp, “Prison Staffing Analysis: A Training Manual,” U.S. Department of Justice National Institute of Corrections, December 2008.

Institutional Profile Document

The main components of this instrument are:

MISSION

Mission has a significant impact on staffing. Comparing two facilities, even ones of the same custody classifications and assuming they need the same staffing is a critical error since the mission can drive staffing decisions. A solid mission will direct employees to make decisions that are consistent with the operation's goals and will serve to insure that employees are utilized in an appropriate manner. Mission also drives where employees are located within a facility. An institution with a mission of education will focus population in classrooms and on effective inmate movement, conversely, one that holds a secure population will focus on basic inmate needs such as showers and meals. The mission of an institution also is vital in providing resources to key activities such as inmates working in the community or providing information to programming staff on inmate adjustment. The mission also gives a sense of direction to staffing the prison or a location within the facility.

PHYSICAL DESIGN

Creating the institutional profile requires a comprehensive and objective look at the physical plant, security systems and inmate populations. The profile begins with generalities of the physical plant such as total acreage, date of construction and type of construction. It flows into the number, type, and use of buildings on the site. Caution should be taken to avoid having the physical layout of the plant as the sole factor dictating the staffing pattern. Security systems analysis begins at the perimeter with a thorough examination of the type of barrier, gates, electronics and human resources necessary to prevent or detect escape. The systems within the main control center are evaluated as to type, ease of use, and need for attendance by staff. Within the facility the fences, gates, locks, building access, cell or dorm doors and building control rooms are all evaluated and observed.

POPULATION CHARACTERISTICS AND PROGRAMMING

When analyzing facilities it is necessary to determine the custody level of the inmate and any local or departmental rules that govern the staffing requirements of the inmate held. Many prisons hold multiple custodies within a single perimeter cordoned off by internal fencing and scheduling. In such a case, the inmate population drives the decision to staff for each individual location that houses different custodies. For example if a facility is comprised of three identical buildings, but each building houses a different custody (Minimum – Medium – Segregation) the three buildings are not staffed the same because each population requires a different level of supervision.

- Frequency and participation in programming
- Assaults on both staff and inmates
- Gang or STG influences on the population

OPERATIONAL ISSUES

Factors relating directly to a particular institution impact on staffing such as method of inmate movement, visitation activities, feeding approach, union agreements or contracts, statutory or court-mandated requirements. The prevalence of outside work crews and the

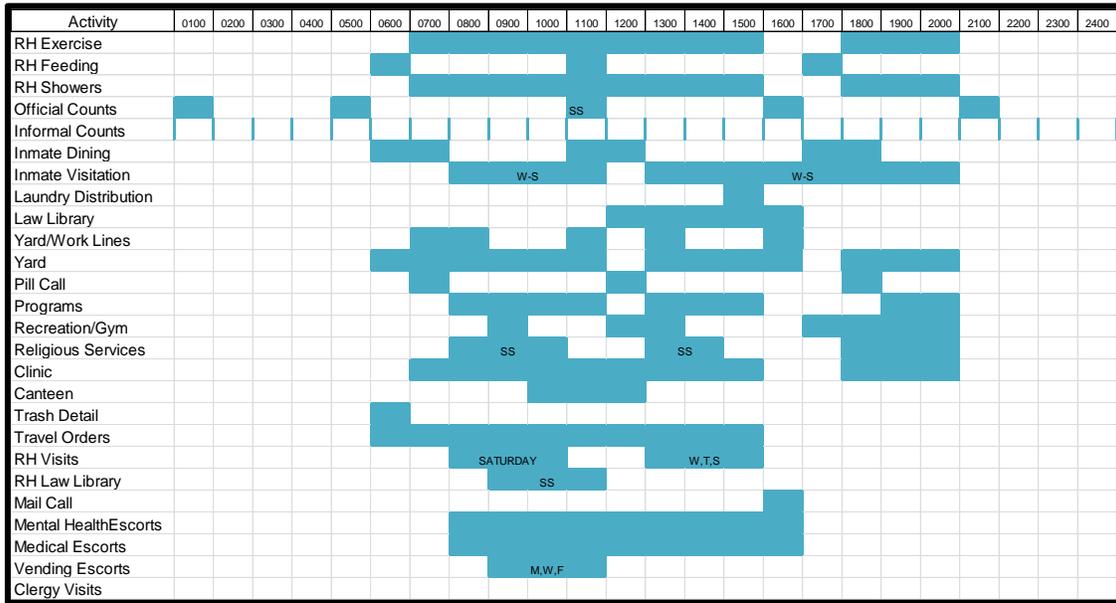
ability to employ inmates significantly affects staffing and can be politically charged. Finally, the use and availability of body alarms, intercoms, radios, cameras and other technology can affect the need for personnel in certain areas.

This instrument is entitled **Institutional Profile** and is included as Attachment 1.

Daily Activities Chart

An activities schedule displays the most important daily activities taking place at the institution at a glance. Contrary to the title, an Activities Chart is not intended to manage the daily activities of an institution. As a snap shot of the operation, it can give a view of where employees should be located twenty-four hours in the day. The activities schedule shows the impact of schedule choices on employees, and proper staff scheduling avoids the concentration of activities on a single shift or at a particular time of the day or day of the week. It may be utilized to enhance efficiency either by rescheduling activities or redeploying staff to ensure maximum resource management.

An example of a completed Activities Chart is provided below:



This instrument is contained in the Prison Staffing Analysis manual, is entitled **Form A**, and a custom form currently used and displayed above is included as Attachment 2.

Current and Proposed Post Plan Document

As stated in the Prison Staffing Analysis Manual, “*Post planning is tedious, detailed work. Every existing and potential post in a facility must be carefully studied for its purpose, its priority, its location, its duration per 24 hours, its effectiveness, and its efficiency. In addition, the relationships between various posts and their respective*

assigned duties must be analyzed to ensure security backup; to cover facility operations, activities, programs, and services; and to avoid unnecessary post redundancies.”²⁴

Florida has a distinct advantage in the fact that the Department currently uses the process expressed in the manual which results in a completed Post Chart. However, the manual also provides instruments that should be utilized during the staffing analysis that will act as worksheets from which the Post Charts can be analyzed and updated. These include:

- Form D. Part 1 Post Evaluation Planning Instrument: Current Post Plan**
- Form D. Part 2 Post Evaluation Planning Instrument Recommended Post Plan**
- Form E. Recommended Post Modification Form**

They are found in the manual and are enclosed as Attachment 3 and an example completed is displayed below.

Post	Attributes				Officers per Shift						Computation	
	2	3	4	5	6	10	11	12	13	14	15	16
	Function	Rank	Priority	Number of days	Split Shifts	Day Shift, 12 hours	Night shift, 12 hours	10 hour	Other	Shift relief required	Calculated Total Staff	Total staff per 24 hours
Command Posts												
Superintendent			2		1							1
Deputy Warden Security			2		2							2
Captain		CPT	2		1							1
Unit Manager			2		1							1
Lieutenant (4)			1			1	1				4.48	5
Portal Sergeant (2)			1			1						2
Shift Sergeant (4)			1			1	1				4.48	5
CERT Sergeant (1)			2		1							1
Total					6	3	2					18
Correctional Officer Posts												
Front Entry			1			1	1				4.48	
Main Control			1			1	1				4.48	
East Control			1			1	1				4.48	
West Control			1			1	1				4.48	
Perimeter Patrol			1			1	1				4.48	
A Wing Floor Officer			1			1	1				4.48	
B Wing Floor Officer			1			1	1				4.48	
C Wing Floor Officer			1			1	1				4.48	
D Wing Floor Officer			1			1	1				4.48	
E Wing Floor Officer			1			1	1				4.48	
F Wing Floor Officer			1			1	1				4.48	
A/B Escort/ Rec./ Shower			1		1						1	
B/C Escort/ Rec./ Shower			1		1						1	
D/E Escort/ Rec./ Shower			2		1						1	
E/F Escort/ Rec./ Shower			2		1						1	
D.R. Investigator			2		1						1	
Laundry			2		1						1	
Sanitation			2		1						1	
MH Multi Functional Officer			2		1						1	
MH Multi Functional Officer			2		1						1	
Security Officer			2		1						1	
CERT Officer			2		1						1	
CERT Officer			2		1						1	
CERT Officer			2		1						1	
CERT Officer			2		1						1	
Front Entry X-Ray			1			1					2.24	
OSD/Outside SMU			2		1						1	
Total Correctional Officer Posts					15	12	11				66.52	67

²⁴ Camille Graham Camp, “Prison Staffing Analysis: A Training Manual,” U.S. Department of Justice National Institute of Corrections, December 2008.

Conclusion

The Florida Department of Corrections staffing system was the original prototype for the staffing model that has become the national standard. Many of the issues raised in this document are the result of the agency deviating from its own rules and straying from the system it created. Our most fervent recommendation is that Florida returns to its leadership role in prison staffing protocols and performance. Our specific recommendations documented in the body of this report are summarized as follows:

- Commit the resources to conduct a full-scale, system-wide staffing analysis and resume on-site reconciliation of post charts.
- Return to the national method of calculating the shift relief factor and recalculate the relief factor considering all the data that accounts for employees being absent from their posts to include:
 - Correctional Officer Academy
 - New Employee Orientation
 - Outside Hospital Assignments
 - Non-Contact Assignments
 - Loans and Special Assignments
- Recognize and capture data relative to the following categories that impact the relief factor:
 - Additional In-Service and Specialty Training to include CERT and K-9
 - Alternate Duty
 - Vacancy Lapse Time and Imposed Vacancy Rates
 - Instructor Time for Academy and In Service Training
 - Suicide and Mental Health Watches
- Review the hiring process in the interest of reducing the time it takes to fill vacancies.
- Activate the Incident Command System whenever a facility falls below Level I staffing levels.
- Consider elimination of the current 4% vacancy requirement or at least calculate its impact in terms of the relief factor.
- Discontinue the practice of recording secondary duties that should be part of the functions of a post.
- Address Special assignments that have run their course and either allocate a post or eliminate them at the end of their term.
- Discontinue the use of 12-hour shifts.

The most important message goes beyond the specific issues addressed in this report and focuses on the amazing effort undertaken by the Department personnel who while dramatically understaffed continue to do the job and manage the agency.

With rapid filling of vacancies, the computation and staffing for a relief factor that reflects the real needs of the department and the ability to return to the existing rules that formed the national model, FDOC has the potential to quickly recover and continue being the example it has always been to national correctional policy.

We greatly appreciate the hospitality shown us during our visit, and are deeply impressed by the professionalism and commitment displayed by all the staff we worked with during this project.

List of Attachments

Institutional Profile	Attachment 1
Daily Activities Chart	Attachment 2
Post Planning Instruments	Attachment 3

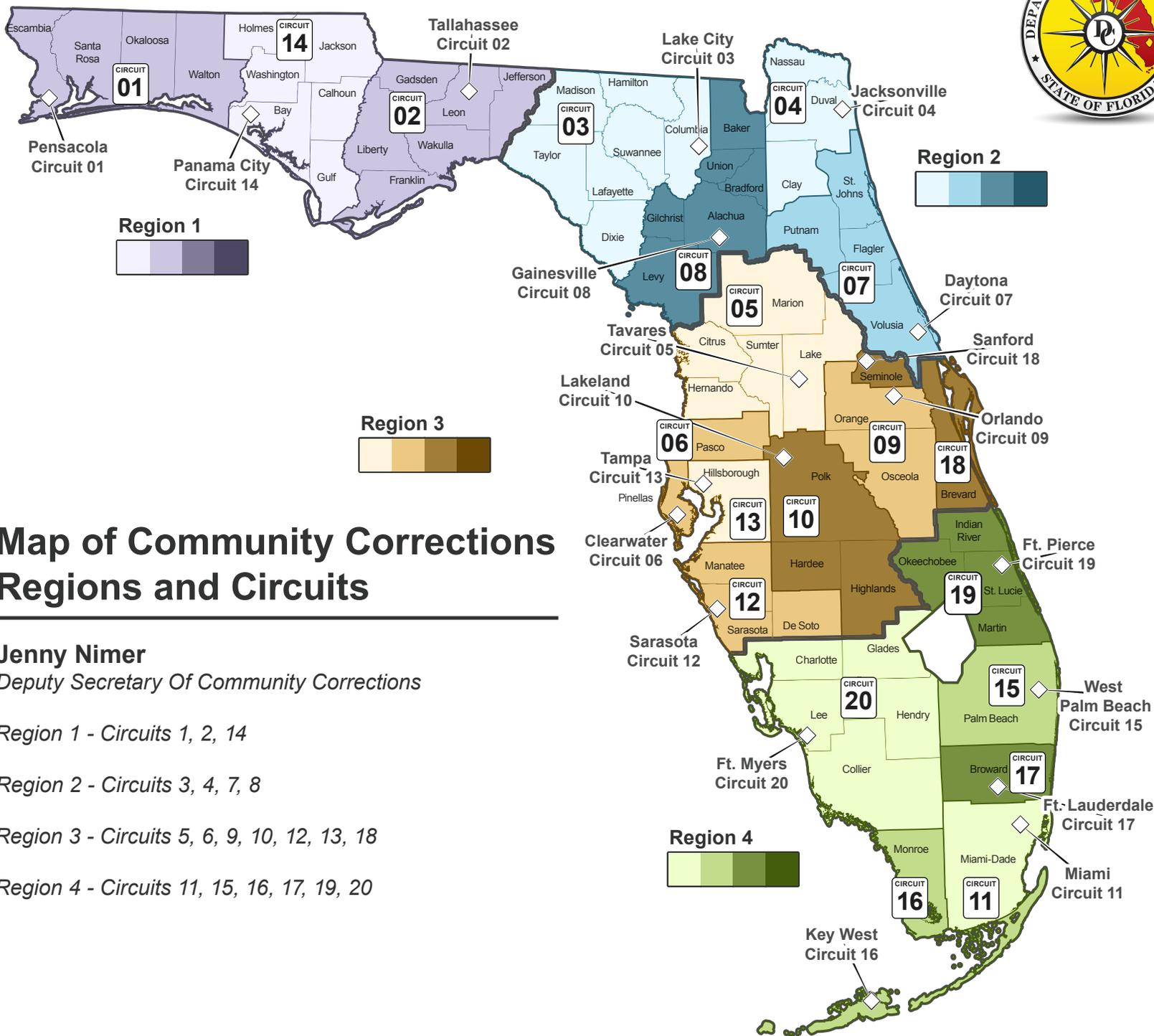
DISCLAIMER

RE: NIC Technical Assistance No. 15P51032

This technical assistance activity was funded by the Prisons Division of the National Institute of Corrections. The Institute is a Federal agency established to provide assistance to strengthen state and local correctional agencies by creating more effective, humane, safe and just correctional services.

The resource person who provided the on-site technical assistance did so through a cooperative agreement, at the request of the Florida Department of Correctional Services, and through the coordination of the National Institute of Corrections. The direct onsite assistance and the subsequent report are intended to assist the agency in addressing issues outlined in the original request and in efforts to enhance the effectiveness of the agency.

The contents of this document reflect the views of Russ Savage and Meg Savage. The contents do not necessarily reflect the official views or policies of the National Institute of Corrections.



Updated 07/2015

Map of Community Corrections Regions and Circuits

Jenny Nimer

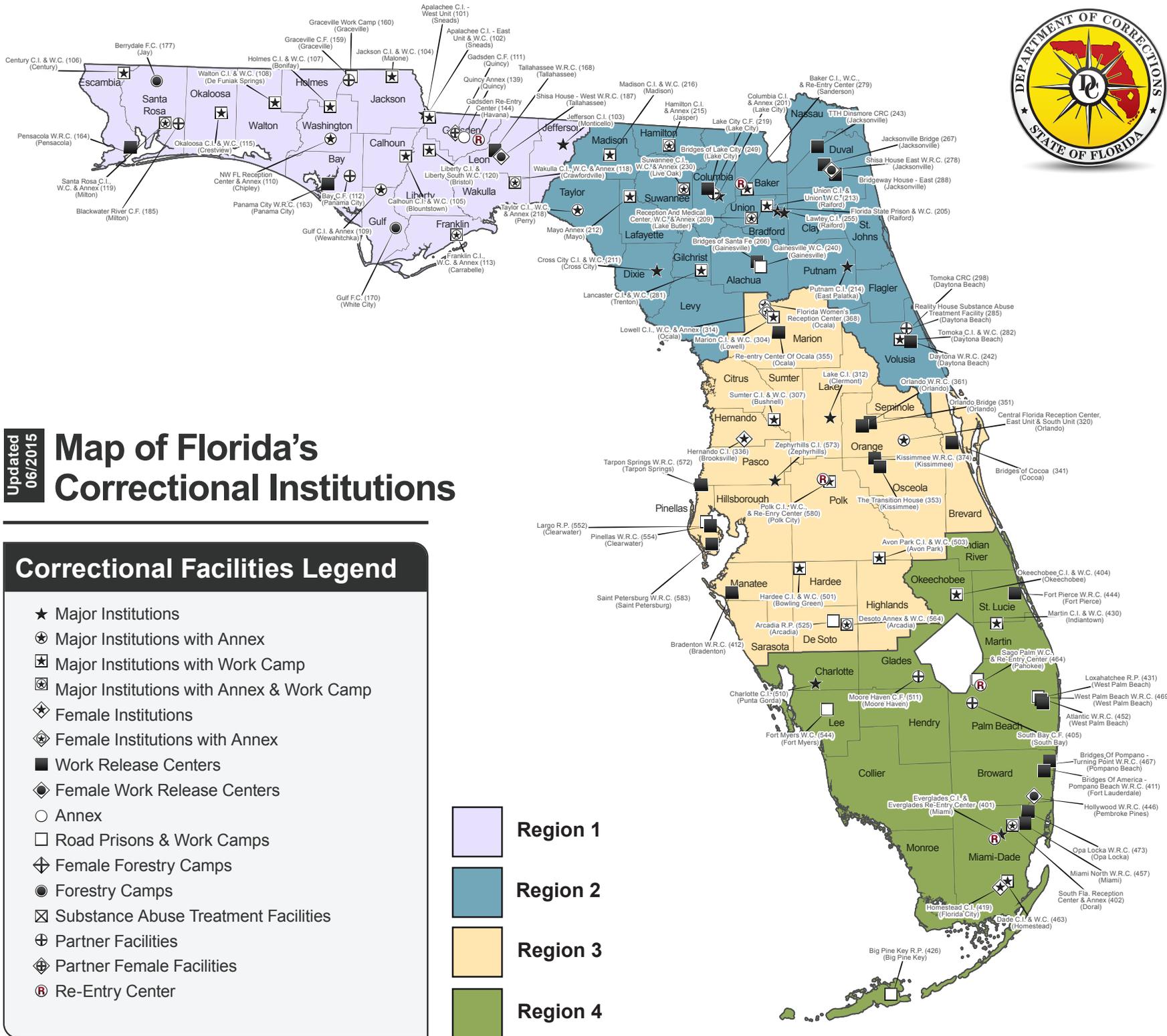
Deputy Secretary Of Community Corrections

Region 1 - Circuits 1, 2, 14

Region 2 - Circuits 3, 4, 7, 8

Region 3 - Circuits 5, 6, 9, 10, 12, 13, 18

Region 4 - Circuits 11, 15, 16, 17, 19, 20



Updated 06/2015
Map of Florida's Correctional Institutions

Correctional Facilities Legend

- ★ Major Institutions
- ⊕ Major Institutions with Annex
- ⊠ Major Institutions with Work Camp
- ⊞ Major Institutions with Annex & Work Camp
- ◆ Female Institutions
- ◆ Female Institutions with Annex
- Work Release Centers
- ◆ Female Work Release Centers
- Annex
- Road Prisons & Work Camps
- ◆ Female Forestry Camps
- Forestry Camps
- ⊠ Substance Abuse Treatment Facilities
- ⊕ Partner Facilities
- ◆ Partner Female Facilities
- Ⓡ Re-Entry Center

- Region 1
- Region 2
- Region 3
- Region 4

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10-5-15
Meeting Date

Topic Updates - Department of Corrections

Bill Number N/A
(if applicable)

Name Julie Jones

Amendment Barcode N/A
(if applicable)

Job Title Secretary

Address 501 S. Calhoun St.

Phone 850-717-3030

Tallahassee FL 32399
City State Zip

E-mail jones.julie@mail.dc.state.fl.us

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 84

INTRODUCER: Senator Joyner

SUBJECT: Controlled Substances

DATE: October 2, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.			ACJ	
3.			FP	
4.			RC	

I. Summary:

SB 84 authorizes a court to grant a defendant's motion to depart from a 3-year mandatory minimum term and mandatory fine for trafficking in cocaine, hydrocodone, oxycodone, opiates or opioids, phencyclidine, amphetamine, methamphetamine, flunitrazepam, phenethylamines, or lysergic acid diethylamide (LSD) if the court finds all of the following criteria are met:

- The defendant has not previously benefited by a departure from the mandatory minimum term and mandatory fine.
- The offense would be subject to a 3-year mandatory minimum term and mandatory fine absent a departure.
- The offense only involves possession of any of the noted controlled substances (or a mixture containing the substance) in a specified quantity.
- The offense does not involve use of a minor, a firearm, a deadly weapon, or use or the threat to use physical force against another person.
- The defendant does not have a previous conviction or withhold of adjudication for a drug trafficking violation, and does not have a previous conviction, adjudication of delinquency, or withhold of adjudication for a non-trafficking controlled substance violation, a specified sexual offense, or any other specified offense.
- The defendant is amenable to substance abuse treatment if the court determines that he or she is in need of such treatment.

The state attorney may object to the motion to depart.

II. Present Situation:

Drug Trafficking

Unlawful activities involving controlled substances (e.g., possession or sale of controlled substances) are punishable under s. 893.13, F.S. (prohibited acts involving controlled substances), and s. 893.135, F.S. (drug trafficking). “Drug trafficking” occurs when a person knowingly sells, purchases, manufactures, delivers, or brings into this state, or is knowingly in actual or constructive possession¹ of, certain controlled substances in a statutorily-specified quantity.²

Whether a person is charged with drug trafficking depends, in part, on the type of controlled substance possessed, sold, etc. Only a limited number of controlled substances are addressed in s. 893.135, F.S. Relevant to the bill, s. 893.135, F.S., punishes trafficking in cocaine, hydrocodone, oxycodone, opiates³ or opioids,⁴ phencyclidine, amphetamine, methamphetamine, flunitrazepam, phenethylamines,⁵ and lysergic acid diethylamide (LSD).

The quantity of a controlled substance must also meet a minimum weight threshold to constitute “trafficking” and s. 893.135, F.S., provides for escalating weight ranges. Most drug trafficking offenses are first degree felonies⁶ and subject to mandatory minimum terms.⁷ The mandatory minimum term applicable to a drug trafficking act depends upon which weight range is applicable to the quantity of the controlled substance possessed, sold, etc. In some cases, possession, sale, etc., of a relatively small quantity of a covered controlled substance will trigger drug trafficking penalties.

The shortest mandatory minimum term available under s. 893.135, F.S., is a 3-year mandatory minimum term. Provided below are the threshold weights that trigger drug trafficking penalties and the weight ranges applicable to a 3-year mandatory minimum term for each of the controlled substances or controlled substance categories addressed in the bill.

Statutory Reference	Covered Substance	Threshold Weight	Weight Range Applicable to Three-Year Mandatory Minimum Term
s. 893.135(1)(b), F.S.	Cocaine	28 grams	28 grams or more but less than 200 grams

¹ One important and unique feature of the drug trafficking statute is that the prosecutor is not required to prove that the possession of the controlled substance was with the intent to sell, deliver, manufacture, etc., the substance.

² See s. 893.135, F.S.

³ Examples of opiates are opium and morphine.

⁴ Examples of opioids are heroin, hydromorphone, oxycodone, and hydrocodone.

⁵ “Phenethylamines” is a broad category of “psychoactive substances.” Sanders, B., Lankenau, S.E., Bloom, J.J., and Hathazi, D., “Research chemicals’: Tryptamine and Phenethylamine Use Among High Risk Youth,” *Substance Use & Misuse* (2008), Vol. 43, No. 3-4, pages 389-402, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/> (last viewed on September 23, 2015).

⁶ A first degree felony is punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

⁷ Most drug offenses under s. 893.13, F.S., are not subject to mandatory minimum terms.

Statutory Reference	Covered Substance	Threshold Weight	Weight Range Applicable to Three-Year Mandatory Minimum Term
s. 893.135(1)(c), F.S.	Hydrocodone, oxycodone, opiates and opioids	14 grams (hydrocodone), 7 grams (oxycodone), 4 grams opiates and opioids)	14 grams or more but less than 28 grams (hydrocodone), 7 grams or more but less than 14 grams (oxycodone), 4 grams or more but less than 14 grams (opiates and opioids)
s. 893.135(1)(d), F.S.	Phencyclidine	28 grams	28 grams or more but less than 200 grams
s. 893.135(1)(f), F.S.	Amphetamines	14 grams	14 grams or more but less than 28 grams
s. 893.135(1)(g), F.S.	Flunitrazepam	4 grams	4 grams or more but less than 14 grams
s. 893.135(1)(k), F.S.	Phenethylamines	10 grams	10 grams or more but less 200 grams
s. 893.135(1)(l), F.S.	Lysergic acid diethylamide (LSD)	1 gram	1 gram or more but less than 5 grams

The Criminal Punishment Code and Mandatory Minimum Terms

The Criminal Punishment Code (“Code”)⁸ is Florida’s framework or mechanism for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Points are assigned and accrue based upon the level ranking (sentence points escalate as the level escalates) assigned to the primary offense, additional offenses, and prior offenses. Points may be added or multiplied for other factors. For example, if the primary offense is drug trafficking, the subtotal sentence points are multiplied by 1.5, at the discretion of the court, for a Level 7 or Level 8 trafficking offense.⁹

Total sentence points are entered into a mathematical calculation (specified in statute) to determine the lowest permissible prison sentence in months. The permissible sentencing range for the primary offense is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S., for the primary offense.

The Code includes a list of mitigating factors. Generally, if a mitigating factor is found by the sentencing court, the court may sentence an offender below the lowest permissible sentence (a “downward departure”). However, a mandatory minimum term is not subject to mitigation.¹⁰

⁸ Sections 921.002-921.0027, F.S.

⁹ Section 921.0024(1)(b), F.S.

¹⁰ See *State v. Vanderhoff*, 14 So. 3d 1185 (Fla. 5th DCA 2009).

Most of the mandatory minimum terms found in Florida law involve drug trafficking offenses. Mandatory minimum terms impact Code sentencing. “If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence.”¹¹

A mandatory minimum sentence may be longer than a prison sentence scored as the lowest permissible sentence under the Code. If the mandatory minimum sentence is longer than the scored lowest permissible sentence, the sentencing range is narrowed. Further, with few exceptions, the sentencing court must impose the mandatory minimum term.¹²

III. Effect of Proposed Changes:

The bill amends s. 893.135, F.S., to provide that if a defendant is convicted of a violation of this section, the defendant may make a motion to the sentencing court to depart from the 3-year mandatory minimum term of imprisonment and mandatory fine that would apply to the conviction absent a downward departure.¹³ The state attorney may file an objection to the motion.

The court may grant the motion to depart if it finds that the defendant has demonstrated by a preponderance of the evidence that all of the following criteria are met:

- The defendant has not previously moved to depart from a 3-year mandatory minimum term and mandatory fine under s. 893.135, F.S. (the drug trafficking statute).
- The defendant’s violation of s. 893.135, F.S., would be subject to a 3-year mandatory minimum term and mandatory fine absent a departure.
- The defendant’s violation of s. 893.135, F.S., involves possession of one of the following controlled substances or a mixture that contains one of the following controlled substances:
 - Not more than 34 grams of cocaine;
 - Not more than 17 grams of hydrocodone;
 - Not more than 8 grams of oxycodone;
 - Not more than 6 grams of a controlled substance opiates or opioids;
 - Not more than 34 grams of phencyclidine;
 - Not more than 17 grams of amphetamine or methamphetamine;
 - Not more than 6 grams of flunitrazepam;
 - Not more than 20 grams of a phenethylamine; or
 - Not more than 2 grams of lysergic acid diethylamide (LSD).
- The defendant did not possess the controlled substance or mixture containing the controlled substance with the intent to sell, manufacture, or deliver the substance or mixture.

¹¹ Rule 3.704(26) (“The Criminal Punishment Code”), Florida Rules of Criminal Procedure.

¹² Staff is aware of two circumstances in which a sentencing court is authorized to impose a sentence below the mandatory minimum term. The first circumstance is when the court sentences a defendant as a youthful offender. Section 958.04, F.S. *See Christian v. State*, 84 So. 3d 437 (Fla. 5th DCA 2012). The second circumstance is when the court grants a motion from the state attorney to reduce or suspend a sentence based upon substantial assistance rendered by the defendant. Section 893.135(4), F.S.

¹³ Presumably the conviction would be for a drug trafficking offense committed on or after the effective date of the bill. Article X, Section 9, of the Florida Constitution provides that “[r]epeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.” This constitutional provision operates as a savings clause to preserve laws in effect at the time of a defendant’s crime that affect prosecution or punishment. It applies to “statutes that effect a substantive change in the law.” *Castle v. State*, 305 So.2d 794, 796 (Fla. 4th DCA 1974), *affirmed*, 330 So.2d 10 (Fla. 1976).

- The defendant did not obtain the controlled substance or mixture containing the controlled substance by using a minor to obtain the substance or mixture.
- In committing the violation of s. 893.135, F.S., the defendant did not possess or threaten to use a firearm or deadly weapon, or use or threaten to use physical force against another person.
- The defendant does not have a previous conviction or withhold of adjudication for a violation of s. 893.135, F.S.
- The defendant does not have a previous conviction, adjudication of delinquency, or withhold of adjudication for:
 - A controlled substance violation under s. 893.13, F.S., that involves sale, manufacture, or delivery of a controlled substance, or the possession with intent to sell, manufacture, or deliver a controlled substance;
 - Sexual misconduct with an individual with a developmental disability;
 - Sexual misconduct with a patient;
 - Kidnapping, false imprisonment, or luring or enticing a child (if the victim is a minor and the defendant is not the victim's parent or guardian);
 - Human trafficking involving commercial sexual activity;
 - Sexual battery;
 - Unlawful sexual activity with a 16 or 17-year-old;
 - The former offense of procuring a minor for prostitution;
 - The former offense of selling or buying a minor into prostitution;
 - A lewd or lascivious offense committed against or in the presence of persons less than 16 years of age;
 - Video voyeurism (adult-on-minor or repeat violation);
 - A lewd or lascivious offense committed against or in the presence of an elderly person or disabled person;
 - Sexual performance by a child;
 - Prohibited acts in connection with obscenity;
 - Child pornography and other prohibited acts involving sexual exploitation of minors;
 - Transmission of pornography to a minor by electronic device or equipment;
 - Transmission of material harmful to minors to a minor by electronic device or equipment;
 - Selling or buying of minors;
 - Sexual misconduct with a forensic client;
 - Sexual misconduct with a juvenile offender; or
 - Any offense similar to an offense previously described which was committed in this state and which has been redesignated from a former statute number to one of the described offenses.
- The defendant is amenable to substance abuse treatment if the court determines that he or she is in need of such treatment.

The court's decision on how to dispose of the motion is completely discretionary. Therefore, the bill does not compel the court to grant the motion to depart even if the court finds that all of the criteria are met.

The effective date of the bill is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not met to review bills. A preliminary estimate of SB 84 by the Legislature's Office of Economic and Demographic Research is that SB 84 would have a negative indeterminate (unquantifiable) prison bed impact. If a bill is estimated to have "negative" impact, this means that the bill may reduce the future need for prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.135 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Joyner

19-00032-16

201684__

1 A bill to be entitled
2 An act relating to controlled substances; amending s.
3 893.135, F.S.; authorizing a defendant to move to
4 depart from the mandatory minimum term of imprisonment
5 of 3 years and from the mandatory fine for a drug
6 trafficking violation involving a specified quantity
7 of a specified controlled substance; authorizing the
8 state attorney to file an objection to the motion;
9 authorizing the sentencing court to grant the motion
10 if the court finds that the defendant has demonstrated
11 by a preponderance of the evidence that specified
12 criteria are met; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Present subsection (7) of section 893.135,
17 Florida Statutes, is redesignated as subsection (8), and a new
18 subsection (7) is added to that section, to read:

19 893.135 Trafficking; mandatory sentences; suspension or
20 reduction of sentences; conspiracy to engage in trafficking.—

21 (7) (a) A person who is convicted of a violation of this
22 section may move the sentencing court to depart from the
23 mandatory minimum term of imprisonment of 3 years and the
24 mandatory fine that would apply to the conviction absent a
25 departure. The state attorney may file an objection to the
26 motion.

27 (b) The court may grant the motion if the court finds that
28 the defendant has demonstrated by a preponderance of the
29 evidence that all of the following criteria are met:

19-00032-16

201684__

30 1. The defendant has not previously benefited by a
31 departure from the mandatory minimum term of imprisonment of 3
32 years and mandatory fine under this subsection.

33 2. The defendant's violation of this section would be
34 subject to a mandatory minimum term of 3 years and mandatory
35 fine absent a departure.

36 3. The defendant's violation of this section involves
37 possession of one of the following controlled substances or a
38 mixture that contains one of the following controlled
39 substances:

40 a. Not more than 34 grams of cocaine;

41 b. Not more than 17 grams of hydrocodone;

42 c. Not more than 8 grams of oxycodone;

43 d. Not more than 6 grams of any controlled substance as
44 described in subparagraph (1)(c)1.;

45 e. Not more than 34 grams of phencyclidine;

46 f. Not more than 17 grams of amphetamine or
47 methamphetamine;

48 g. Not more than 6 grams of flunitrazepam;

49 h. Not more than 20 grams of a Phenethylamine as described
50 in subparagraph (1)(k)1.; or

51 i. Not more than 2 grams of lysergic acid diethylamide
52 (LSD).

53 4. The defendant did not possess the controlled substance
54 or mixture containing the controlled substance with the intent
55 to sell, manufacture, or deliver the substance or mixture.

56 5. The defendant did not obtain the controlled substance or
57 mixture containing the controlled substance by using a minor to
58 obtain the substance or mixture.

19-00032-16

201684__

59 6. In committing the violation of this section, the
60 defendant did not possess or threaten to use a firearm or deadly
61 weapon, or use or threaten to use physical force against another
62 person.

63 7. The defendant does not have a previous conviction for or
64 has not had adjudication withheld for a violation of this
65 section.

66 8. The defendant does not have a previous conviction for,
67 does not have an adjudication of delinquency for, or has not had
68 adjudication withheld for a violation of s. 893.13 which
69 involved the sale, manufacture, or delivery of a controlled
70 substance or the possession with intent to sell, manufacture, or
71 deliver a controlled substance.

72 9. The defendant does not have a previous conviction for,
73 does not have an adjudication of delinquency for, or has not had
74 adjudication withheld for committing or for attempting,
75 soliciting, or conspiring to commit any of the criminal offenses
76 proscribed in the following statutes or similar offenses in
77 another jurisdiction:

78 a. Section 393.135(2);

79 b. Section 394.4593(2);

80 c. Section 787.01, s. 787.02, or s. 787.025(2)(c), if the
81 victim is a minor and the defendant is not the victim's parent
82 or guardian;

83 d. Section 787.06(3)(b), (d), (f), or (g);

84 e. Section 794.011, excluding s. 794.011(10);

85 f. Section 794.05;

86 g. Former s. 796.03;

87 h. Former s. 796.035;

19-00032-16

201684__

- 88 i. Section 800.04;
89 j. Section 810.145(8);
90 k. Section 825.1025;
91 l. Section 827.071;
92 m. Section 847.0133;
93 n. Section 847.0135, excluding s. 847.0135(6);
94 o. Section 847.0137;
95 p. Section 847.0138;
96 q. Section 847.0145;
97 r. Section 916.1075(2);
98 s. Section 985.701(1); or
99 t. Any offense similar to those listed in sub-subparagraphs
100 a.-s. which was committed in this state and which has been
101 redesignated from a former statute number to one of those listed
102 in this subparagraph.
103 10. The defendant is amenable to substance abuse treatment
104 if the court determines that he or she is in need of such
105 treatment.
106 Section 2. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

✓
COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Health Policy
Higher Education
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER

Democratic Leader
19th District

August 20, 2015

Senator Greg Evers, Chair
Senate Committee on Criminal Justice
510 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Evers:

This is to request that Senate Bill 84, Controlled Substances, be placed on the agenda for the Committee on Criminal Justice. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Arthenia L. Joyner".

Arthenia L. Joyner
State Senator, District 19

REPLY TO:

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10/5/2015
Meeting Date

84
Bill Number (if applicable)

Topic Mandatory Minimum

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone 681-0024

Street Tallahassee, FL 32301

Email jorge@flapartners.com

City Tallahassee State FL Zip 32301

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fla Assoc of Crim Defense Lawyers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

October 5, 2015

Meeting Date

84

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Hon. Julianne Holt

Job Title Public Defender, 13th Judicial Circuit

Address 700 East Twiggs St., 5th Floor

Phone 813.272.5980

Street

Tampa

Florida

33672

Email holtj@pd13.state.fl.us

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 218

INTRODUCER: Criminal Justice Committee and Senator Hutson

SUBJECT: Offenses Involving Electronic Benefits Transfer Cards

DATE: October 6, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 218 amends s. 414.39, F.S., which punishes public assistance fraud. Currently this statute, in part, punishes a person who knowingly “traffics” (or knowingly attempts to traffic or knowingly aids another person in trafficking) in a food assistance card, an authorization for the expenditure of food assistance benefits, a certificate of eligibility for medical services, or a Medicaid identification card in any manner not authorized by law.

The bill specifies acts included in the term “traffic.” The bill also punishes a person who possesses two or more electronic benefits transfer cards issued to other persons and sells or attempts to sell one or more of these cards. The first violation is a first degree misdemeanor; a second or subsequent violation is a third degree felony.

II. Present Situation:

Public Assistance Fraud

“Public assistance” refers to benefits paid for temporary cash assistance,¹ food assistance,² Medicaid,³ or optional state supplementation program.^{4 5} The Division of Public Assistance

¹ Temporary cash assistance provides cash assistance to families with children to help families become self-supporting.
² Food assistance helps low-income individuals and families buy healthy food.
³ Medicaid provides medical coverage to low-income individuals and families.
⁴ Optional state supplementation provides monthly cash payments to indigent elderly or disabled individuals.
⁵ Section 414.0252(10), F.S.

Fraud in the Department of Financial Services (DFS) is authorized to investigate public assistance fraud.⁶

Relevant to the bill, s. 414.39(2), F.S., provides that a person is subject to the criminal penalties provided in s. 414.39(5), F.S., if the person knowingly uses, transfers, acquires, *traffics*, alters, forges, or possesses a food assistance identification card, an authorization, including, but not limited to, an electronic authorization, for the expenditure of food assistance benefits, a certificate of eligibility for medical services, or a Medicaid identification card in any manner not authorized by law.⁷ Subsection (2) also provides that a person is subject to the criminal penalties provided in s. 414.39(5), F.S., if the person knowingly attempts or knowingly aids or abets another person to commit any of the previously-described acts of public assistance fraud.

Section 414.39(5), F.S., provides that:

- If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is less than an aggregate value of \$200 in any 12 consecutive months, such person commits a first degree misdemeanor;⁸
- If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more, but less than \$20,000 in any 12 consecutive months, such person commits a third degree felony;⁹
- If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$20,000 or more, but less than \$100,000 in any 12 consecutive months, such person commits a second degree felony;¹⁰ and
- If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$100,000 or more in any 12 consecutive months, such person commits a first degree felony.¹¹

⁶ Section 414.411, F.S.; “Division of Public Assistance Fraud (Retailer Food Stamp Trafficking),” Department of Financial Services, available at <http://www.myfloridacfo.com/Division/PAF/SLEB/reportRetailFraud.htm> (last viewed on September 25, 2015). “On the State level, the Division partners with the Department of Children and Families, the Agency for Health Care Administration, the Department of Health, and the Office of Early Learning to investigate fraud in programs administered by those entities. On the Federal level[,] the Division partners with the United States Department of Agriculture’s Food and Nutrition Services, the Social Security Administration, and the Department of Health and Human Services.” “Division of Public Assistance Fraud,” Department of Financial Services, available at <http://www.myfloridacfo.com/Division/PAF/> (last viewed on September 25, 2015).

⁷ Federal law also punishes public assistance fraud. *See* 7 U.S.C. sec. 2024. Further, the Florida Department of Children and Families states: “According to [7 C.F.R. sec. 273.16], persons convicted in court of trafficking more than \$500 (aggregate) in food assistance benefits are permanently disqualified from receiving food assistance (lifetime ineligibility). Recipients are permanently disqualified on a third Intentional Program Violation (IPV or “fraud”) or receiving benefits in a transaction involving a controlled substance, firearms, ammunition, or explosives.” 2016 Agency Legislative Bill Analysis (SB 218) (September 17, 2015), Florida Department of Children and Families (on file with the Senate Committee on Criminal Justice).

⁸ A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

⁹ A third degree felony is punishable by up to five years in state prison and a fine of up to \$5,000. However, if the third degree felony is not a forcible felony or a third degree felony under chapter 810, F.S., and if total sentence points are 22 points or fewer, the court must sentence the offender to a nonprison sanction unless the court makes written findings that this sanction could present a danger to the public. Sections 775.082 and 775.083, F.S.

¹⁰ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

¹¹ A first degree felony is punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

Relevant to the bill, s. 414.39(2), F.S., does not currently describe acts included in the term “traffics.”¹² The Code of Federal Regulation defines “trafficking” as:

- The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
- The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
- Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;
- Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food;
- Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or
- Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.¹³

SNAP Fraud and Electronic Benefits Transfer Card Fraud

The United States Department of Agriculture (USDA), under federal-state agreements, issues food assistance benefits to low-income individuals and households. These benefits used to be issued in the form of paper food coupons that were commonly referred to as “food stamps.” Previously these coupons were issued under the federal Food Stamp Program. This program is now called the Supplemental Nutrition Assistance Program (SNAP). SNAP benefits are “deposited into a cash or food assistance (SNAP) account each month” by the USDA. These benefits are accessed using an Electronic Benefits Transfer (EBT) card.¹⁴ In Florida this card is

¹² According to the Florida Department of Children and Families, “[c]riminal prosecution of public assistance trafficking has met some resistance from prosecutors due in part to the lack of a definition. In SFY 2014-15, 496 recipients were administratively disqualified under trafficking regulations, while only 5 were sent to a State Attorney’s Office for criminal prosecution. (Note: This number does not include local law enforcement efforts.)” 2016 Agency Legislative Bill Analysis (SB 218) (September 17, 2015), Florida Department of Children and Families (on file with the Senate Committee on Criminal Justice).

¹³ 7 C.F.R. sec. 271.2 (Definitions).

¹⁴ According to the USDA, in FY 2014, SNAP provided over \$5 billion (\$5,472,834,001) in food assistance benefits to a monthly average of 3,526,311 persons in Florida. *Supplemental Nutrition Assistance Program, State Activity Report, Fiscal Year 2014* (June 2015), Food and Nutrition Service, United States Department of Agriculture, available at <http://www.fns.usda.gov/sites/default/files/FY14%20State%20Activity%20Report.pdf> (last viewed on September 25, 2015). The Florida Department of Children and Families states: “EBT cards are produced with the name of the Head of Household – even though several family members may be on the public assistance case. There is no law prohibiting eligible clients from giving their EBT cards to someone for the purposes of obtaining those benefits for them. (Example: A grandmother may give

referred to as an EBT ACCESS card.¹⁵ The Florida Department of Children and Families (DCF) administers the EBT card program.¹⁶

“Households can use food assistance benefits to buy breads, cereals, fruits, vegetables, meats, fish, poultry, dairy and plants and seeds to grow food for ... [a] household to eat. Households cannot use food assistance benefits to buy nonfood items such as pet foods, soaps, paper products, household supplies, grooming items, alcoholic beverages, tobacco, vitamins, medicines, food to eat in the store, or hot foods.”¹⁷ “SNAP benefits ... cannot be used to withdraw cash.”¹⁸

A retailer that would like to accept SNAP benefits (EBT) must be licensed by the USDA’s Food and Nutrition Service to participate. A retailer must either sell three varieties of qualifying foods in four specified staple food groups (with perishable foods in at least two of the categories) or “more than one-half (50%) of the total dollar amount of all retail sales (food, nonfood, gas and services) sold in the store must be from the sale of eligible staple foods.”¹⁹ Florida law specifically prohibits use or acceptance of EBT cards at certain establishments that sell distilled spirits and at bottle clubs, adult entertainment establishments, casinos, and gambling and gaming facilities.²⁰

Fraudulent activity involving SNAP benefits occurs in a number of different ways:

SNAP fraud is when SNAP benefits are exchanged for cash. This is called trafficking and it is against the law.²¹

SNAP fraud also happens when someone lies on their application to get benefits or to get more benefits than they are supposed to get.

SNAP fraud also happens when a retailer has been disqualified from the program for past abuse and lies on the application to get in the program again.²²

her EBT card to her son or neighbor to get her groceries.) In some situations, an EBT card also can be issued and used by a representative on behalf of the client.” 2016 Agency Legislative Bill Analysis (SB 218) (September 17, 2015), Florida Department of Children and Families (on file with the Senate Committee on Criminal Justice).

¹⁵ “Welcome to EBT,” Florida Department of Children and Families, available at <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/welcome-ebt> (last viewed on September 25, 2015).

¹⁶ Section 402.82, F.S.

¹⁷ “What is SNAP Fraud?”, Food and Nutrition Service, United States Department of Agriculture, available at <http://www.fns.usda.gov/fraud/what-snap-fraud> (last viewed on September 25, 2015).

¹⁸ “Restrictions On Use Of Public Assistance Electronic Benefit Transfer Cards” (May 8, 2015), National Conference of State Legislatures, available at <http://www.ncsl.org/research/human-services/ebt-electronic-benefit-transfer-card-restrictions-for-public-assistance.aspx> (last viewed on September 25, 2015).

¹⁹ “Retail Store Eligibility USDA Supplemental Nutrition Assistance Program,” Food and Nutrition Service, United States Department of Agriculture, available at <http://www.fns.usda.gov/snap/retail-store-eligibility-usda-supplemental-nutrition-assistance-program> (last viewed on September 25, 2015).

²⁰ Section 402.82, F.S.

²¹ This act is also known as “cash back.” “Owner Of Lakeland Market Sentenced To Federal Prison For Food Stamp Fraud” (April 17, 2015), United States Attorney’s Office (Middle District of Florida), available at <http://www.justice.gov/usao-mdfl/pr/owner-lakeland-market-sentenced-federal-prison-food-stamp-fraud> (last viewed on September 25, 2015).

²² “What is SNAP Fraud?”, Food and Nutrition Service, United States Department of Agriculture, available at <http://www.fns.usda.gov/fraud/what-snap-fraud> (last viewed on September 25, 2015).

State and federal investigations of SNAP fraud involve fraud that occurs before and after certification of eligibility for SNAP benefits.²³ The DFS's Division of Public Assistance Fraud states that EBT card trafficking, which is a type of fraud involving SNAP benefits, occurs:

when through the use of EBT cards there is an exchange of ... [SNAP] benefits with a retail store for cash. Trafficking also includes the buying or selling of EBT cards by citizens and stores. The advent of social networking has given rise to open selling of EBT cards by advertising them on social networking sites or on public listings such as Craigslist and EBay.^{24 25}

According to the USDA, the EBT card creates an “‘audit trail’ from EBT transactions to identify trafficking and other suspicious activities.” Investigators with the USDA’s Food and Nutrition Service “analyze retailer data, conduct undercover investigations, and process case – including fines and administrative disqualifications- against violating retailers.”²⁶ The USDA “also works with State law enforcement authorities to provide them with SNAP benefits that are used in sting operations, supporting anti-trafficking actions at the local level.”

As previously noted, EBT card fraud may be prosecuted under s. 414.39, F.S. Further, according to the DCF, “EBT cards are also currently covered under the definition of ‘credit cards’ per

²³ According to the USDA, in FY 2014, fraud dollars determined by pre-certification investigations (Florida) totaled \$23,633,173 and fraud dollars determined by post-certification eligibility (Florida) totaled \$14,605,207. *Supplemental Nutrition Assistance Program, State Activity Report, Fiscal Year 2014* (June 2015), Food and Nutrition Service, United States Department of Agriculture, available at <http://www.fns.usda.gov/sites/default/files/FY14%20State%20Activity%20Report.pdf> (last viewed on September 25, 2015).

²⁴ “Division of Public Assistance Fraud (Retailer Food Stamp Trafficking),” Department of Financial Services, available at <http://www.myfloridacfo.com/Division/PAF/SLEB/reportRetailFraud.htm> (last viewed on September 25, 2015). The division further notes that SNAP trafficking is “a cash business that spawns other crimes in the community” and such trafficking supports drugs, prostitution, and illegal gambling. *Id.*

²⁵ The extent of EBT card fraud in Florida cannot be determined based on available data. Data from the USDA does not disaggregate EBT card fraud from SNAP fraud. The Division of Public Assistance Fraud in the Department of Financial Services has provided the following information regarding cases that office has handled:

In calendar year 2014, the Division of Public Assistance Fraud (PAF) completed 1,671 trafficking cases totaling \$2,613,546. The average recovery for a trafficking case is \$1,615.

However, PAF has shifted focus from EBT food stamp trafficking to fraud that is detected through data-matching processes. These are cases where PAF finds inconsistencies between wages being reported to DOR vs. what is reported to DCF - where people are fraudulently receiving benefits based on unreported income or by concealing material facts. The expense to the state is much higher in this type of fraud - so far in calendar year 2015, PAF has closed 265 cases involving eligibility totaling \$1.494 million. The average recovery per case is \$5,636.

In calendar year 2015, PAF completed an additional 15 cases for \$110,113. Trafficking investigations are still ongoing - just on a far smaller scale. When PAF has sufficient evidence the cases are elevated to the level that is appropriate for criminal prosecution. This bill will make the prosecution of trafficking much clearer and PAF will continue to work those cases to the full extent of the law.

Bill Analysis and Fiscal Impact Statement (SB 218) (September 23, 2015), Department of Financial Services (on file with the Senate Committee on Criminal Justice).

²⁶ What is SNAP Fraud?”, Food and Nutrition Service, United States Department of Agriculture, available at <http://www.fns.usda.gov/fraud/what-snap-fraud> (last viewed on September 25, 2015).

s. 817.58, F.S.”²⁷ This definition is relevant to s. 817.60, F.S., which punishes: theft by taking or retaining possession of a credit card taken; theft of a credit card that has been lost, mislaid, or delivered by mistake; the unauthorized purchase or selling of another person’s credit card; unlawfully obtaining control of a credit card as a security for debt; and dealing in other cardholders’ credit cards.

As previously noted, the DFS’s Division of Public Assistance Fraud is authorized to investigate SNAP fraud. Some of these cases may involve “allegations of clients/recipients trafficking in benefits” that are referred by the DCF to the division.²⁸ EBT card trafficking sting operations may involve multiple agencies such as the USDA and other federal agencies, local law enforcement and the Department of Law Enforcement, Florida or federal prosecutors, and the Department of Financial Services and other state agencies.

III. Effect of Proposed Changes:

The bill amends s. 414.39, F.S., which punishes public assistance fraud. Currently this statute, in part, punishes a person who knowingly “traffics” (or knowingly attempts to traffic or knowingly aids another person in trafficking) in a food assistance card, an authorization for the expenditure of food assistance benefits, a certificate of eligibility for medical services, or a Medicaid identification card in any manner not authorized by law.

The bill specifies acts included in the term “traffic.” “Traffic” includes:

- Buying, selling, stealing, or otherwise effecting an exchange of food assistance benefits issued and accessed via electronic benefits transfer (EBT) cards, electronic benefits transfer (EBT) card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
- Attempting to buy, sell, steal, or otherwise effect an exchange of food assistance benefits issued and accessed via electronic benefits transfer (EBT) cards, electronic benefits transfer (EBT) card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
- Exchanging firearms, ammunition, explosives, or controlled substances, as defined in s. 893.02, F.S., for food assistance benefits;
- Purchasing with food assistance benefits a product with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with food assistance benefits in exchange for cash or consideration other than eligible food; or
- Intentionally purchasing products originally purchased with food assistance benefits in exchange for cash or consideration other than eligible food.

²⁷ 2016 Agency Legislative Bill Analysis (SB 218) (September 17, 2015), Florida Department of Children and Families (on file with the Senate Committee on Criminal Justice).

²⁸ 2016 Agency Legislative Bill Analysis (SB 218) (September 17, 2015), Florida Department of Children and Families (on file with the Senate Committee on Criminal Justice); “Public Benefits Integrity,” Florida Department of Children and Families, <http://www.myflfamilies.com/service-programs/public-benefits-integrity> (last viewed on September 25, 2015).

The acts described in the bill are substantively similar to the acts described in the federal definition of “trafficking” in 7 C.F.R. sec. 271.2 (Code of Federal Regulations).

The bill also punishes a person who possesses two or more electronic benefits transfer cards issued to other persons and sells or attempts to sell one or more of these cards. The first violation is a first degree misdemeanor; a second or subsequent violation is a third degree felony.

The bill reenacts s. 921.0022(3)(a), F.S. (offense severity ranking chart of Criminal Punishment Code), which currently ranks offenses in s. 414.39(2), F.S., as Level 1 offenses. This reenactment incorporates the amendment to s. 414.39(2), F.S., made by the bill. Therefore, the new third degree felony for EBT card fraud (second or subsequent violation) would be a Level 1 offense.

The effective date of the bill is October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An EBT card retailer who commits the new EBT card fraud offense (created by the bill) could lose its license to accept SNAP benefits (EBT). A person receiving SNAP benefits (EBT) could be determined ineligible for further SNAP benefits if he or she commits the new EBT card fraud offense.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not met to review bills. A preliminary estimate of the bill by the Legislature’s Office of Economic and Demographic Research is that the bill will have a positive insignificant prison bed impact.

According to the Department of Financial Services, the bill will not have a fiscal impact on the department.²⁹

The Florida Department of Children and Families did not indicate that the bill will have an impact on the department.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 414.39 of the Florida Statutes.

This bill also reenacts section 921.0022(3)(a), F.S., for the purpose of incorporating the amendment made by the bill to section 414.39, F.S., in reference to that statute in section 921.0022(3)(a), F.S.

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 October 5, 2015:

- Removes mandatory community service for a violation of the new EBT card fraud offense created by the bill.
- Provides that a first violation of the new EBT card fraud offense is a first degree misdemeanor; a second or subsequent violation is a third degree felony.

B. Amendments:

None.

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

²⁹ Bill Analysis and Fiscal Impact Statement (SB 218) (September 23, 2015), Department of Financial Services (on file with the Senate Committee on Criminal Justice).

³⁰ 2016 Agency Legislative Bill Analysis (SB 218) (September 17, 2015), Florida Department of Children and Families (on file with the Senate Committee on Criminal Justice).



211176

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/05/2015	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Brandes) recommended the following:

Senate Amendment

Delete lines 64 - 67
and insert:
misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A second or subsequent violation of this paragraph constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

By Senator Hutson

6-00231-16

2016218__

1 A bill to be entitled
2 An act relating to offenses involving electronic
3 benefits transfer cards; amending s. 414.39, F.S.;
4 specifying acts that constitute trafficking in food
5 assistance benefits cards and are subject to criminal
6 penalties; providing criminal penalties; reenacting s.
7 921.0022(3)(a), F.S., relating to level 1 of the
8 offense severity ranking chart, to incorporate the
9 amendment made to s. 414.39, F.S., in a reference
10 thereto; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Subsection (2) of section 414.39, Florida
15 Statutes, is amended to read:

16 414.39 Fraud.—

17 (2) (a) Any person who knowingly:

18 1. ~~(a)~~ Uses, transfers, acquires, traffics, alters, forges,
19 or possesses;

20 2. ~~(b)~~ Attempts to use, transfer, acquire, traffic, alter,
21 forge, or possess; or

22 3. ~~(c)~~ Aids and abets another person in the use, transfer,
23 acquisition, traffic, alteration, forgery, or possession of,

24
25 a food assistance identification card, an authorization,
26 including, but not limited to, an electronic authorization, for
27 the expenditure of food assistance benefits, a certificate of
28 eligibility for medical services, or a Medicaid identification
29 card in any manner not authorized by law commits a crime and

6-00231-16

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30 shall be punished as provided in subsection (5).

31 (b) As used in this subsection, the term "traffic"
32 includes:

33 1. Buying, selling, stealing, or otherwise effecting an
34 exchange of food assistance benefits issued and accessed via
35 electronic benefits transfer (EBT) cards, electronic benefits
36 transfer (EBT) card numbers and personal identification numbers
37 (PINs), or by manual voucher and signature, for cash or
38 consideration other than eligible food, either directly,
39 indirectly, in complicity or collusion with others, or acting
40 alone;

41 2. Attempting to buy, sell, steal, or otherwise effect an
42 exchange of food assistance benefits issued and accessed via
43 electronic benefits transfer (EBT) cards, electronic benefits
44 transfer (EBT) card numbers and personal identification numbers
45 (PINs), or by manual voucher and signature, for cash or
46 consideration other than eligible food, either directly,
47 indirectly, in complicity or collusion with others, or acting
48 alone;

49 3. Exchanging firearms, ammunition, explosives, or
50 controlled substances, as defined in s. 893.02, for food
51 assistance benefits;

52 4. Purchasing with food assistance benefits a product with
53 the intent of obtaining cash or consideration other than
54 eligible food by reselling the product, and subsequently
55 intentionally reselling the product purchased with food
56 assistance benefits in exchange for cash or consideration other
57 than eligible food; or

58 5. Intentionally purchasing products originally purchased

6-00231-16

2016218__

59 with food assistance benefits in exchange for cash or
 60 consideration other than eligible food.

61 (c) Any person who has possession of two or more electronic
 62 benefits transfer (EBT) cards issued to other persons and who
 63 sells or attempts to sell one or more of these cards commits a
 64 felony of the third degree, punishable as provided in s.
 65 775.082, s. 775.083, or s. 775.084 and by a mandatory sentence
 66 of 6 months of community service with a nonprofit entity that
 67 services the community with food distribution for the needy.

68 Section 2. For the purpose of incorporating the amendment
 69 made by this act to section 414.39, Florida Statutes, in a
 70 reference thereto, paragraph (a) of subsection (3) of section
 71 921.0022, Florida Statutes, is reenacted to read:

72 921.0022 Criminal Punishment Code; offense severity ranking
 73 chart.—

74 (3) OFFENSE SEVERITY RANKING CHART

75 (a) LEVEL 1

76

Florida Statute	Felony Degree	Description
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales

77

78

79

	6-00231-16		2016218__
80			taxes, amount greater than \$300 but less than \$20,000.
	316.1935 (1)	3rd	Fleeing or attempting to elude law enforcement officer.
81			
	319.30 (5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
82			
	319.35 (1) (a)	3rd	Tamper, adjust, change, etc., an odometer.
83			
	320.26 (1) (a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
84			
	322.212 (1) (a) - (c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
85			
	322.212 (4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
86			

	6-00231-16		2016218__
87	322.212 (5) (a)	3rd	False application for driver license or identification card.
88	414.39 (2)	3rd	Unauthorized use, possession, forgery, or alteration of food assistance program, Medicaid ID, value greater than \$200.
89	414.39 (3) (a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
90	443.071 (1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
91	509.151 (1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
92	517.302 (1)	3rd	Violation of the Florida Securities and Investor Protection Act.
	562.27 (1)	3rd	Possess still or still

6-00231-16

2016218__

93			apparatus.
	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
94			
	812.014 (3) (c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
95			
	812.081 (2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
96			
	815.04 (5) (a)	3rd	Offense against intellectual property (i.e., computer programs, data).
97			
	817.52 (2)	3rd	Hiring with intent to defraud, motor vehicle services.
98			
	817.569 (2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.
99			

	6-00231-16		2016218__
100	826.01	3rd	Bigamy.
101	828.122 (3)	3rd	Fighting or baiting animals.
102	831.04 (1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
103	831.31 (1) (a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
104	832.041 (1)	3rd	Stopping payment with intent to defraud \$150 or more.
105	832.05 (2) (b) & (4) (c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
106	838.15 (2)	3rd	Commercial bribe receiving.
107	838.16	3rd	Commercial bribery.
	843.18	3rd	Fleeing by boat to elude a law enforcement officer.

6-00231-16

2016218__

108

847.011(1)(a) 3rd Sell, distribute, etc.,
obscene, lewd, etc.,
material (2nd conviction).

109

849.01 3rd Keeping gambling house.

110

849.09(1)(a)-(d) 3rd Lottery; set up, promote,
etc., or assist therein,
conduct or advertise drawing
for prizes, or dispose of
property or money by means
of lottery.

111

849.23 3rd Gambling-related machines;
"common offender" as to
property rights.

112

849.25(2) 3rd Engaging in bookmaking.

113

860.08 3rd Interfere with a railroad
signal.

114

860.13(1)(a) 3rd Operate aircraft while under
the influence.

115

893.13(2)(a)2. 3rd Purchase of cannabis.

116

893.13(6)(a) 3rd Possession of cannabis (more

6-00231-16

2016218__

than 20 grams).

117

934.03(1)(a)

3rd

Intercepts, or procures any other person to intercept, any wire or oral communication.

118

119

Section 3. This act shall take effect October 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice
Children, Families, and Elder Affairs
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Environmental Preservation and Conservation

SENATOR TRAVIS HUTSON
6th District

September 17, 2015

The Honorable Greg Evers
Chairman
Senate Committee on Criminal Justice
510 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chairman Evers:

I would like to respectfully request that my bill, SB 218 – Offenses Involving Electronic Benefits Transfer Cards, be placed on the Committee on Criminal Justice's agenda for the week of October 5, 2015.

SB 218 expands the explanation of the term "Trafficking" in 414.39 FS, to include the sale, purchase, or theft, attempted or otherwise, of Electronic Benefits Transfer (EBT) Cards. The bill includes a criminal penalty of a felony of a 3rd degree if a person is found in possession of 2 or more EBT Cards issued to another person, and who attempts to sell these cards.

Thank you in advance for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me directly.

Sincerely,


Senator Travis Hutson
District 6

REPLY TO:

4875 Palm Coast Parkway, NW, Suite 6, Palm Coast, Florida 32137 (386) 448-7610 FAX: (888) 283-3475
 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 228

INTRODUCER: Criminal Justice Committee and Senator Bean

SUBJECT: Self-Defense Protection Act

DATE: October 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.			ACJ	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 228 eliminates the minimum mandatory sentences for aggravated assault in the 10-20-Life statute by deleting aggravated assault from the list of crimes to which the law applies.¹

Under the 10-20-Life law, a person convicted of one of the specified crimes or the attempt to commit the crime must be sentenced to the following mandatory prison penalties:

- Possession of a firearm – 10 years
- Possession of a semi-automatic/machine gun – 15 years
- Discharge of a firearm (any type) – 20 years
- Discharge with great bodily injury or death – 25 years to life

Under the bill, persons who are convicted of only an aggravated assault offense will no longer qualify for the 10-20-Life penalties.

The bill deletes subsection (6) from s. 775.087, F.S. This provision was added to the 10-20-Life statute in 2014 to allow the sentencing court to deviate from the minimum mandatory sentences for crimes of aggravated assault. Because a person convicted only of aggravated assault will no longer qualify for 10-20-Life sentencing under the bill, the deleted language would have no further application in cases of aggravated assault committed after the effective date of the bill.

¹ Sections 775.087(2)(a)1. and 775.087(3)(a)1., F.S.

The bill becomes effective July 1, 2016.

II. Present Situation:

The 10-20-Life Law

The 10-20-Life law, s. 775.087, F.S., is among ten sentencing laws enacted by the 1999 Legislature after Governor Jeb Bush was elected in 1998 on a platform that included making Florida's streets safer in response to Florida's rising violent crime rate in the 1990's.² The new laws took sentencing discretion away from judges and, at the same time, discouraged elected state attorneys from plea-bargaining these cases to lesser sentences.³

10-20-Life requires a judge to sentence a person convicted of specified offenses to a minimum term of imprisonment if, while committing the offense, the person possesses or discharges a firearm or destructive device, or if the discharge of the firearm results in death or great bodily harm.⁴

Mandatory Minimum Sentencing Under 10-20-Life

Under the 10-20-Life law, a person convicted of one of the specified crimes or the attempt to commit the crime must be sentenced to the following mandatory prison penalties:

- Possession of a firearm – 10 years
- Possession of a semi-automatic/machine gun – 15 years
- Discharge of a firearm (any type) – 20 years
- Discharge with great bodily injury or death – 25 years to life

The crimes specified in s. 775.087(2)(a)1., F.S., are:

- a. Murder;
- b. Sexual battery;
- c. Robbery;
- d. Burglary;
- e. Arson;
- f. Aggravated assault;
- g. Aggravated battery;
- h. Kidnapping;
- i. Escape;
- j. Aircraft piracy;
- k. Aggravated child abuse;
- l. Aggravated abuse of an elderly person or disabled adult;
- m. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- n. Carjacking;

² Chapter 99-12, L.O.F., "Whereas" clauses.

³ *Tough Times in the Sunshine State*, Fingerhut, Scola; The Florida Bar Journal, November, 1999 Volume LXXIII, No. 10. Until 2011, when s. 27.366, F.S., was amended, 10-20-Life required state attorneys to report every potential 10-20-Life defendant whose case was not charged as a 10-20-Life case or who was not sentenced according to the minimum mandatories, to the presiding officers of the Legislature and the Governor. Current law only requires that the deviation memo be retained in the case file.

⁴ The terms "firearm" and "destructive device" are defined in accordance with s. 790.001, F.S.

- o. Home-invasion robbery;
- p. Aggravated stalking;
- q. Trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1); or
- r. Possession of a firearm by a felon.

The offense of possession of a firearm by a convicted felon does not appear in the crimes specified in s. 775.087(3)(a)1., F.S., however sale, manufacture, delivery, or intent to sell, manufacture, or deliver any controlled substance is specified therein.⁵

Since the creation of the 10-20-Life mandatory minimum sentencing law, over 14,000 inmates have been admitted to prison for offenses under this law. On June 30, 2014, there were approximately 9,500 inmates in the prison population who were sentenced under the 10-20-Life law.

Amendment to 10-20-Life Law

Section 775.087, F.S., was amended in 2014 to create an exception for sentencing in aggravated assault cases outside the 10-20-Life minimum mandatory terms of imprisonment.

The exception provides that the court shall not impose the minimum mandatory sentence if the court makes written findings that:

- (a) The defendant had a good faith belief that the aggravated assault was justifiable pursuant to chapter 776.
- (b) The aggravated assault was not committed in the course of committing another criminal offense.
- (c) The defendant does not pose a threat to public safety.
- (d) The totality of the circumstances involved in the offense do not justify the imposition of such sentence.⁶

The Use of the 10-20-Life Law in Cases Involving Self-Defense

In recent years some high-profile cases and controversy has emerged concerning the use of the 10-20-Life law when a defendant either displays or fires a gun in self-defense. Many of these cases constitute aggravated assault. Defendants who believe they acted in self-defense often

⁵ Section 775.087(3)(a)1.j., F.S.

⁶ Chapter 2014-195, L.O.F.; s. 775.087(6), F.S. Arguably it was the Marissa Alexander and Ronald Thompson 10-20-Life cases in Florida's Fourth Judicial Circuit and the George Zimmerman "Stand Your Ground"/justifiable use of force case in Sanford that began to highlight for the public the apparent incongruence in the very existence of, or perhaps the disparate application of, these two legal concepts. See "Use a Gun and You're Done: How 10-20-Life and 'Stand Your Ground' Together Have a Disparate Impact on Florida Citizens," Heller, Vol. 43, 2014, Southwestern L.R. See also Menzel, "Worst...case...ever" draws 20-year sentence, outrage, The St. Augustine Record, June 23, 2012; and <http://famm.org/ronald-thompson/>.

times agree to a plea deal, admitting to crimes they do not feel they committed, in order to avoid the risk of a trial and a possible mandatory minimum 10 or 20-year prison sentence.

III. Effect of Proposed Changes:

The bill eliminates the minimum mandatory sentences for aggravated assault in the 10-20-Life statute by deleting aggravated assault from the list of crimes to which 10-20-Life applies.⁷ As a result persons who are convicted of only an aggravated assault offense will no longer qualify for the 10-20-Life penalties.

The bill deletes subsection (6) from s. 775.087, F.S. Subsection (6) is the language added to the 10-20-Life statute in 2014 to allow the sentencing court to deviate from the minimum mandatory sentences for crimes of aggravated assault if the court makes the statutory findings based upon mitigating evidence presented at sentencing. Under the bill, because a person convicted only of aggravated assault will no longer qualify for 10-20-Life sentencing, the deleted language would have no further application in cases of aggravated assault committed after the effective date of the bill.

The 10-20-Life statute is referenced in ss. 27.366, 921.0022(2), 921.0024(1)(b), 947.146(3)(b), and 985.557, F.S., therefore those sections are amended or reenacted to incorporate or conform the amendments made to s. 775.087, F.S., by the bill.

The bill's effective date is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁷ Sections 775.087(2)(a)1. and 775.087(3)(a)1., F.S.

C. Government Sector Impact:

According to the Office of Economic and Demographic Research, there were 235 inmates sentenced under the 10-20-Life Law on June 30, 2015, with a primary offense of aggravated assault. This represents roughly 2.3 percent of the 10-20-Life population. Below is a more detailed breakdown of that population.

10-20-Life June 30, 2015 Population with Primary Offense of Aggravated Assault					
Offense	Sentence				
	3 YR-10 YR	10 YR-20 YR	20 YR-25 YR	25 YR-Life	Total
Aggravated assault with weapon - no intent to kill	12	19	168	10	209
Aggravated assault – intent to commit felony	0	1	2	0	3
Aggravated assault on law enforcement officer, firefighter, emergency management services	3	6	14	0	23
Total	15	26	184	10	235

Consequently, the bill will result in a reduction in the number of offenders sentenced to 10-20-Life. This more than likely will result in the need for fewer prison beds in the future. The Criminal Justice Impact Conference has yet to determine the exact fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 775.087 of the Florida Statutes.

The bill also amends section 985.557, Florida Statutes to conform a cross-reference.

The bill reenacts sections 27.366, 921.0022(2), 921.0024(1)(b), and 947.146(3)(b), Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on October 5, 2015:

- Aggravated assault is removed from the list of crimes to which the 10-20-Life law applies. This means that a person who commits aggravated assault with a firearm is no longer subject to the minimum mandatory sentence.

- Subsection (6) of s. 775.087, F.S., is deleted. This eliminates language added to the statute in order to give persons convicted of aggravated assault an opportunity to present mitigating evidence at sentencing and to allow the court to deviate from the 10-20-Life minimum mandatory sentence. The language is no longer necessary due to the deletion of aggravated assault from the list of 10-20-Life crimes.
- Section 985.557, F.S., the juvenile direct file statute, is amended to conform a cross-reference to the list of 10-20-Life crimes.
- Sections 27.366, 921.0022(2), 921.0024(1)(b), and 947.146(3)(b), F.S., are reenacted to incorporate the amendments made by the bill to s. 775.087, F.S.
- The reference to the bill as the “Self-Defense Protection Act” is deleted.

B. Amendments:

None.



812936

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
10/05/2015	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 15 - 227

and insert:

Section 2. Subsections (2), (3), and (6) of section 775.087, Florida Statutes, are amended to read:

775.087 Possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.—

(2)(a)1. Any person who is convicted of a felony or an attempt to commit a felony, regardless of whether the use of a



812936

11 | weapon is an element of the felony, and the conviction was for:
12 | a. Murder;
13 | b. Sexual battery;
14 | c. Robbery;
15 | d. Burglary;
16 | e. Arson;
17 | ~~f. Aggravated assault;~~
18 | f.g. Aggravated battery;
19 | g.h. Kidnapping;
20 | h.i. Escape;
21 | i.j. Aircraft piracy;
22 | j.k. Aggravated child abuse;
23 | k.l. Aggravated abuse of an elderly person or disabled
24 | adult;
25 | l.m. Unlawful throwing, placing, or discharging of a
26 | destructive device or bomb;
27 | m.n. Carjacking;
28 | n.o. Home-invasion robbery;
29 | o.p. Aggravated stalking;
30 | p.q. Trafficking in cannabis, trafficking in cocaine,
31 | capital importation of cocaine, trafficking in illegal drugs,
32 | capital importation of illegal drugs, trafficking in
33 | phencyclidine, capital importation of phencyclidine, trafficking
34 | in methaqualone, capital importation of methaqualone,
35 | trafficking in amphetamine, capital importation of amphetamine,
36 | trafficking in flunitrazepam, trafficking in gamma-
37 | hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
38 | trafficking in Phenethylamines, or other violation of s.
39 | 893.135(1); or



812936

40 ~~q.f.~~ Possession of a firearm by a felon
41
42 and during the commission of the offense, such person actually
43 possessed a "firearm" or "destructive device" as those terms are
44 defined in s. 790.001, shall be sentenced to a minimum term of
45 imprisonment of 10 years, except that a person who is convicted
46 for ~~aggravated assault~~, possession of a firearm by a felon, or
47 burglary of a conveyance shall be sentenced to a minimum term of
48 imprisonment of 3 years if such person possessed a "firearm" or
49 "destructive device" during the commission of the offense.
50 However, if an offender who is convicted of the offense of
51 possession of a firearm by a felon has a previous conviction of
52 committing or attempting to commit a felony listed in s.
53 775.084(1)(b)1. and actually possessed a firearm or destructive
54 device during the commission of the prior felony, the offender
55 shall be sentenced to a minimum term of imprisonment of 10
56 years.

57 2. Any person who is convicted of a felony or an attempt to
58 commit a felony listed in sub-subparagraphs ~~(a)1.a.-p. (a)1.a.-~~
59 ~~q.~~, regardless of whether the use of a weapon is an element of
60 the felony, and during the course of the commission of the
61 felony such person discharged a "firearm" or "destructive
62 device" as defined in s. 790.001 shall be sentenced to a minimum
63 term of imprisonment of 20 years.

64 3. Any person who is convicted of a felony or an attempt to
65 commit a felony listed in sub-subparagraphs ~~(a)1.a.-p. (a)1.a.-~~
66 ~~q.~~, regardless of whether the use of a weapon is an element of
67 the felony, and during the course of the commission of the
68 felony such person discharged a "firearm" or "destructive



812936

69 device" as defined in s. 790.001 and, as the result of the
70 discharge, death or great bodily harm was inflicted upon any
71 person, the convicted person shall be sentenced to a minimum
72 term of imprisonment of not less than 25 years and not more than
73 a term of imprisonment of life in prison.

74 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph
75 (a)3. does not prevent a court from imposing a longer sentence
76 of incarceration as authorized by law in addition to the minimum
77 mandatory sentence, or from imposing a sentence of death
78 pursuant to other applicable law. Subparagraph (a)1.,
79 subparagraph (a)2., or subparagraph (a)3. does not authorize a
80 court to impose a lesser sentence than otherwise required by
81 law.

82
83 Notwithstanding s. 948.01, adjudication of guilt or imposition
84 of sentence shall not be suspended, deferred, or withheld, and
85 the defendant is not eligible for statutory gain-time under s.
86 944.275 or any form of discretionary early release, other than
87 pardon or executive clemency, or conditional medical release
88 under s. 947.149, prior to serving the minimum sentence.

89 (c) If the minimum mandatory terms of imprisonment imposed
90 pursuant to this section exceed the maximum sentences authorized
91 by s. 775.082, s. 775.084, or the Criminal Punishment Code under
92 chapter 921, then the mandatory minimum sentence must be
93 imposed. If the mandatory minimum terms of imprisonment pursuant
94 to this section are less than the sentences that could be
95 imposed as authorized by s. 775.082, s. 775.084, or the Criminal
96 Punishment Code under chapter 921, then the sentence imposed by
97 the court must include the mandatory minimum term of



812936

98 imprisonment as required in this section.

99 (d) It is the intent of the Legislature that offenders who
100 actually possess, carry, display, use, threaten to use, or
101 attempt to use firearms or destructive devices be punished to
102 the fullest extent of the law, and the minimum terms of
103 imprisonment imposed pursuant to this subsection shall be
104 imposed for each qualifying felony count for which the person is
105 convicted. The court shall impose any term of imprisonment
106 provided for in this subsection consecutively to any other term
107 of imprisonment imposed for any other felony offense.

108 (3)(a)1. Any person who is convicted of a felony or an
109 attempt to commit a felony, regardless of whether the use of a
110 firearm is an element of the felony, and the conviction was for:

- 111 a. Murder;
- 112 b. Sexual battery;
- 113 c. Robbery;
- 114 d. Burglary;
- 115 e. Arson;
- 116 ~~f. Aggravated assault;~~
- 117 ~~f.g.~~ Aggravated battery;
- 118 ~~g.h.~~ Kidnapping;
- 119 ~~h.i.~~ Escape;
- 120 ~~i.j.~~ Sale, manufacture, delivery, or intent to sell,
121 manufacture, or deliver any controlled substance;
- 122 ~~j.k.~~ Aircraft piracy;
- 123 ~~k.l.~~ Aggravated child abuse;
- 124 ~~l.m.~~ Aggravated abuse of an elderly person or disabled
125 adult;
- 126 ~~m.n.~~ Unlawful throwing, placing, or discharging of a



812936

127 destructive device or bomb;
128 ~~n.e.~~ Carjacking;
129 ~~o.p.~~ Home-invasion robbery;
130 ~~p.e.~~ Aggravated stalking; or
131 ~~q.r.~~ Trafficking in cannabis, trafficking in cocaine,
132 capital importation of cocaine, trafficking in illegal drugs,
133 capital importation of illegal drugs, trafficking in
134 phencyclidine, capital importation of phencyclidine, trafficking
135 in methaqualone, capital importation of methaqualone,
136 trafficking in amphetamine, capital importation of amphetamine,
137 trafficking in flunitrazepam, trafficking in gamma-
138 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
139 trafficking in Phenethylamines, or other violation of s.
140 893.135(1);

141
142 and during the commission of the offense, such person possessed
143 a semiautomatic firearm and its high-capacity detachable box
144 magazine or a machine gun as defined in s. 790.001, shall be
145 sentenced to a minimum term of imprisonment of 15 years.

146 2. Any person who is convicted of a felony or an attempt to
147 commit a felony listed in subparagraph (a)1., regardless of
148 whether the use of a weapon is an element of the felony, and
149 during the course of the commission of the felony such person
150 discharged a semiautomatic firearm and its high-capacity box
151 magazine or a "machine gun" as defined in s. 790.001 shall be
152 sentenced to a minimum term of imprisonment of 20 years.

153 3. Any person who is convicted of a felony or an attempt to
154 commit a felony listed in subparagraph (a)1., regardless of
155 whether the use of a weapon is an element of the felony, and



812936

156 during the course of the commission of the felony such person
157 discharged a semiautomatic firearm and its high-capacity box
158 magazine or a "machine gun" as defined in s. 790.001 and, as the
159 result of the discharge, death or great bodily harm was
160 inflicted upon any person, the convicted person shall be
161 sentenced to a minimum term of imprisonment of not less than 25
162 years and not more than a term of imprisonment of life in
163 prison.

164 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph
165 (a)3. does not prevent a court from imposing a longer sentence
166 of incarceration as authorized by law in addition to the minimum
167 mandatory sentence, or from imposing a sentence of death
168 pursuant to other applicable law. Subparagraph (a)1.,
169 subparagraph (a)2., or subparagraph (a)3. does not authorize a
170 court to impose a lesser sentence than otherwise required by
171 law.

172
173 Notwithstanding s. 948.01, adjudication of guilt or imposition
174 of sentence shall not be suspended, deferred, or withheld, and
175 the defendant is not eligible for statutory gain-time under s.
176 944.275 or any form of discretionary early release, other than
177 pardon or executive clemency, or conditional medical release
178 under s. 947.149, prior to serving the minimum sentence.

179 (c) If the minimum mandatory terms of imprisonment imposed
180 pursuant to this section exceed the maximum sentences authorized
181 by s. 775.082, s. 775.084, or the Criminal Punishment Code under
182 chapter 921, then the mandatory minimum sentence must be
183 imposed. If the mandatory minimum terms of imprisonment pursuant
184 to this section are less than the sentences that could be



812936

185 imposed as authorized by s. 775.082, s. 775.084, or the Criminal
186 Punishment Code under chapter 921, then the sentence imposed by
187 the court must include the mandatory minimum term of
188 imprisonment as required in this section.

189 (d) It is the intent of the Legislature that offenders who
190 possess, carry, display, use, threaten to use, or attempt to use
191 a semiautomatic firearm and its high-capacity detachable box
192 magazine or a machine gun as defined in s. 790.001 be punished
193 to the fullest extent of the law, and the minimum terms of
194 imprisonment imposed pursuant to this subsection shall be
195 imposed for each qualifying felony count for which the person is
196 convicted. The court shall impose any term of imprisonment
197 provided for in this subsection consecutively to any other term
198 of imprisonment imposed for any other felony offense.

199 (e) As used in this subsection, the term:

200 1. "High-capacity detachable box magazine" means any
201 detachable box magazine, for use in a semiautomatic firearm,
202 which is capable of being loaded with more than 20 centerfire
203 cartridges.

204 2. "Semiautomatic firearm" means a firearm which is capable
205 of firing a series of rounds by separate successive depressions
206 of the trigger and which uses the energy of discharge to perform
207 a portion of the operating cycle.

208 (6) Notwithstanding s. 27.366, the sentencing court shall
209 not impose the mandatory minimum sentence required by subsection
210 (2) or subsection (3) ~~for a conviction for aggravated assault~~ if
211 the court makes written findings that:

212 (a) The defendant had a good faith belief that the use or
213 threatened use of force ~~aggravated assault~~ was justifiable



812936

214 pursuant to chapter 776.

215 ~~(b) The aggravated assault was not committed in the course~~
216 ~~of committing another criminal offense.~~

217 (b)~~(e)~~ The defendant does not pose a threat to public
218 safety.

219 (c)~~(d)~~ The totality of the circumstances involved in the
220 offense does ~~do~~ not justify the imposition of such sentence.

221 Section 3. Paragraph (d) of subsection (2) of section
222 985.557, Florida Statutes, is amended to read:

223 985.557 Direct filing of an information; discretionary and
224 mandatory criteria.—

225 (2) MANDATORY DIRECT FILE.—

226 (d)1. With respect to any child who was 16 or 17 years of
227 age at the time the alleged offense was committed, the state
228 attorney shall file an information if the child has been charged
229 with committing or attempting to commit an offense listed in s.
230 775.087(2)(a)1.a.-p. ~~s. 775.087(2)(a)1.a.-q.~~, and, during the
231 commission of or attempt to commit the offense, the child:

232 a. Actually possessed a firearm or destructive device, as
233 those terms are defined in s. 790.001.

234 b. Discharged a firearm or destructive device, as described
235 in s. 775.087(2)(a)2.

236 c. Discharged a firearm or destructive device, as described
237 in s. 775.087(2)(a)3., and, as a result of the discharge, death
238 or great bodily harm was inflicted upon any person.

239 2. Upon transfer, any child who is:

240 a. Charged under sub-subparagraph 1.a. and who has been
241 previously adjudicated or had adjudication withheld for a
242 forcible felony offense or any offense involving a firearm, or



812936

243 who has been previously placed in a residential commitment
244 program, shall be subject to sentencing under s. 775.087(2)(a),
245 notwithstanding s. 985.565.

246 b. Charged under sub-subparagraph 1.b. or sub-subparagraph
247 1.c., shall be subject to sentencing under s. 775.087(2)(a),
248 notwithstanding s. 985.565.

249 3. Upon transfer, any child who is charged under this
250 paragraph, but who does not meet the requirements specified in
251 subparagraph 2., shall be sentenced under s. 985.565; however,
252 if the court imposes a juvenile sanction, the court must commit
253 the child to a high-risk or maximum-risk juvenile facility.

254 4. This paragraph shall not apply if the state attorney has
255 good cause to believe that exceptional circumstances exist that
256 preclude the just prosecution of the child in adult court.

257 5. The Department of Corrections shall make every
258 reasonable effort to ensure that any child 16 or 17 years of age
259 who is convicted and sentenced under this paragraph be
260 completely separated such that there is no physical contact with
261 adult offenders in the facility, to the extent that it is
262 consistent with chapter 958.

263 Section 4. For the purpose of incorporating the amendment
264 made by this act to section 775.087, Florida Statutes, in a
265 reference thereto, section 27.366, Florida Statutes, is
266 reenacted to read:

267 27.366 Legislative intent and policy in cases meeting
268 criteria of s. 775.087(2) and (3).—It is the intent of the
269 Legislature that convicted criminal offenders who meet the
270 criteria in s. 775.087(2) and (3) be sentenced to the minimum
271 mandatory prison terms provided therein. It is the intent of the



812936

272 Legislature to establish zero tolerance of criminals who use,
273 threaten to use, or avail themselves of firearms in order to
274 commit crimes and thereby demonstrate their lack of value for
275 human life. It is also the intent of the Legislature that
276 prosecutors should appropriately exercise their discretion in
277 those cases in which the offenders' possession of the firearm is
278 incidental to the commission of a crime and not used in
279 furtherance of the crime, used in order to commit the crime, or
280 used in preparation to commit the crime. For every case in which
281 the offender meets the criteria in this act and does not receive
282 the mandatory minimum prison sentence, the state attorney must
283 explain the sentencing deviation in writing and place such
284 explanation in the case file maintained by the state attorney.

285 Section 5. For the purpose of incorporating the amendment
286 made by this act to section 775.087, Florida Statutes, in a
287 reference thereto, subsection (2) of section 921.0022, Florida
288 Statutes, is reenacted to read:

289 921.0022 Criminal Punishment Code; offense severity ranking
290 chart.-

291 (2) The offense severity ranking chart has 10 offense
292 levels, ranked from least severe, which are level 1 offenses, to
293 most severe, which are level 10 offenses, and each felony
294 offense is assigned to a level according to the severity of the
295 offense. For purposes of determining which felony offenses are
296 specifically listed in the offense severity ranking chart and
297 which severity level has been assigned to each of these
298 offenses, the numerical statutory references in the left column
299 of the chart and the felony degree designations in the middle
300 column of the chart are controlling; the language in the right



812936

301 column of the chart is provided solely for descriptive purposes.
302 Reclassification of the degree of the felony through the
303 application of s. 775.0845, s. 775.0861, s. 775.0862, s.
304 775.087, s. 775.0875, s. 794.023, or any other law that provides
305 an enhanced penalty for a felony offense, to any offense listed
306 in the offense severity ranking chart in this section shall not
307 cause the offense to become unlisted and is not subject to the
308 provisions of s. 921.0023.

309 Section 6. For the purpose of incorporating the amendment
310 made by this act to section 775.087, Florida Statutes, in a
311 reference thereto, paragraph (b) of subsection (1) of section
312 921.0024, Florida Statutes, is reenacted to read:

313 921.0024 Criminal Punishment Code; worksheet computations;
314 scoresheets.—

315 (1)

316 (b) WORKSHEET KEY:

317

318 Legal status points are assessed when any form of legal status
319 existed at the time the offender committed an offense before the
320 court for sentencing. Four (4) sentence points are assessed for
321 an offender's legal status.

322

323 Community sanction violation points are assessed when a
324 community sanction violation is before the court for sentencing.
325 Six (6) sentence points are assessed for each community sanction
326 violation and each successive community sanction violation,
327 unless any of the following apply:

328 1. If the community sanction violation includes a new
329 felony conviction before the sentencing court, twelve (12)



812936

330 community sanction violation points are assessed for the
331 violation, and for each successive community sanction violation
332 involving a new felony conviction.

333 2. If the community sanction violation is committed by a
334 violent felony offender of special concern as defined in s.
335 948.06:

336 a. Twelve (12) community sanction violation points are
337 assessed for the violation and for each successive violation of
338 felony probation or community control where:

339 I. The violation does not include a new felony conviction;
340 and

341 II. The community sanction violation is not based solely on
342 the probationer or offender's failure to pay costs or fines or
343 make restitution payments.

344 b. Twenty-four (24) community sanction violation points are
345 assessed for the violation and for each successive violation of
346 felony probation or community control where the violation
347 includes a new felony conviction.

348
349 Multiple counts of community sanction violations before the
350 sentencing court shall not be a basis for multiplying the
351 assessment of community sanction violation points.

352
353 Prior serious felony points: If the offender has a primary
354 offense or any additional offense ranked in level 8, level 9, or
355 level 10, and one or more prior serious felonies, a single
356 assessment of thirty (30) points shall be added. For purposes of
357 this section, a prior serious felony is an offense in the
358 offender's prior record that is ranked in level 8, level 9, or



812936

359 level 10 under s. 921.0022 or s. 921.0023 and for which the
360 offender is serving a sentence of confinement, supervision, or
361 other sanction or for which the offender's date of release from
362 confinement, supervision, or other sanction, whichever is later,
363 is within 3 years before the date the primary offense or any
364 additional offense was committed.

365

366 Prior capital felony points: If the offender has one or more
367 prior capital felonies in the offender's criminal record, points
368 shall be added to the subtotal sentence points of the offender
369 equal to twice the number of points the offender receives for
370 the primary offense and any additional offense. A prior capital
371 felony in the offender's criminal record is a previous capital
372 felony offense for which the offender has entered a plea of nolo
373 contendere or guilty or has been found guilty; or a felony in
374 another jurisdiction which is a capital felony in that
375 jurisdiction, or would be a capital felony if the offense were
376 committed in this state.

377

378 Possession of a firearm, semiautomatic firearm, or machine gun:
379 If the offender is convicted of committing or attempting to
380 commit any felony other than those enumerated in s. 775.087(2)
381 while having in his or her possession: a firearm as defined in
382 s. 790.001(6), an additional eighteen (18) sentence points are
383 assessed; or if the offender is convicted of committing or
384 attempting to commit any felony other than those enumerated in
385 s. 775.087(3) while having in his or her possession a
386 semiautomatic firearm as defined in s. 775.087(3) or a machine
387 gun as defined in s. 790.001(9), an additional twenty-five (25)



812936

388 sentence points are assessed.

389

390 Sentencing multipliers:

391

392 Drug trafficking: If the primary offense is drug trafficking
393 under s. 893.135, the subtotal sentence points are multiplied,
394 at the discretion of the court, for a level 7 or level 8
395 offense, by 1.5. The state attorney may move the sentencing
396 court to reduce or suspend the sentence of a person convicted of
397 a level 7 or level 8 offense, if the offender provides
398 substantial assistance as described in s. 893.135(4).

399

400 Law enforcement protection: If the primary offense is a
401 violation of the Law Enforcement Protection Act under s.
402 775.0823(2), (3), or (4), the subtotal sentence points are
403 multiplied by 2.5. If the primary offense is a violation of s.
404 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points
405 are multiplied by 2.0. If the primary offense is a violation of
406 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement
407 Protection Act under s. 775.0823(10) or (11), the subtotal
408 sentence points are multiplied by 1.5.

409

410 Grand theft of a motor vehicle: If the primary offense is grand
411 theft of the third degree involving a motor vehicle and in the
412 offender's prior record, there are three or more grand thefts of
413 the third degree involving a motor vehicle, the subtotal
414 sentence points are multiplied by 1.5.

415

416 Offense related to a criminal gang: If the offender is convicted



812936

417 of the primary offense and committed that offense for the
418 purpose of benefiting, promoting, or furthering the interests of
419 a criminal gang as defined in s. 874.03, the subtotal sentence
420 points are multiplied by 1.5. If applying the multiplier results
421 in the lowest permissible sentence exceeding the statutory
422 maximum sentence for the primary offense under chapter 775, the
423 court may not apply the multiplier and must sentence the
424 defendant to the statutory maximum sentence.

425
426 Domestic violence in the presence of a child: If the offender is
427 convicted of the primary offense and the primary offense is a
428 crime of domestic violence, as defined in s. 741.28, which was
429 committed in the presence of a child under 16 years of age who
430 is a family or household member as defined in s. 741.28(3) with
431 the victim or perpetrator, the subtotal sentence points are
432 multiplied by 1.5.

433
434 Adult-on-minor sex offense: If the offender was 18 years of age
435 or older and the victim was younger than 18 years of age at the
436 time the offender committed the primary offense, and if the
437 primary offense was an offense committed on or after October 1,
438 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the
439 violation involved a victim who was a minor and, in the course
440 of committing that violation, the defendant committed a sexual
441 battery under chapter 794 or a lewd act under s. 800.04 or s.
442 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.
443 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.
444 800.04; or s. 847.0135(5), the subtotal sentence points are
445 multiplied by 2.0. If applying the multiplier results in the



812936

446 lowest permissible sentence exceeding the statutory maximum
447 sentence for the primary offense under chapter 775, the court
448 may not apply the multiplier and must sentence the defendant to
449 the statutory maximum sentence.

450 Section 7. For the purpose of incorporating the amendment
451 made by this act to section 775.087, Florida Statutes, in a
452 reference thereto, paragraph (b) of subsection (3) of section
453 947.146, Florida Statutes, is reenacted to read:

454 947.146 Control Release Authority.—

455 (3) Within 120 days prior to the date the state
456 correctional system is projected pursuant to s. 216.136 to
457 exceed 99 percent of total capacity, the authority shall
458 determine eligibility for and establish a control release date
459 for an appropriate number of parole ineligible inmates committed
460 to the department and incarcerated within the state who have
461 been determined by the authority to be eligible for
462 discretionary early release pursuant to this section. In
463 establishing control release dates, it is the intent of the
464 Legislature that the authority prioritize consideration of
465 eligible inmates closest to their tentative release date. The
466 authority shall rely upon commitment data on the offender
467 information system maintained by the department to initially
468 identify inmates who are to be reviewed for control release
469 consideration. The authority may use a method of objective risk
470 assessment in determining if an eligible inmate should be
471 released. Such assessment shall be a part of the department's
472 management information system. However, the authority shall have
473 sole responsibility for determining control release eligibility,
474 establishing a control release date, and effectuating the



812936

475 release of a sufficient number of inmates to maintain the inmate
476 population between 99 percent and 100 percent of total capacity.
477 Inmates who are ineligible for control release are inmates who
478 are parole eligible or inmates who:

479 (b) Are serving the mandatory minimum portion of a sentence
480 enhanced under s. 775.087(2) or (3), or s. 784.07(3);

481
482 In making control release eligibility determinations under this
483 subsection, the authority may rely on any document leading to or
484 generated during the course of the criminal proceedings,
485 including, but not limited to, any presentence or postsentence
486 investigation or any information contained in arrest reports
487 relating to circumstances of the offense.

488
489 ===== T I T L E A M E N D M E N T =====

490 And the title is amended as follows:

491 Delete lines 4 - 8

492 and insert:

493 deleting aggravated assault from the list of
494 convictions which carry a minimum term of imprisonment
495 if during the commission of the offense the convicted
496 person possessed a firearm or destructive device;
497 deleting aggravated assault from a list of exceptions
498 of convictions which carry a minimum term of
499 imprisonment if during the commission of the offense
500 the convicted person possessed a firearm or
501 destructive device; deleting aggravated assault from
502 the list of convictions which carry a minimum term of
503 imprisonment if during the commission of the offense



812936

504 the convicted person possessed a semiautomatic firearm
505 and its high-capacity detachable box magazine or a
506 machine gun; extending an exception to certain
507 mandatory minimum sentences required for aggravated
508 assault convictions if the court makes written
509 findings that a use or threatened use of force was
510 justifiable pursuant to specified provisions; revising
511 required written findings; conforming cross-
512 references; amending s. 985.557, F.S.; conforming a
513 cross-reference; reenacting ss. 27.366, 921.0022(2),
514 921.0024(1)(b), and 947.146(3)(b), F.S., relating to
515 legislative intent and policy in cases meeting the
516 criteria of s. 775.087(2) and (3), F.S., the Criminal
517 Punishment Code, the Criminal Punishment Code
518 worksheet, and the Control Release Authority,
519 respectively, to incorporate the amendment made to s.
520 775.087, F.S., in references thereto; providing an
521 effective



223716

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/05/2015	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Bradley) recommended the following:

1 **Senate Substitute for Amendment (812936) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Subsections (2), (3), and (6) of section
7 775.087, Florida Statutes, are amended to read:

8 775.087 Possession or use of weapon; aggravated battery;
9 felony reclassification; minimum sentence.—

10 (2)(a)1. Any person who is convicted of a felony or an



223716

11 attempt to commit a felony, regardless of whether the use of a
12 weapon is an element of the felony, and the conviction was for:
13 a. Murder;
14 b. Sexual battery;
15 c. Robbery;
16 d. Burglary;
17 e. Arson;
18 ~~f. Aggravated assault;~~
19 ~~f.g.~~ Aggravated battery;
20 ~~g.h.~~ Kidnapping;
21 ~~h.i.~~ Escape;
22 ~~i.j.~~ Aircraft piracy;
23 ~~j.k.~~ Aggravated child abuse;
24 ~~k.l.~~ Aggravated abuse of an elderly person or disabled
25 adult;
26 ~~l.m.~~ Unlawful throwing, placing, or discharging of a
27 destructive device or bomb;
28 ~~m.n.~~ Carjacking;
29 ~~n.o.~~ Home-invasion robbery;
30 ~~o.p.~~ Aggravated stalking;
31 ~~p.q.~~ Trafficking in cannabis, trafficking in cocaine,
32 capital importation of cocaine, trafficking in illegal drugs,
33 capital importation of illegal drugs, trafficking in
34 phencyclidine, capital importation of phencyclidine, trafficking
35 in methaqualone, capital importation of methaqualone,
36 trafficking in amphetamine, capital importation of amphetamine,
37 trafficking in flunitrazepam, trafficking in gamma-
38 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
39 trafficking in Phenethylamines, or other violation of s.



223716

40 893.135(1); or
41 q.~~q.~~ Possession of a firearm by a felon
42
43 and during the commission of the offense, such person actually
44 possessed a "firearm" or "destructive device" as those terms are
45 defined in s. 790.001, shall be sentenced to a minimum term of
46 imprisonment of 10 years, except that a person who is convicted
47 for ~~aggravated assault~~, possession of a firearm by a felon, or
48 burglary of a conveyance shall be sentenced to a minimum term of
49 imprisonment of 3 years if such person possessed a "firearm" or
50 "destructive device" during the commission of the offense.
51 However, if an offender who is convicted of the offense of
52 possession of a firearm by a felon has a previous conviction of
53 committing or attempting to commit a felony listed in s.
54 775.084(1)(b)1. and actually possessed a firearm or destructive
55 device during the commission of the prior felony, the offender
56 shall be sentenced to a minimum term of imprisonment of 10
57 years.
58 2. Any person who is convicted of a felony or an attempt to
59 commit a felony listed in sub-subparagraphs (a)1.a.-p. ~~(a)1.a.-~~
60 ~~q.~~, regardless of whether the use of a weapon is an element of
61 the felony, and during the course of the commission of the
62 felony such person discharged a "firearm" or "destructive
63 device" as defined in s. 790.001 shall be sentenced to a minimum
64 term of imprisonment of 20 years.
65 3. Any person who is convicted of a felony or an attempt to
66 commit a felony listed in sub-subparagraphs (a)1.a.-p. ~~(a)1.a.-~~
67 ~~q.~~, regardless of whether the use of a weapon is an element of
68 the felony, and during the course of the commission of the



223716

69 felony such person discharged a "firearm" or "destructive
70 device" as defined in s. 790.001 and, as the result of the
71 discharge, death or great bodily harm was inflicted upon any
72 person, the convicted person shall be sentenced to a minimum
73 term of imprisonment of not less than 25 years and not more than
74 a term of imprisonment of life in prison.

75 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph
76 (a)3. does not prevent a court from imposing a longer sentence
77 of incarceration as authorized by law in addition to the minimum
78 mandatory sentence, or from imposing a sentence of death
79 pursuant to other applicable law. Subparagraph (a)1.,
80 subparagraph (a)2., or subparagraph (a)3. does not authorize a
81 court to impose a lesser sentence than otherwise required by
82 law.

83
84 Notwithstanding s. 948.01, adjudication of guilt or imposition
85 of sentence shall not be suspended, deferred, or withheld, and
86 the defendant is not eligible for statutory gain-time under s.
87 944.275 or any form of discretionary early release, other than
88 pardon or executive clemency, or conditional medical release
89 under s. 947.149, prior to serving the minimum sentence.

90 (c) If the minimum mandatory terms of imprisonment imposed
91 pursuant to this section exceed the maximum sentences authorized
92 by s. 775.082, s. 775.084, or the Criminal Punishment Code under
93 chapter 921, then the mandatory minimum sentence must be
94 imposed. If the mandatory minimum terms of imprisonment pursuant
95 to this section are less than the sentences that could be
96 imposed as authorized by s. 775.082, s. 775.084, or the Criminal
97 Punishment Code under chapter 921, then the sentence imposed by



223716

98 the court must include the mandatory minimum term of
99 imprisonment as required in this section.

100 (d) It is the intent of the Legislature that offenders who
101 actually possess, carry, display, use, threaten to use, or
102 attempt to use firearms or destructive devices be punished to
103 the fullest extent of the law, and the minimum terms of
104 imprisonment imposed pursuant to this subsection shall be
105 imposed for each qualifying felony count for which the person is
106 convicted. The court shall impose any term of imprisonment
107 provided for in this subsection consecutively to any other term
108 of imprisonment imposed for any other felony offense.

109 (3)(a)1. Any person who is convicted of a felony or an
110 attempt to commit a felony, regardless of whether the use of a
111 firearm is an element of the felony, and the conviction was for:

- 112 a. Murder;
- 113 b. Sexual battery;
- 114 c. Robbery;
- 115 d. Burglary;
- 116 e. Arson;
- 117 ~~f. Aggravated assault;~~
- 118 ~~f.g.~~ Aggravated battery;
- 119 ~~g.h.~~ Kidnapping;
- 120 ~~h.i.~~ Escape;
- 121 ~~i.j.~~ Sale, manufacture, delivery, or intent to sell,
122 manufacture, or deliver any controlled substance;
- 123 ~~j.k.~~ Aircraft piracy;
- 124 ~~k.l.~~ Aggravated child abuse;
- 125 ~~l.m.~~ Aggravated abuse of an elderly person or disabled
126 adult;



223716

127 ~~m.#.~~ Unlawful throwing, placing, or discharging of a
128 destructive device or bomb;
129 ~~n.#.~~ Carjacking;
130 ~~o.#.~~ Home-invasion robbery;
131 ~~p.#.~~ Aggravated stalking; or
132 ~~q.#.~~ Trafficking in cannabis, trafficking in cocaine,
133 capital importation of cocaine, trafficking in illegal drugs,
134 capital importation of illegal drugs, trafficking in
135 phencyclidine, capital importation of phencyclidine, trafficking
136 in methaqualone, capital importation of methaqualone,
137 trafficking in amphetamine, capital importation of amphetamine,
138 trafficking in flunitrazepam, trafficking in gamma-
139 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
140 trafficking in Phenethylamines, or other violation of s.
141 893.135(1);

142
143 and during the commission of the offense, such person possessed
144 a semiautomatic firearm and its high-capacity detachable box
145 magazine or a machine gun as defined in s. 790.001, shall be
146 sentenced to a minimum term of imprisonment of 15 years.

147 2. Any person who is convicted of a felony or an attempt to
148 commit a felony listed in subparagraph (a)1., regardless of
149 whether the use of a weapon is an element of the felony, and
150 during the course of the commission of the felony such person
151 discharged a semiautomatic firearm and its high-capacity box
152 magazine or a "machine gun" as defined in s. 790.001 shall be
153 sentenced to a minimum term of imprisonment of 20 years.

154 3. Any person who is convicted of a felony or an attempt to
155 commit a felony listed in subparagraph (a)1., regardless of



223716

156 whether the use of a weapon is an element of the felony, and
157 during the course of the commission of the felony such person
158 discharged a semiautomatic firearm and its high-capacity box
159 magazine or a "machine gun" as defined in s. 790.001 and, as the
160 result of the discharge, death or great bodily harm was
161 inflicted upon any person, the convicted person shall be
162 sentenced to a minimum term of imprisonment of not less than 25
163 years and not more than a term of imprisonment of life in
164 prison.

165 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph
166 (a)3. does not prevent a court from imposing a longer sentence
167 of incarceration as authorized by law in addition to the minimum
168 mandatory sentence, or from imposing a sentence of death
169 pursuant to other applicable law. Subparagraph (a)1.,
170 subparagraph (a)2., or subparagraph (a)3. does not authorize a
171 court to impose a lesser sentence than otherwise required by
172 law.

173
174 Notwithstanding s. 948.01, adjudication of guilt or imposition
175 of sentence shall not be suspended, deferred, or withheld, and
176 the defendant is not eligible for statutory gain-time under s.
177 944.275 or any form of discretionary early release, other than
178 pardon or executive clemency, or conditional medical release
179 under s. 947.149, prior to serving the minimum sentence.

180 (c) If the minimum mandatory terms of imprisonment imposed
181 pursuant to this section exceed the maximum sentences authorized
182 by s. 775.082, s. 775.084, or the Criminal Punishment Code under
183 chapter 921, then the mandatory minimum sentence must be
184 imposed. If the mandatory minimum terms of imprisonment pursuant



223716

185 to this section are less than the sentences that could be
186 imposed as authorized by s. 775.082, s. 775.084, or the Criminal
187 Punishment Code under chapter 921, then the sentence imposed by
188 the court must include the mandatory minimum term of
189 imprisonment as required in this section.

190 (d) It is the intent of the Legislature that offenders who
191 possess, carry, display, use, threaten to use, or attempt to use
192 a semiautomatic firearm and its high-capacity detachable box
193 magazine or a machine gun as defined in s. 790.001 be punished
194 to the fullest extent of the law, and the minimum terms of
195 imprisonment imposed pursuant to this subsection shall be
196 imposed for each qualifying felony count for which the person is
197 convicted. The court shall impose any term of imprisonment
198 provided for in this subsection consecutively to any other term
199 of imprisonment imposed for any other felony offense.

200 (e) As used in this subsection, the term:

201 1. "High-capacity detachable box magazine" means any
202 detachable box magazine, for use in a semiautomatic firearm,
203 which is capable of being loaded with more than 20 centerfire
204 cartridges.

205 2. "Semiautomatic firearm" means a firearm which is capable
206 of firing a series of rounds by separate successive depressions
207 of the trigger and which uses the energy of discharge to perform
208 a portion of the operating cycle.

209 ~~(6) Notwithstanding s. 27.366, the sentencing court shall~~
210 ~~not impose the mandatory minimum sentence required by subsection~~
211 ~~(2) or subsection (3) for a conviction for aggravated assault if~~
212 ~~the court makes written findings that:~~

213 ~~(a) The defendant had a good faith belief that the~~



223716

214 ~~aggravated assault was justifiable pursuant to chapter 776.~~

215 ~~(b) The aggravated assault was not committed in the course~~
216 ~~of committing another criminal offense.~~

217 ~~(c) The defendant does not pose a threat to public safety.~~

218 ~~(d) The totality of the circumstances involved in the~~
219 ~~offense do not justify the imposition of such sentence.~~

220 Section 2. Paragraph (d) of subsection (2) of section
221 985.557, Florida Statutes, is amended to read:

222 985.557 Direct filing of an information; discretionary and
223 mandatory criteria.—

224 (2) MANDATORY DIRECT FILE.—

225 (d)1. With respect to any child who was 16 or 17 years of
226 age at the time the alleged offense was committed, the state
227 attorney shall file an information if the child has been charged
228 with committing or attempting to commit an offense listed in s.
229 775.087(2)(a)1.a.-p. ~~s. 775.087(2)(a)1.a.-q.~~, and, during the
230 commission of or attempt to commit the offense, the child:

231 a. Actually possessed a firearm or destructive device, as
232 those terms are defined in s. 790.001.

233 b. Discharged a firearm or destructive device, as described
234 in s. 775.087(2)(a)2.

235 c. Discharged a firearm or destructive device, as described
236 in s. 775.087(2)(a)3., and, as a result of the discharge, death
237 or great bodily harm was inflicted upon any person.

238 2. Upon transfer, any child who is:

239 a. Charged under sub-subparagraph 1.a. and who has been
240 previously adjudicated or had adjudication withheld for a
241 forcible felony offense or any offense involving a firearm, or
242 who has been previously placed in a residential commitment



223716

243 program, shall be subject to sentencing under s. 775.087(2)(a),
244 notwithstanding s. 985.565.

245 b. Charged under sub-subparagraph 1.b. or sub-subparagraph
246 1.c., shall be subject to sentencing under s. 775.087(2)(a),
247 notwithstanding s. 985.565.

248 3. Upon transfer, any child who is charged under this
249 paragraph, but who does not meet the requirements specified in
250 subparagraph 2., shall be sentenced under s. 985.565; however,
251 if the court imposes a juvenile sanction, the court must commit
252 the child to a high-risk or maximum-risk juvenile facility.

253 4. This paragraph shall not apply if the state attorney has
254 good cause to believe that exceptional circumstances exist that
255 preclude the just prosecution of the child in adult court.

256 5. The Department of Corrections shall make every
257 reasonable effort to ensure that any child 16 or 17 years of age
258 who is convicted and sentenced under this paragraph be
259 completely separated such that there is no physical contact with
260 adult offenders in the facility, to the extent that it is
261 consistent with chapter 958.

262 Section 3. For the purpose of incorporating the amendment
263 made by this act to section 775.087, Florida Statutes, in a
264 reference thereto, section 27.366, Florida Statutes, is
265 reenacted to read:

266 27.366 Legislative intent and policy in cases meeting
267 criteria of s. 775.087(2) and (3).—It is the intent of the
268 Legislature that convicted criminal offenders who meet the
269 criteria in s. 775.087(2) and (3) be sentenced to the minimum
270 mandatory prison terms provided therein. It is the intent of the
271 Legislature to establish zero tolerance of criminals who use,



223716

272 threaten to use, or avail themselves of firearms in order to
273 commit crimes and thereby demonstrate their lack of value for
274 human life. It is also the intent of the Legislature that
275 prosecutors should appropriately exercise their discretion in
276 those cases in which the offenders' possession of the firearm is
277 incidental to the commission of a crime and not used in
278 furtherance of the crime, used in order to commit the crime, or
279 used in preparation to commit the crime. For every case in which
280 the offender meets the criteria in this act and does not receive
281 the mandatory minimum prison sentence, the state attorney must
282 explain the sentencing deviation in writing and place such
283 explanation in the case file maintained by the state attorney.

284 Section 4. For the purpose of incorporating the amendment
285 made by this act to section 775.087, Florida Statutes, in a
286 reference thereto, subsection (2) of section 921.0022, Florida
287 Statutes, is reenacted to read:

288 921.0022 Criminal Punishment Code; offense severity ranking
289 chart.—

290 (2) The offense severity ranking chart has 10 offense
291 levels, ranked from least severe, which are level 1 offenses, to
292 most severe, which are level 10 offenses, and each felony
293 offense is assigned to a level according to the severity of the
294 offense. For purposes of determining which felony offenses are
295 specifically listed in the offense severity ranking chart and
296 which severity level has been assigned to each of these
297 offenses, the numerical statutory references in the left column
298 of the chart and the felony degree designations in the middle
299 column of the chart are controlling; the language in the right
300 column of the chart is provided solely for descriptive purposes.



223716

301 Reclassification of the degree of the felony through the
302 application of s. 775.0845, s. 775.0861, s. 775.0862, s.
303 775.087, s. 775.0875, s. 794.023, or any other law that provides
304 an enhanced penalty for a felony offense, to any offense listed
305 in the offense severity ranking chart in this section shall not
306 cause the offense to become unlisted and is not subject to the
307 provisions of s. 921.0023.

308 Section 5. For the purpose of incorporating the amendment
309 made by this act to section 775.087, Florida Statutes, in a
310 reference thereto, paragraph (b) of subsection (1) of section
311 921.0024, Florida Statutes, is reenacted to read:

312 921.0024 Criminal Punishment Code; worksheet computations;
313 scoresheets.—

314 (1)

315 (b) WORKSHEET KEY:

316

317 Legal status points are assessed when any form of legal status
318 existed at the time the offender committed an offense before the
319 court for sentencing. Four (4) sentence points are assessed for
320 an offender's legal status.

321

322 Community sanction violation points are assessed when a
323 community sanction violation is before the court for sentencing.
324 Six (6) sentence points are assessed for each community sanction
325 violation and each successive community sanction violation,
326 unless any of the following apply:

327 1. If the community sanction violation includes a new
328 felony conviction before the sentencing court, twelve (12)
329 community sanction violation points are assessed for the



223716

330 violation, and for each successive community sanction violation
331 involving a new felony conviction.

332 2. If the community sanction violation is committed by a
333 violent felony offender of special concern as defined in s.
334 948.06:

335 a. Twelve (12) community sanction violation points are
336 assessed for the violation and for each successive violation of
337 felony probation or community control where:

338 I. The violation does not include a new felony conviction;
339 and

340 II. The community sanction violation is not based solely on
341 the probationer or offender's failure to pay costs or fines or
342 make restitution payments.

343 b. Twenty-four (24) community sanction violation points are
344 assessed for the violation and for each successive violation of
345 felony probation or community control where the violation
346 includes a new felony conviction.

347
348 Multiple counts of community sanction violations before the
349 sentencing court shall not be a basis for multiplying the
350 assessment of community sanction violation points.

351
352 Prior serious felony points: If the offender has a primary
353 offense or any additional offense ranked in level 8, level 9, or
354 level 10, and one or more prior serious felonies, a single
355 assessment of thirty (30) points shall be added. For purposes of
356 this section, a prior serious felony is an offense in the
357 offender's prior record that is ranked in level 8, level 9, or
358 level 10 under s. 921.0022 or s. 921.0023 and for which the



223716

359 offender is serving a sentence of confinement, supervision, or
360 other sanction or for which the offender's date of release from
361 confinement, supervision, or other sanction, whichever is later,
362 is within 3 years before the date the primary offense or any
363 additional offense was committed.

364

365 Prior capital felony points: If the offender has one or more
366 prior capital felonies in the offender's criminal record, points
367 shall be added to the subtotal sentence points of the offender
368 equal to twice the number of points the offender receives for
369 the primary offense and any additional offense. A prior capital
370 felony in the offender's criminal record is a previous capital
371 felony offense for which the offender has entered a plea of nolo
372 contendere or guilty or has been found guilty; or a felony in
373 another jurisdiction which is a capital felony in that
374 jurisdiction, or would be a capital felony if the offense were
375 committed in this state.

376

377 Possession of a firearm, semiautomatic firearm, or machine gun:
378 If the offender is convicted of committing or attempting to
379 commit any felony other than those enumerated in s. 775.087(2)
380 while having in his or her possession: a firearm as defined in
381 s. 790.001(6), an additional eighteen (18) sentence points are
382 assessed; or if the offender is convicted of committing or
383 attempting to commit any felony other than those enumerated in
384 s. 775.087(3) while having in his or her possession a
385 semiautomatic firearm as defined in s. 775.087(3) or a machine
386 gun as defined in s. 790.001(9), an additional twenty-five (25)
387 sentence points are assessed.



223716

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Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), or (4), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement Protection Act under s. 775.0823(10) or (11), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

Offense related to a criminal gang: If the offender is convicted of the primary offense and committed that offense for the



223716

417 purpose of benefiting, promoting, or furthering the interests of
418 a criminal gang as defined in s. 874.03, the subtotal sentence
419 points are multiplied by 1.5. If applying the multiplier results
420 in the lowest permissible sentence exceeding the statutory
421 maximum sentence for the primary offense under chapter 775, the
422 court may not apply the multiplier and must sentence the
423 defendant to the statutory maximum sentence.

424

425 Domestic violence in the presence of a child: If the offender is
426 convicted of the primary offense and the primary offense is a
427 crime of domestic violence, as defined in s. 741.28, which was
428 committed in the presence of a child under 16 years of age who
429 is a family or household member as defined in s. 741.28(3) with
430 the victim or perpetrator, the subtotal sentence points are
431 multiplied by 1.5.

432

433 Adult-on-minor sex offense: If the offender was 18 years of age
434 or older and the victim was younger than 18 years of age at the
435 time the offender committed the primary offense, and if the
436 primary offense was an offense committed on or after October 1,
437 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the
438 violation involved a victim who was a minor and, in the course
439 of committing that violation, the defendant committed a sexual
440 battery under chapter 794 or a lewd act under s. 800.04 or s.
441 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.
442 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.
443 800.04; or s. 847.0135(5), the subtotal sentence points are
444 multiplied by 2.0. If applying the multiplier results in the
445 lowest permissible sentence exceeding the statutory maximum



223716

446 sentence for the primary offense under chapter 775, the court
447 may not apply the multiplier and must sentence the defendant to
448 the statutory maximum sentence.

449 Section 6. For the purpose of incorporating the amendment
450 made by this act to section 775.087, Florida Statutes, in a
451 reference thereto, paragraph (b) of subsection (3) of section
452 947.146, Florida Statutes, is reenacted to read:

453 947.146 Control Release Authority.—

454 (3) Within 120 days prior to the date the state
455 correctional system is projected pursuant to s. 216.136 to
456 exceed 99 percent of total capacity, the authority shall
457 determine eligibility for and establish a control release date
458 for an appropriate number of parole ineligible inmates committed
459 to the department and incarcerated within the state who have
460 been determined by the authority to be eligible for
461 discretionary early release pursuant to this section. In
462 establishing control release dates, it is the intent of the
463 Legislature that the authority prioritize consideration of
464 eligible inmates closest to their tentative release date. The
465 authority shall rely upon commitment data on the offender
466 information system maintained by the department to initially
467 identify inmates who are to be reviewed for control release
468 consideration. The authority may use a method of objective risk
469 assessment in determining if an eligible inmate should be
470 released. Such assessment shall be a part of the department's
471 management information system. However, the authority shall have
472 sole responsibility for determining control release eligibility,
473 establishing a control release date, and effectuating the
474 release of a sufficient number of inmates to maintain the inmate



223716

475 population between 99 percent and 100 percent of total capacity.
476 Inmates who are ineligible for control release are inmates who
477 are parole eligible or inmates who:

478 (b) Are serving the mandatory minimum portion of a sentence
479 enhanced under s. 775.087(2) or (3), or s. 784.07(3);

480

481 In making control release eligibility determinations under this
482 subsection, the authority may rely on any document leading to or
483 generated during the course of the criminal proceedings,
484 including, but not limited to, any presentence or postsentence
485 investigation or any information contained in arrest reports
486 relating to circumstances of the offense.

487 Section 7. This act shall take effect July 1, 2016.

488

489 ===== T I T L E A M E N D M E N T =====

490 And the title is amended as follows:

491 Delete everything before the enacting clause
492 and insert:

493

A bill to be entitled

494

An act relating to the mandatory minimum sentences;

495

amending s. 775.087, F.S.; deleting aggravated assault

496

from the list of convictions which carry a minimum

497

term of imprisonment if during the commission of the

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offense the convicted person possessed a firearm or

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destructive device; deleting aggravated assault from a

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list of convictions which carry a minimum term of

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imprisonment if during the commission of the offense

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the convicted person possessed a firearm or

503

destructive device; deleting aggravated assault from



223716

504 the list of convictions which carry a minimum term of
505 imprisonment if during the commission of the offense
506 the convicted person possessed a semiautomatic firearm
507 and its high-capacity detachable box magazine or a
508 machine gun; deleting a provision prohibiting a court
509 from imposing the mandatory minimum sentence for a
510 conviction for aggravated assault if the court makes
511 specified written findings; conforming cross-
512 references; amending s. 985.557, F.S.; conforming a
513 cross-reference; reenacting ss. 27.366, 921.0022(2),
514 921.0024(1)(b), and 947.146(3)(b), F.S., relating to
515 legislative intent and policy in cases meeting the
516 criteria of s. 775.087(2) and (3), F.S., the Criminal
517 Punishment Code, the Criminal Punishment Code
518 worksheet, and the Control Release Authority,
519 respectively, to incorporate the amendment made to s.
520 775.087, F.S., in references thereto; providing an
521 effective date.

By Senator Bean

4-00341-16

2016228__

1 A bill to be entitled
2 An act relating to the Self-Defense Protection Act;
3 providing a short title; amending s. 775.087, F.S.;
4 extending an exception to certain mandatory minimum
5 sentences if a use or threatened use of force was
6 justifiable under specified provisions to other cases,
7 including those involving aggravated assault; revising
8 required written findings; providing an effective
9 date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. This act shall be cited as the "Self-Defense
14 Protection Act."

15 Section 2. Subsection (6) of section 775.087, Florida
16 Statutes, is amended, and subsections (2) and (3) of that
17 section are republished, to read:

18 775.087 Possession or use of weapon; aggravated battery;
19 felony reclassification; minimum sentence.—

20 (2)(a)1. Any person who is convicted of a felony or an
21 attempt to commit a felony, regardless of whether the use of a
22 weapon is an element of the felony, and the conviction was for:

- 23 a. Murder;
24 b. Sexual battery;
25 c. Robbery;
26 d. Burglary;
27 e. Arson;
28 f. Aggravated assault;
29 g. Aggravated battery;

4-00341-16

2016228__

- 30 h. Kidnapping;
31 i. Escape;
32 j. Aircraft piracy;
33 k. Aggravated child abuse;
34 l. Aggravated abuse of an elderly person or disabled adult;
35 m. Unlawful throwing, placing, or discharging of a
36 destructive device or bomb;
37 n. Carjacking;
38 o. Home-invasion robbery;
39 p. Aggravated stalking;
40 q. Trafficking in cannabis, trafficking in cocaine, capital
41 importation of cocaine, trafficking in illegal drugs, capital
42 importation of illegal drugs, trafficking in phencyclidine,
43 capital importation of phencyclidine, trafficking in
44 methaqualone, capital importation of methaqualone, trafficking
45 in amphetamine, capital importation of amphetamine, trafficking
46 in flunitrazepam, trafficking in gamma-hydroxybutyric acid
47 (GHB), trafficking in 1,4-Butanediol, trafficking in
48 Phenethylamines, or other violation of s. 893.135(1); or
49 r. Possession of a firearm by a felon

50
51 and during the commission of the offense, such person actually
52 possessed a "firearm" or "destructive device" as those terms are
53 defined in s. 790.001, shall be sentenced to a minimum term of
54 imprisonment of 10 years, except that a person who is convicted
55 for aggravated assault, possession of a firearm by a felon, or
56 burglary of a conveyance shall be sentenced to a minimum term of
57 imprisonment of 3 years if such person possessed a "firearm" or
58 "destructive device" during the commission of the offense.

4-00341-16

2016228__

59 However, if an offender who is convicted of the offense of
60 possession of a firearm by a felon has a previous conviction of
61 committing or attempting to commit a felony listed in s.
62 775.084(1)(b)1. and actually possessed a firearm or destructive
63 device during the commission of the prior felony, the offender
64 shall be sentenced to a minimum term of imprisonment of 10
65 years.

66 2. Any person who is convicted of a felony or an attempt to
67 commit a felony listed in sub-subparagraphs (a)1.a.-q.,
68 regardless of whether the use of a weapon is an element of the
69 felony, and during the course of the commission of the felony
70 such person discharged a "firearm" or "destructive device" as
71 defined in s. 790.001 shall be sentenced to a minimum term of
72 imprisonment of 20 years.

73 3. Any person who is convicted of a felony or an attempt to
74 commit a felony listed in sub-subparagraphs (a)1.a.-q.,
75 regardless of whether the use of a weapon is an element of the
76 felony, and during the course of the commission of the felony
77 such person discharged a "firearm" or "destructive device" as
78 defined in s. 790.001 and, as the result of the discharge, death
79 or great bodily harm was inflicted upon any person, the
80 convicted person shall be sentenced to a minimum term of
81 imprisonment of not less than 25 years and not more than a term
82 of imprisonment of life in prison.

83 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph
84 (a)3. does not prevent a court from imposing a longer sentence
85 of incarceration as authorized by law in addition to the minimum
86 mandatory sentence, or from imposing a sentence of death
87 pursuant to other applicable law. Subparagraph (a)1.,

4-00341-16

2016228__

88 subparagraph (a)2., or subparagraph (a)3. does not authorize a
89 court to impose a lesser sentence than otherwise required by
90 law.

91
92 Notwithstanding s. 948.01, adjudication of guilt or imposition
93 of sentence shall not be suspended, deferred, or withheld, and
94 the defendant is not eligible for statutory gain-time under s.
95 944.275 or any form of discretionary early release, other than
96 pardon or executive clemency, or conditional medical release
97 under s. 947.149, prior to serving the minimum sentence.

98 (c) If the minimum mandatory terms of imprisonment imposed
99 pursuant to this section exceed the maximum sentences authorized
100 by s. 775.082, s. 775.084, or the Criminal Punishment Code under
101 chapter 921, then the mandatory minimum sentence must be
102 imposed. If the mandatory minimum terms of imprisonment pursuant
103 to this section are less than the sentences that could be
104 imposed as authorized by s. 775.082, s. 775.084, or the Criminal
105 Punishment Code under chapter 921, then the sentence imposed by
106 the court must include the mandatory minimum term of
107 imprisonment as required in this section.

108 (d) It is the intent of the Legislature that offenders who
109 actually possess, carry, display, use, threaten to use, or
110 attempt to use firearms or destructive devices be punished to
111 the fullest extent of the law, and the minimum terms of
112 imprisonment imposed pursuant to this subsection shall be
113 imposed for each qualifying felony count for which the person is
114 convicted. The court shall impose any term of imprisonment
115 provided for in this subsection consecutively to any other term
116 of imprisonment imposed for any other felony offense.

4-00341-16

2016228__

117 (3) (a) 1. Any person who is convicted of a felony or an
118 attempt to commit a felony, regardless of whether the use of a
119 firearm is an element of the felony, and the conviction was for:

- 120 a. Murder;
- 121 b. Sexual battery;
- 122 c. Robbery;
- 123 d. Burglary;
- 124 e. Arson;
- 125 f. Aggravated assault;
- 126 g. Aggravated battery;
- 127 h. Kidnapping;
- 128 i. Escape;
- 129 j. Sale, manufacture, delivery, or intent to sell,
130 manufacture, or deliver any controlled substance;
- 131 k. Aircraft piracy;
- 132 l. Aggravated child abuse;
- 133 m. Aggravated abuse of an elderly person or disabled adult;
- 134 n. Unlawful throwing, placing, or discharging of a
135 destructive device or bomb;
- 136 o. Carjacking;
- 137 p. Home-invasion robbery;
- 138 q. Aggravated stalking; or
- 139 r. Trafficking in cannabis, trafficking in cocaine, capital
140 importation of cocaine, trafficking in illegal drugs, capital
141 importation of illegal drugs, trafficking in phencyclidine,
142 capital importation of phencyclidine, trafficking in
143 methaqualone, capital importation of methaqualone, trafficking
144 in amphetamine, capital importation of amphetamine, trafficking
145 in flunitrazepam, trafficking in gamma-hydroxybutyric acid

4-00341-16

2016228__

146 (GHB), trafficking in 1,4-Butanediol, trafficking in
147 Phenethylamines, or other violation of s. 893.135(1);

148
149 and during the commission of the offense, such person possessed
150 a semiautomatic firearm and its high-capacity detachable box
151 magazine or a machine gun as defined in s. 790.001, shall be
152 sentenced to a minimum term of imprisonment of 15 years.

153 2. Any person who is convicted of a felony or an attempt to
154 commit a felony listed in subparagraph (a)1., regardless of
155 whether the use of a weapon is an element of the felony, and
156 during the course of the commission of the felony such person
157 discharged a semiautomatic firearm and its high-capacity box
158 magazine or a "machine gun" as defined in s. 790.001 shall be
159 sentenced to a minimum term of imprisonment of 20 years.

160 3. Any person who is convicted of a felony or an attempt to
161 commit a felony listed in subparagraph (a)1., regardless of
162 whether the use of a weapon is an element of the felony, and
163 during the course of the commission of the felony such person
164 discharged a semiautomatic firearm and its high-capacity box
165 magazine or a "machine gun" as defined in s. 790.001 and, as the
166 result of the discharge, death or great bodily harm was
167 inflicted upon any person, the convicted person shall be
168 sentenced to a minimum term of imprisonment of not less than 25
169 years and not more than a term of imprisonment of life in
170 prison.

171 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph
172 (a)3. does not prevent a court from imposing a longer sentence
173 of incarceration as authorized by law in addition to the minimum
174 mandatory sentence, or from imposing a sentence of death

4-00341-16

2016228__

175 pursuant to other applicable law. Subparagraph (a)1.,
176 subparagraph (a)2., or subparagraph (a)3. does not authorize a
177 court to impose a lesser sentence than otherwise required by
178 law.

179

180 Notwithstanding s. 948.01, adjudication of guilt or imposition
181 of sentence shall not be suspended, deferred, or withheld, and
182 the defendant is not eligible for statutory gain-time under s.
183 944.275 or any form of discretionary early release, other than
184 pardon or executive clemency, or conditional medical release
185 under s. 947.149, prior to serving the minimum sentence.

186 (c) If the minimum mandatory terms of imprisonment imposed
187 pursuant to this section exceed the maximum sentences authorized
188 by s. 775.082, s. 775.084, or the Criminal Punishment Code under
189 chapter 921, then the mandatory minimum sentence must be
190 imposed. If the mandatory minimum terms of imprisonment pursuant
191 to this section are less than the sentences that could be
192 imposed as authorized by s. 775.082, s. 775.084, or the Criminal
193 Punishment Code under chapter 921, then the sentence imposed by
194 the court must include the mandatory minimum term of
195 imprisonment as required in this section.

196 (d) It is the intent of the Legislature that offenders who
197 possess, carry, display, use, threaten to use, or attempt to use
198 a semiautomatic firearm and its high-capacity detachable box
199 magazine or a machine gun as defined in s. 790.001 be punished
200 to the fullest extent of the law, and the minimum terms of
201 imprisonment imposed pursuant to this subsection shall be
202 imposed for each qualifying felony count for which the person is
203 convicted. The court shall impose any term of imprisonment

4-00341-16

2016228__

204 provided for in this subsection consecutively to any other term
205 of imprisonment imposed for any other felony offense.

206 (e) As used in this subsection, the term:

207 1. "High-capacity detachable box magazine" means any
208 detachable box magazine, for use in a semiautomatic firearm,
209 which is capable of being loaded with more than 20 centerfire
210 cartridges.

211 2. "Semiautomatic firearm" means a firearm which is capable
212 of firing a series of rounds by separate successive depressions
213 of the trigger and which uses the energy of discharge to perform
214 a portion of the operating cycle.

215 (6) Notwithstanding s. 27.366, the sentencing court shall
216 not impose the mandatory minimum sentence required by subsection
217 (2) or subsection (3) ~~for a conviction for aggravated assault~~ if
218 the court makes written findings that:

219 (a) The defendant had a good faith belief that the use or
220 threatened use of force ~~aggravated assault~~ was justifiable
221 pursuant to chapter 776.

222 ~~(b) The aggravated assault was not committed in the course~~
223 ~~of committing another criminal offense.~~

224 (b)(e) The defendant does not pose a threat to public
225 safety.

226 (c)(d) The totality of the circumstances involved in the
227 offense does ~~do~~ not justify the imposition of such sentence.

228 Section 3. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request



To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: September 16, 2015

I respectfully request that **Senate Bill # 228**, relating to Self-Defense Protection Act, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

223716

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

October 5, 2015

228

Meeting Date

Bill Number (if applicable)

812936

Amendment Barcode (if applicable)

Topic Self-Defense

Name Hon. Stacy Scott

Job Title Public Defender, 8th Judicial Circuit

Address 35 North Main Street

Phone 352.338.7370

Street

Gainesville

Florida

32601

Email scotts@pdo8.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10/5/2015

Meeting Date

228

Bill Number (if applicable)

223716

Amendment Barcode (if applicable)

Topic _____

Name Matt Dunagan

Job Title Deputy Executive Director

Address 2617 Mahan Drive

Street

Tallahassee

City

FL

State

32308

Zip

Phone 850-877-2165

Email mdunagan@flsheriffs.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10/5/15
Meeting Date

203716
SB 228

Topic Aggravated Assault

only to the
Amendment

Bill Number (if applicable)

812936

Amendment Barcode (if applicable)

Name Buddy Jacobs

Job Title General Counsel Fla. Prosecuting Attys Assoc

Address 961687 Gateway Blvd.
Street

Phone 904-261-3693

Fernandina Bch
City

FL
State

32034
Zip

Email bjacobs@comcast.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing State Attorneys of Fla.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

October 5, 2015
Meeting Date

SB 228
Bill Number (if applicable)

Topic Self-Defense Protection Act

223716
Amendment Barcode (if applicable)

Name Frank Fabrizio

Job Title Chief of Police, Ponce Inlet Police Department

Address 4301 S. Peninsula Dr

Phone # 386-236-2160

Tallahassee FL 32327
City State Zip

Email ffabrizio@ponce-inlet.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing The Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10/5/2015

Meeting Date

228

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Executive Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10/5/2015

Meeting Date

228

Bill Number (if applicable)

Topic Mandatory Minimum 10-20-Life

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone 681-0024

Street

Tallahassee, FL 32301

Email jorge@flapartners.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLA Association of Crim. Defense L

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

October 5, 2015
Meeting Date

SB 228
Bill Number (if applicable)

Topic Self-Defense Protection Act

Amendment Barcode (if applicable)

Name Frank Fabrizio

Job Title Chief of Police, Ponce Inlet Police Department

Address 4301 S. Peninsula Drive
Street

Phone #386-236-2160

Tallahassee FL 32327
City State Zip

Email ffabrizio@ponce-inlet.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing The Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10-9-15
Meeting Date

228
Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933

Phone 352.682.9542

Gainesville, FL 32614
City State Zip

Email gnewburn@fam.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Families Against Mandatory Minimums

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 230

INTRODUCER: Senator Dean

SUBJECT: Missing Persons with Special Needs

DATE: October 2, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.	_____	_____	CF	_____
3.	_____	_____	AP	_____

I. Summary:

SB 230 creates the “Project Leo” pilot program in Baker, Columbia, Hamilton, and Suwanee counties to provide personal devices to aid search-and-rescue efforts for persons with special needs in the case of elopement.

The project is developed and administered by the Center for Autism and Related Disabilities at the University of Florida (“CARD/UF”). The bill directs the CARD/UF to develop criteria for selecting project participants. The CARD/UF selects qualifying participants on a first-come, first-served basis to the extent of available funding within the center’s existing resources. The project is voluntary and free to participants. The CARD/UF distributes the personal devices to the sheriff’s offices of the participating counties. The CARD/UF funds any device monitoring costs.

The CARD/UF submits preliminary and final reports to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The final report must include recommendations for modifications or continued implementation of the project.

The bill states, for FY 2016-17, \$100,000 is appropriated from the General Revenue Fund to the CARD/UF for the purpose of implementing this act.

II. Present Situation:

Elopement of Individuals with Special Needs

Elopement, also referred to as wandering, is a safety issue that affects some individuals with disabilities, their families, and the community. Wandering is when someone leaves a safe area or

a responsible caregiver. This typically includes situations where the person may be injured or harmed as a result.¹

Elopement and Wandering of Individuals with Autism

Elopement in children with autism might include running off from adults at school or in the community, leaving the classroom without permission, or leaving the house when the family is not looking. This behavior is considered common and short-lived in toddlers, but it may persist or re-emerge in children and adults with autism. Children with autism have challenges with social and communication skills and safety awareness. This makes wandering a potentially dangerous behavior.²

There are various reasons someone with autism may wander; more often than not, he or she will wander to something of interest (especially bodies of water) or away from something that is bothersome or stressful (such as uncomfortable noise or bright lights).³

Approximately 50 percent of children with autism have a tendency to wander or elope.⁴ Families report that about half of those children who have a tendency to wander succeeded and went missing long enough to cause serious concern. A substantial portion of those children who wander are at risk for bodily harm.⁵ Of those children who went missing, 24 percent were in danger of drowning and 65 percent were in danger of traffic injury.⁶

Elopement and Wandering of Individuals with Alzheimer's Disease

Wandering and elopement can also be dangerous for individuals with Alzheimer's disease and other forms of dementia, as the individual may not remember his or her name or address in order to assist rescuers; they can become disoriented, even in familiar places. An individual with Alzheimer's disease who wanders or elopes is most often looking for someone or something familiar, escaping a source of stress or anxiety, or may be reliving the past.⁷

Statistics indicate that in the U.S., more than 34,000 individuals with Alzheimer's disease wander out of their homes or care facilities each year.⁸ Six in 10 people with some type of

¹“Wandering (Elopement),” Centers for Disease Control and Prevention, available at <http://www.cdc.gov/ncbddd/disabilityandsafety/wandering.html> (last viewed on September 23, 2015).

² Information provided by the AWAARE Collaboration, available at <http://awaare.nationalautismassociation.org/> (last viewed on September 23, 2015).

³ “Why is My Child Eloping and What Can I Do?,” Autism Community, available at <http://www.autism-community.com/why-is-my-child-eloping-and-what-can-i-do/> (last viewed on September 23, 2015).

⁴ Michelle Diament, “Autism Wandering Poses ‘Critical Safety Issue,’ Survey Suggests,” *Autism Wandering Poses “Critical”* (April 21, 2011), disability scoop, available at <http://www.disabilityscoop.com/2011/04/21/autism-wandering-survey/12953/> (last viewed on September 23, 2015).

⁵ Connie Anderston, et al., “Occurrence and Family Impact of Elopement in Children With Autism Spectrum Disorders,” *PEDIATRICS* (October 8, 2012), available at <http://pediatrics.aappublications.org/content/early/2012/10/02/peds.2012-0762.full.pdf+html> (last viewed on September 23, 2015).

⁶ *Id.*

⁷ “Alzheimer’s: Understand wandering and how to address it,” Mayo Clinic, available at <http://www.mayoclinic.org/healthy-living/caregivers/in-depth/alzheimers/art-20046222> (last viewed on September 23, 2015).

⁸ “Wandering and Elopement Resources,” National Council of Certified Dementia Practitioners, available at <http://www.nccdp.org/wandering.htm> (last viewed on September 23, 2015).

dementia will wander or elope;⁹ additionally, it is estimated that 11-24 percent of institutionalized dementia patients wander.¹⁰

Anti-wandering and GPS tracking devices can be worn as a bracelet, attached to an individual's shoe or belt loop or even sewn into clothing. In the event that an individual goes missing, a caregiver can utilize products and services from the monitoring company for the device to pinpoint the wearer's location. There are a number of anti-wandering and GPS tracking devices on the market that can aid in search and rescue for individuals with special needs who are prone to wander. Two examples are the Protect and Locate (PAL) tracking system through Project Lifesaver and the Amber Alert GPS.

- The PAL is a tracking device that is worn as a watch by the individual at risk of wandering and has a companion portable receiver which notifies the caregiver of a wandering event. Through the use of cell ID location and GPS technologies, it provides the location of a wearer accurate to nine feet.¹¹ If an individual wearing a PAL device wanders outside of a set perimeter, the caregiver's receiver will receive an alert and the caregiver will receive an email alert and the device will send a text message with the date and location of the wandering event.¹²

Additionally, a caregiver can press the "find" button on his or her receiver to have the location of the individual and the address displayed on the portable receiver. If the individual wearing the PAL watch/transmitter is lost, he or she can push the panic button on the PAL watch to have the current address shown on the caregiver's portable receiver.¹³ The PAL tracking system costs \$249.99 per unit and requires a monitoring/service plan of \$29.95 per month.¹⁴

- The Amber Alert GPS is a small disk that can be put in an individual's purse or backpack or, with the purchase of an accessory, can be attached to the individual. The Amber Alert GPS syncs with an online tracking portal and mobile application for iPhone, Blackberry, and Droid cellular phones to provide the real-time location of the wearer.¹⁵ It allows the caregiver to designate up to 20 "safe zones" and receive an alert each time a wearer leaves one of the designated safe zones. It also has a two-way voice feature to allow the caregiver and wearer to talk to each other through the device and an SOS button that the wearer can push in the event of an emergency to notify the caregiver and up to ten additional individuals.¹⁶ Amber Alert GPS costs \$145 per unit and requires a monitoring/service plan of \$15-18 per month.¹⁷

⁹ "Wandering and Getting Lost," Alzheimer's Association, available at <http://www.alz.org/care/alzheimers-dementia-wandering.asp> (last viewed on September 23, 2015).

¹⁰ See footnote 8.

¹¹ Information about PAL (Protect And Locate) Tracking System is available from Project Lifesaver at <http://www.projectlifesaver.org/Pal-info/> (last viewed on September 23, 2015).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Information about the Amber Alert GPS Smart Locator is available from Amber Alert GPS at <https://www.amberalertgps.com/products> (last viewed on September 23, 2015).

¹⁶ *Id.*

¹⁷ *Id.*

Center for Autism and Related Disabilities

The Center for Autism and Related Disabilities (CARD/UF) works with families, caregivers, and professionals to optimize the potential of people with autism and related disabilities. The CARD/UF serves children and adults of all levels of intellectual functioning who have autism, autistic-like disabilities, pervasive developmental disorder, dual sensory impairments (hearing and vision impaired), or a vision or hearing loss with another disabling condition.¹⁸ There are seven non-residential CARD centers across the state and the CARD/UF serves fourteen counties in North Central Florida.¹⁹

III. Effect of Proposed Changes:

The bill creates s. 937.041, F.S., which creates the “Project Leo” pilot program in Baker, Columbia, Hamilton, and Suwanee counties to provide personal devices to aid search-and-rescue efforts for persons with special needs in the case of elopement. The project is developed and administered by the CARD/UF.

The CARD/UF selects project participants based on criteria it develops, which must include, at a minimum, the individual’s risk of elopement. Participants are selected on a first-come, first-serve basis. The number of participants is determined based on available funding within the center’s existing resources.

Participation in the project is voluntary and free. Participants are provided a personal device to aid search and rescue efforts. This device is attachable to clothing or otherwise wearable. The CARD/UF distributes the personal devices to the sheriff’s offices of the participating counties. The CARD/UF funds any device monitoring costs.

The CARD/UF submits preliminary and final reports to the Governor, the Speaker of the House of Representatives, and the President of the Senate. Both reports must include all of the following:

- The criteria used to select the participants.
- The number of participants.
- The age of the participants.
- The nature of the participants’ special needs.
- The number of participants who elope.
- The amount of time taken to rescue a participant following elopement.
- The outcome of any rescue attempts.

Additionally, the final report must include recommendations for modifications or continued implementation of the program. The project operates to the extent of available funding within the center’s existing resources. Since the bill provides that s. 937.041, F.S., expires on June 30, 2018, the project effectively ends on that date.

¹⁸ “About CARD FAQ,” Center for Autism and Related Disabilities, University of Florida, available at <http://card.ufl.edu/about-card/faq/> (last viewed on September 23, 2015).

¹⁹ *Id.* The counties served by the CARD/UF are Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Levy, Marion, Putnam, Suwannee, and Union.

The bill states, for FY 2016-17, \$100,000 is appropriated from the General Revenue Fund to the CARD/UF for the purpose of implementing this act.

The effective date of the bill is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The number of participants is determined based on available funding within the existing resources of the CARD/UF. The CARD/UF distributes the personal devices to the sheriff's offices of the participating counties. The CARD/UF funds any device monitoring costs.

The bill states, for FY 2016-17, \$100,000 is appropriated from the General Revenue Fund to the CARD/UF for the purpose of implementing this act.

The Board of Governors states that there is no determinable fiscal impact to the state universities from the bill and the bill has no fiscal impact on the Board of Governors office.²⁰

VI. Technical Deficiencies:

None.

²⁰ 2016 Legislative Bill Analysis (SB 230) (September 9, 2015), State University System of Florida Board of Governors (on file with the Senate Committee on Criminal Justice).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 937.041 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Dean

5-00275A-16

2016230__

1 A bill to be entitled
2 An act relating to missing persons with special needs;
3 creating s. 937.041, F.S.; creating a pilot project in
4 specified counties to provide personal devices to aid
5 search-and-rescue efforts for persons with special
6 needs; providing for administration of the project;
7 requiring reports; providing for expiration; providing
8 an appropriation; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 937.041, Florida Statutes, is created to
13 read:

14 937.041 Missing persons with special needs pilot project.-

15 (1) There is created a pilot project in Baker, Columbia,
16 Hamilton, and Suwannee Counties to be known as "Project Leo" to
17 provide personal devices to aid search-and-rescue efforts for
18 persons with special needs in the case of elopement.

19 (2) Participants for the pilot project shall be selected
20 based on criteria developed by the Center for Autism and Related
21 Disabilities at the University of Florida. Criteria for
22 participation shall include, at a minimum, the person's risk of
23 elopement. The qualifying participants shall be selected on a
24 first-come, first-served basis by the center to the extent of
25 available funding within the center's existing resources. The
26 project shall be voluntary and free to participants.

27 (3) Under the pilot project, personal devices to aid
28 search-and-rescue efforts that are attachable to clothing or
29 otherwise worn shall be provided by the center to the sheriff's

5-00275A-16

2016230__

30 offices of the participating counties. The devices shall be
31 distributed to project participants by the county sheriff's
32 offices in conjunction with the center. The center shall fund
33 any costs associated with monitoring the devices.

34 (4) The center shall submit a preliminary report by
35 December 1, 2016, and a final report by December 15, 2017, to
36 the Governor, the President of the Senate, and the Speaker of
37 the House of Representatives describing the implementation and
38 operation of the pilot project. At a minimum, the report shall
39 include the criteria used to select participants, the number of
40 participants, the age of the participants, the nature of the
41 participants' special needs, the number of participants who
42 elope, the amount of time taken to rescue such participants
43 following elopement, and the outcome of any rescue attempts. The
44 final report shall also provide recommendations for modification
45 or continued implementation of the project.

46 (5) The project shall operate to the extent of available
47 funding within the center's existing resources.

48 (6) This section expires June 30, 2018.

49 Section 2. For the 2016-2017 fiscal year, the sum of
50 \$100,000 is appropriated from the General Revenue Fund to the
51 Center for Autism and Related Disabilities at the University of
52 Florida for the purpose of implementing this act.

53 Section 3. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and
Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

SENATOR CHARLES S. DEAN, SR.
5th District



September 29, 2015

The Honorable Greg Evers
308 Senate Office Building
404 South Monroe St.
Tallahassee, FL 32399-1100

Dear Chairman Evers:

Thank you for allowing Senate Bill 230, relating to Missing Persons with Special Needs, to be placed on your agenda. Unfortunately, I will be unable to attend the Committee meeting and would like to request your permission to allow my aide, Kyle Langan, to present this bill in my place.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Charles S. Dean".

Charles S. Dean
State Senator, District 5

Cc: Amanda Cannon, Staff Director

REPLY TO:

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10/05/2015
Meeting Date

230
Bill Number (if applicable)

Topic Rescue Devices For People w/ Disabilities

Amendment Barcode (if applicable)

Name Michael Daniels

Job Title Executive Director

Address 3333 W. Pensacola Street
Street

Phone 850-766-3732

Tallahassee FL 32304
City State Zip

Email mdaniels@faast.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Alliance for Assistive Services & Technology
FAAST

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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: SPB 7006

INTRODUCER: For consideration by the Criminal Justice Committee

SUBJECT: Corrections

DATE: October 2, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sumner	Cannon		Pre-meeting

I. Summary:

SPB 7006:

- Requires the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders;
- Removes the current restriction against assessing victim injury sentencing points against a correctional officer or employee who commits sexual misconduct with an inmate without committing sexual battery;
- Expands the ability of an inmate to get a one-time award of gain-time for educational attainment without violating the requirement for every inmate to serve 85 percent of their court imposed sentence;
- Creates a new felony for Department of Corrections (DOC) employees or employees of a private provider who withhold water, food, and other essential services; and
- Increases the frequency of mental and physical health care surveys conducted by the Correctional Medical Authority at prisons from every three years to every 18 months.

II. Present Situation:

Criminal Justice Estimating Conference

Consensus Estimating Conferences have statutory authority under ss. 216.133 – 216.138, F.S., to forecast economic, demographic, caseload, and revenue information for a variety of governmental planning and budgeting functions. This ensures that the “State meets the constitutional balanced budget requirement.”¹ The forecasts are “primarily used in the development of the constitutionally required Long-Range Financial Outlook, the Governor’s budget recommendations and the General Appropriations Act. Economic and demographic forecasts are also used to support estimates of revenues and demands for state services.”⁴

¹ <http://edr.state.fl.us/Content/conferences/index.cfm>

Specifically, the Criminal Justice Estimating Conference is statutorily tasked under s. 216.136(6), F.S., with developing forecasts of prison admissions and population and of supervised felony offender admissions and population; developing information relating to the number of eligible discharges and the projected number of civil commitments for determining needs for space; and developing information relating to the number of sexual offenders and sexual predators who are required by law to be placed on community control, probation, or conditional release who are subject to electronic monitoring.

Elderly Inmates in Prison

- The majority of elderly inmates in prison on June 30, 2014, were serving time for sex offenses (21.6 percent), murder/manslaughter (20.8 percent), or drug offenses (12.9 percent).
- The 20,753 elderly inmates in prison on June 30, 2014, represented 20.6 percent of the total inmate population.
- 94.6 percent of the elderly inmates in prison were male; 5.4 percent were female.
- 46.2 percent of the elderly inmates in prison had no prior prison commitments.
- On June 30, 2014, the department housed three inmates whose age was 92.

Most of the elderly inmates are housed separately from the general population for purposes of reducing the potential for predatory and abusive behavior by younger, more aggressive inmates and to promote efficient use of medical resources. There are three centers currently housing elderly inmates:

- Reception and Medical Center on-site in Lake Butler;
- South Unit of the Central Florida Reception Center; and
- Zephyrhills Correctional Institution.²

Increased Costs for Elderly Inmates

Florida Tax Watch in September 2014 reported that the department budget had grown by \$560 million (35 percent) from 2000-2012. The health care cost had grown by \$176 million or 76 percent. The report states that the elderly patients accounted for 49 percent of all hospital in days in 2012. By assuming that hospitalization is a representation of overall prison health care costs, the report states the elderly prison population is responsible for approximately half of the \$408 million in prisoner healthcare costs in 2012.

The DOC reports that the Pew Center on Research estimated that the overall cost of managing an elderly prisoner is \$70,000 annually. This yields a per diem cost of \$192 per inmate compared to the average DOC per diem of \$50 per inmate.³

Conditional Medical Release

In 1992, the Florida Legislature created the Conditional Medical Release Program (s. 947.149, F.S.) which is a discretionary release process allowing the Florida Commission on Offender Review (FCOR) to release inmates on supervision who are “terminally ill” or “permanently

² <http://www.dc.state.fl.us/pub/annual/1314/ar-additional-facts-elderly.html>

³ Id.

incapacitated” and who are not a danger to others. The department is charged with the responsibility of recommending to the FCOR inmates who are eligible to be considered for conditional medical release. Upon release, the offender is subject to conditions of supervision set by the FCOR. The FCOR monitors the offender’s progress through periodic medical reviews. Supervision can be revoked and the offender returned to prison if the FCOR determines that a willful and substantial violation of supervision has occurred or if their medical or physical condition improves to the point that the offender no longer meets release criteria. In Fiscal Year 2013-2014, the FCOR granted conditional medical release to eight of the 19 inmates recommended by the department.

Sentencing for Sexual Misconduct with an Inmate or Supervised Offender

Section 944.35(3)(b)2., F.S., prohibits an employee of the department or a private correctional facility from engaging in sexual misconduct with an inmate or an offender on community supervision. “Sexual misconduct” is defined as the “oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object, but does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee’s duty.”⁴ Sexual misconduct is prohibited regardless of whether the activity is non-consensual or consensual. However, if the activity is non-consensual, the more serious offense of sexual battery could be charged. The offense is a third degree felony, punishable by imprisonment for a maximum five years and a potential fine not exceeding \$5,000.

Sexual Misconduct with an Inmate or Supervised Offender is ranked by default as a Level 1 offense, which means that four sentencing points are scored. No victim injury points can be assessed for sexual contact or sexual penetration for a violation of s. 944.35(3)(b)2., F.S., and correctional employees can be expected to have no significant prior offenses for which sentencing points would be added. Therefore, it is unlikely that there would be more than 22 total sentencing points. Because s. 944.35(3)(b)2., F.S., is not a forcible felony and the sentencing points total would likely be 22 or lower, s. 775.082(10), F.S., would limit the sentence to a nonprison sanction.

Gain-Time

Gain-time is authorized in s. 944.275, F.S., and is a means by which eligible inmates can earn a reduction in the sentence that was imposed by the court. Current forms of gain-time are based upon the department’s assessment that the inmate has behaved satisfactorily and engaged in constructive activities. As such, gain-time is a tool by which the department can encourage good behavior and motivate inmates to participate in programs and work assignments. Inmates who are serving life sentences or certain minimum mandatory sentences are not eligible for gain-time during the portion of time that the mandatory sentences are in effect. Incentive gain-time is awarded to inmates for institutional adjustment, work, and participation in programs.

⁴ Section 944.35(3)(b)1., F.S.

Meritorious gain-time may be considered for an inmate who commits an outstanding deed. The maximum award is 60 days. Examples of outstanding deeds are saving a life or assisting in recapturing an escaped inmate, or in some manner performing an outstanding service.

Educational Achievement gain-time in the amount of 60 days may be awarded to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program. Inmates whose offense was committed on or after October 1, 1995, are not eligible for this one-time award.

Criminal Penalties and Employee Misconduct

Employees of the department who, with malicious intent, commit a battery on an inmate supervised by the department, commit a first degree misdemeanor. Employees who, with malicious intent, commit a battery or inflict cruel or inhuman treatment by neglect causing great bodily harm, permanent disability, or permanent disfigurement to an inmate commit a third degree felony.⁵

Correctional Medical Authority

The Correctional Medical Authority (CMA) was created in July 1986, while the state's prison healthcare system was under the jurisdiction of the federal court as a result of litigation that began in 1972. *Costello v. Wainwright* (430 U.S. 57 (1977)) was a class action suit brought by inmates alleging that their constitutional rights had been violated by inadequate medical care, insufficient staffing, overcrowding, and poor sanitation. The CMA was created as part of the settlement of that case and continues to serve as an independent monitoring body providing oversight of the systems in place to provide health care to inmates in the Department of Corrections. In the final order closing the case, Judge Susan Black noted that creation of the CMA made it possible for the Federal Court to relinquish the prison monitoring and oversight function it had performed for the prior twenty years. In light of "Florida's affirmation of its continued commitment to the CMA's independence" and the support from the Defendant and the State of Florida, the court found that the CMA was capable of "performing an oversight and monitoring function over the department in order to assure continued compliance with the orders entered in this case."

In December 2001, the DOC entered into a settlement agreement in a lawsuit (*Osterback v. Crosby*, 16 Fla. Weekly Fed. D 513 (N.D. Fla. 2003)) involving mentally ill inmates housed in close management. The purpose of close management is to confine inmates separate from the general inmate population for reasons of security and for the order and effective management of the prison system. The Osterback agreement included a stipulation that the CMA monitor provisions of the agreement including clinical, administrative, and security components of the program designed to ensure effective treatment of mental illness in the close management population. The CMA completed its special monitoring responsibilities pending the outcome of the federal court's hearing of the case. The department completed and complied with each component of the close management corrective action plan process. The court entered a final

⁵ Section 944.35(3)(a), F.S.

judgment ruling in favor of the department and the case was closed on March 28, 2008. Facilities with close management are now monitored as part of the regular CMA survey process.

The CMA has stated that “Osterback, along with the multitude of lawsuits related to the provision of correctional health care, serve as reminders of the CMA’s important role in ensuring proper health and mental health care is provided to incarcerated members of society.”⁶

Prior to July 1, 2011, the CMA was housed within the Department of Health (DOH) for administrative purposes. During the 2011 Legislative Session two bills designed to abolish the CMA passed both chambers and were sent to the Governor for approval: Chapter 2011-69, Laws of Florida, (the 2011 General Appropriations Act), which eliminated the funding and positions related to the authority; and HB 5305, which repealed the statutes related to the CMA. The Governor vetoed HB 5305, but not the General Appropriations Act. Therefore, the CMA existed in statute but did not have the funding to operate or perform its duties for the 2011-2012 fiscal year. The CMA was funded again in 2012 and reconstituted as an independent state agency housed within the administrative structure of the Executive Office of the Governor.

The governing board of the authority is composed of nine persons appointed by the Governor subject to confirmation by the Senate. Members of the CMA are not compensated for performance of their duties but they are paid expenses incurred while engaged in the performance of such duties pursuant to s. 112.061, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 216.136, F.S., to require the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders.

Section 2 deletes s. 921.0021(7)(c), F.S., removing the prohibition against assessing victim injury points for sexual penetration or sexual contact in calculating the sentencing score for Sexual Misconduct with an Inmate or Supervised Offender (s. 944.35(3)(b)2., F.S.). By definition, the offense cannot be committed without either sexual contact or sexual penetration. Currently, in almost all cases the sentencing range would be limited to a nonprison sanction because no more than 22 sentencing points would be scored. The amendment significantly changes the sentencing range:

- If there was sexual contact, the offender would have a minimum of 44 sentencing points (four points for the base offense plus 40 victim injury points). A total sentencing score of 44 would allow the judge to impose any sentence from a nonprison sanction to the five year maximum prison sentence. If there are additional sentencing points, a prison sentence would be required unless the judge finds statutory grounds for a departure below the minimum permissible sentence.
- If there was sexual penetration, the offender would have a minimum of 84 sentencing points (four points for the base offense plus 80 victim injury points). A total sentencing score of 84

⁶ The first two paragraphs of this section and the designated quote are from the State of Florida, Correctional Medical Authority 2012-2013 Annual Report and Report on Aging Inmates, http://www.flgov.com/wp-content/uploads/pdfs/correctional_medical_authority_2012-2013_annual_report.pdf

would permit the judge to impose any sentence from 42 months in prison to the five year maximum prison sentence.

Section 3 amends s. 944.275, F.S., to allow inmates sentenced for an offense committed on or after October 1, 1995, to be eligible for education attainment gain-time in the amount of 60 days. If this bill becomes law, an inmate may receive a one-time award of 60 days of gain-time for receiving a General Education Development (GED) diploma or for earning a certificate for completion of a vocational program. Under current law, inmates whose offense was committed on or after October 1, 1995, are not eligible for this one-time award.

Section 4 creates a new third degree felony for an employee of the department, private provider, or private correctional facility who knowingly, and with the intent to cause an inmate great bodily harm, permanent disability, or permanent disfigurement, withholds food, water, clothing, shelter, supervision, medicine, or medical services from the inmate and causes an inmate to suffer great bodily harm, permanent disability, or permanent disfigurement by such action.

Section 5 amends s. 945.6031, F.S., to change the CMA's frequency of surveys of the physical and mental health care system at each institution from every three years to every 18 months.

Section 6 conforms a cross reference.

Section 7, 8, 9 reenacts ss. 944.023, 435.04, and 921.022, F.S., for the purpose of incorporating amendments made in the bill.

Section 10 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:**Correctional Medical Authority**

The increase in the frequency of CMA surveys from every 4 years to every 18 months has an estimated fiscal impact of approximately \$790,000 for additional personnel and expenses.

Education Gain-time

According to the 2015 projections by the department, approximately 650 inmates will immediately receive the one-time 60 day additional gain-time award for past educational attainments. It is estimated that approximately 60 of these inmates will be immediately released due to this award since this group is within 60 days of release. In terms of future impact on prison bed space, the department estimates 24,000 inmate-days will be saved per year as a result of this bill. In other words, the average daily prison population is projected to be reduced by 66 inmates over the course of the year. Reduction of the average daily population by 66 inmates would reduce costs by approximately \$1.2 million each year at the current inmate per diem cost of \$49.49.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Between May and September, 2015, Governor Rick Scott signed three Executive Orders addressing reforms and initiatives for the Department of Corrections. Executive Order No. 15-102 addresses providing a safe and humane environment for offenders and staff and increased security. Executive Order 15-134 calls for an independent audit of the Department's operations by the National Institute of Corrections and the Association of State Correctional Administrators,⁷ and creating a partnership between the Department of Corrections, the Department of Juvenile Justice, and the Department of Children and Families to establish best management practices in order to improve mental health services using facilities in Broward County. Executive Order 15-175 is an addendum to Executive Order 15-134 and adds the Department of Health and the Agency for Health Care Administration to the partnership and expands the pilot mental health programs to Alachua and Pinellas Counties.

The study by the National Institute of Corrections (NIC) was completed pursuant to Executive Order No. 15-134. In the description of the problem the NIC stated it was to provide assistance to DOC by providing an evaluation of staffing adequacy, the application of appropriate relief

⁷ The Order establishes two prototype institutions in Lake and Liberty Counties focused on identifying and measuring enhanced operational methods.

factors consistent with national practices, and a review of the agency's use of special assignment allocations. The study made nine specific findings related to staffing and hiring practices including discontinuing the use of 12-hour shifts with its most "fervent" recommendation that Florida return to its leadership role in prison staffing protocols and performance.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.136, 921.0021, 944.275, 944.35, 945.6031, and 951.221.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Criminal Justice

591-00528-16

20167006pb

1 A bill to be entitled
2 An act relating to corrections; amending s. 216.136,
3 F.S.; requiring the Criminal Justice Estimating
4 Conference to develop projections of prison admissions
5 and populations for elderly felony offenders; amending
6 s. 921.0021, F.S.; revising the definition of "victim
7 injury" by removing a prohibition on assessing certain
8 victim injury sentence points for sexual misconduct by
9 an employee of the Department of Corrections or a
10 private correctional facility with an inmate or an
11 offender supervised by the department; conforming a
12 provision to changes made by the act; amending s.
13 944.275, F.S.; prohibiting an inmate from receiving
14 incentive gain-time for completing the requirements
15 for and receiving a high school equivalency diploma or
16 vocational certificate if the inmate is convicted of a
17 specified offense on or after a specified date;
18 amending s. 944.35, F.S.; expanding applicability of a
19 current felony offense to include employees of private
20 providers and private correctional facilities;
21 creating criminal penalties for employees who
22 knowingly and with the intent to cause specified harm
23 withhold food, water, or essential services from an
24 inmate; amending s. 945.6031, F.S.; increasing the
25 frequency of required surveys of health care systems
26 at correctional institutions; amending s. 951.221,
27 F.S.; conforming a cross-reference; reenacting s.
28 944.023(1)(a), F.S., relating to the definition of the
29 term "Criminal Justice Estimating Conference", to

591-00528-16

20167006pb

30 incorporate the amendment made to s. 216.136, F.S., in
31 a reference thereto; reenacting ss. 435.04(2)(uu) and
32 921.0022(3)(f), F.S., relating to level 2 screening
33 standards and level 6 of the offense severity ranking
34 chart, respectively, to incorporate the amendment made
35 to s. 944.35, F.S., in references thereto; providing
36 an effective date.

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. Paragraph (d) is added to subsection (5) of
41 section 216.136, Florida Statutes, to read:

42 216.136 Consensus estimating conferences; duties and
43 principals.—

44 (5) CRIMINAL JUSTICE ESTIMATING CONFERENCE.—The Criminal
45 Justice Estimating Conference shall:

46 (d) Develop projections of prison admissions and
47 populations for elderly felony offenders.

48 Section 2. Subsection (7) of section 921.0021, Florida
49 Statutes, is amended to read:

50 921.0021 Definitions.—As used in this chapter, for any
51 felony offense, except any capital felony, committed on or after
52 October 1, 1998, the term:

53 (7) (a) "Victim injury" means the physical injury or death
54 suffered by a person as a direct result of the primary offense,
55 or any additional offense, for which an offender is convicted
56 and which is pending before the court for sentencing at the time
57 of the primary offense.

58 (b) Except as provided in paragraph (c): ~~or paragraph (d),~~

591-00528-16

20167006pb

59 1. If the conviction is for an offense involving sexual
60 contact that includes sexual penetration, the sexual penetration
61 must be scored in accordance with the sentence points provided
62 under s. 921.0024 for sexual penetration, regardless of whether
63 there is evidence of any physical injury.

64 2. If the conviction is for an offense involving sexual
65 contact that does not include sexual penetration, the sexual
66 contact must be scored in accordance with the sentence points
67 provided under s. 921.0024 for sexual contact, regardless of
68 whether there is evidence of any physical injury.

69
70 If the victim of an offense involving sexual contact suffers any
71 physical injury as a direct result of the primary offense or any
72 additional offense committed by the offender resulting in
73 conviction, such physical injury must be scored separately and
74 in addition to the points scored for the sexual contact or the
75 sexual penetration.

76 ~~(c) The sentence points provided under s. 921.0024 for~~
77 ~~sexual contact or sexual penetration may not be assessed for a~~
78 ~~violation of s. 944.35(3)(b)2.~~

79 (c)~~(d)~~ If the conviction is for the offense described in s.
80 872.06, the sentence points provided under s. 921.0024 for
81 sexual contact or sexual penetration may not be assessed.

82 (d)~~(e)~~ Notwithstanding paragraph (a), if the conviction is
83 for an offense described in s. 316.027 and the court finds that
84 the offender caused victim injury, sentence points for victim
85 injury may be assessed against the offender.

86 Section 3. Paragraphs (d) and (e) of subsection (4) of
87 section 944.275, Florida Statutes, are amended, and paragraph

591-00528-16

20167006pb

88 (b) of that subsection is republished, to read:

89 944.275 Gain-time.—

90 (4)

91 (b) For each month in which an inmate works diligently,
92 participates in training, uses time constructively, or otherwise
93 engages in positive activities, the department may grant
94 incentive gain-time in accordance with this paragraph. The rate
95 of incentive gain-time in effect on the date the inmate
96 committed the offense which resulted in his or her incarceration
97 shall be the inmate's rate of eligibility to earn incentive
98 gain-time throughout the period of incarceration and shall not
99 be altered by a subsequent change in the severity level of the
100 offense for which the inmate was sentenced.

101 1. For sentences imposed for offenses committed prior to
102 January 1, 1994, up to 20 days of incentive gain-time may be
103 granted. If granted, such gain-time shall be credited and
104 applied monthly.

105 2. For sentences imposed for offenses committed on or after
106 January 1, 1994, and before October 1, 1995:

107 a. For offenses ranked in offense severity levels 1 through
108 7, under former s. 921.0012 or former s. 921.0013, up to 25 days
109 of incentive gain-time may be granted. If granted, such gain-
110 time shall be credited and applied monthly.

111 b. For offenses ranked in offense severity levels 8, 9, and
112 10, under former s. 921.0012 or former s. 921.0013, up to 20
113 days of incentive gain-time may be granted. If granted, such
114 gain-time shall be credited and applied monthly.

115 3. For sentences imposed for offenses committed on or after
116 October 1, 1995, the department may grant up to 10 days per

591-00528-16

20167006pb

117 month of incentive gain-time, except that no prisoner is
118 eligible to earn any type of gain-time in an amount that would
119 cause a sentence to expire, end, or terminate, or that would
120 result in a prisoner's release, prior to serving a minimum of 85
121 percent of the sentence imposed. For purposes of this
122 subparagraph, credits awarded by the court for time physically
123 incarcerated shall be credited toward satisfaction of 85 percent
124 of the sentence imposed. Except as provided by this section, a
125 prisoner shall not accumulate further gain-time awards at any
126 point when the tentative release date is the same as that date
127 at which the prisoner will have served 85 percent of the
128 sentence imposed. State prisoners sentenced to life imprisonment
129 shall be incarcerated for the rest of their natural lives,
130 unless granted pardon or clemency.

131 (d) Notwithstanding paragraph (b) ~~subparagraphs (b)1. and~~
132 ~~2.~~, the education program manager shall recommend, and the
133 Department of Corrections may grant, a one-time award of 60
134 additional days of incentive gain-time to an inmate who is
135 otherwise eligible and who successfully completes requirements
136 for and is awarded a high school equivalency diploma or
137 vocational certificate. This incentive gain-time award may be
138 granted to reduce any sentence for an offense committed on or
139 after October 1, 1995. However, this gain-time may not be
140 granted to reduce any sentence for an offense committed on or
141 after October 1, 1995, if the inmate is, or has previously been,
142 convicted of a violation of s. 794.011, s. 794.05, former s.
143 796.03, former s. 796.035, s. 800.04, s. 825.1025, s. 827.03, s.
144 827.071, s. 847.0133, s. 847.0135, s. 847.0137, s. 847.0138, s.
145 847.0145, or s. 985.701(1), or a forcible felony offense that is

591-00528-16

20167006pb

146 specified in s. 776.08, except burglary as specified in s.
147 810.02(4). An inmate subject to the 85 percent minimum service
148 requirement pursuant to subparagraph (b)3. may not accumulate
149 gain-time awards at any point when the tentative release date is
150 the same as the 85 percent minimum service date of the sentence
151 imposed. Under no circumstances may an inmate receive more than
152 60 days for educational attainment pursuant to this section.

153 (e) Notwithstanding subparagraph (b)3. and paragraph (d),
154 for sentences imposed for offenses committed on or after October
155 1, 2014, the department may not grant incentive gain-time if the
156 offense is a violation of s. 782.04(1)(a)2.c.; s. 787.01(3)(a)2.
157 or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s.
158 794.011(10); s. 800.04; s. 825.1025; or s. 847.0135(5).

159 Section 4. Subsection (3) of section 944.35, Florida
160 Statutes, is amended to read:

161 944.35 Authorized use of force; malicious battery and
162 sexual misconduct prohibited; reporting required; penalties.—

163 (3)(a)1. Any employee of the department, a private
164 provider, or private correctional facility who, with malicious
165 intent, commits a battery upon an inmate or an offender
166 supervised by the department in the community, commits a
167 misdemeanor of the first degree, punishable as provided in s.
168 775.082 or s. 775.083.

169 2. Any employee of the department, a private provider, or
170 private correctional facility who, with malicious intent,
171 commits a battery or inflicts cruel or inhuman treatment by
172 neglect or otherwise, and in so doing causes great bodily harm,
173 permanent disability, or permanent disfigurement to an inmate or
174 an offender supervised by the department in the community,

591-00528-16

20167006pb

175 commits a felony of the third degree, punishable as provided in
176 s. 775.082, s. 775.083, or s. 775.084.

177 (b) An employee of the department, a private provider, or
178 private correctional facility commits a felony of the third
179 degree, punishable as provided in s. 775.082, s. 775.083, or s.
180 775.084, if the employee:

181 1. Knowingly and with the intent to cause an inmate great
182 bodily harm, permanent disability, or permanent disfigurement,
183 withholds food, water, clothing, shelter, supervision, medicine,
184 or medical services from the inmate; and

185 2. Causes an inmate to suffer great bodily harm, permanent
186 disability, or permanent disfigurement by such action.

187 (c) ~~(b)~~1. As used in this paragraph, the term "sexual
188 misconduct" means the oral, anal, or vaginal penetration by, or
189 union with, the sexual organ of another or the anal or vaginal
190 penetration of another by any other object, but does not include
191 an act done for a bona fide medical purpose or an internal
192 search conducted in the lawful performance of the employee's
193 duty.

194 2. Any employee of the department or a private correctional
195 facility as defined in s. 944.710 who engages in sexual
196 misconduct with an inmate or an offender supervised by the
197 department in the community, without committing the crime of
198 sexual battery, commits a felony of the third degree, punishable
199 as provided in s. 775.082, s. 775.083, or s. 775.084.

200 3. The consent of the inmate or offender supervised by the
201 department in the community to any act of sexual misconduct may
202 not be raised as a defense to a prosecution under this
203 paragraph.

591-00528-16

20167006pb

204 4. This paragraph does not apply to any employee of the
205 department or any employee of a private correctional facility
206 who is legally married to an inmate or an offender supervised by
207 the department in the community, nor does it apply to any
208 employee who has no knowledge, and would have no reason to
209 believe, that the person with whom the employee has engaged in
210 sexual misconduct is an inmate or an offender under community
211 supervision of the department.

212 (d)~~(d)~~ Notwithstanding prosecution, any violation of the
213 provisions of this subsection, as determined by the Public
214 Employees Relations Commission, shall constitute sufficient
215 cause under s. 110.227 for dismissal from employment with the
216 department, and such person shall not again be employed in any
217 capacity in connection with the correctional system.

218 (e)~~(d)~~ Each employee who witnesses, or has reasonable cause
219 to suspect, that an inmate or an offender under the supervision
220 of the department in the community has been unlawfully abused or
221 is the subject of sexual misconduct pursuant to this subsection
222 shall immediately prepare, date, and sign an independent report
223 specifically describing the nature of the force used or the
224 nature of the sexual misconduct, the location and time of the
225 incident, and the persons involved. The report shall be
226 delivered to the inspector general of the department with a copy
227 to be delivered to the warden of the institution or the regional
228 administrator. The inspector general shall immediately conduct
229 an appropriate investigation, and, if probable cause is
230 determined that a violation of this subsection has occurred, the
231 respective state attorney in the circuit in which the incident
232 occurred shall be notified.

591-00528-16

20167006pb

233 Section 5. Subsection (2) of section 945.6031, Florida
234 Statutes, is amended to read:

235 945.6031 Required reports and surveys.—

236 (2) The authority shall conduct surveys of the physical and
237 mental health care system at each correctional institution at
238 least every 18 months ~~triennially~~ and shall report the survey
239 findings for each institution to the Secretary of Corrections.

240 Section 6. Subsection (1) of section 951.221, Florida
241 Statutes, is amended to read:

242 951.221 Sexual misconduct between detention facility
243 employees and inmates; penalties.—

244 (1) Any employee of a county or municipal detention
245 facility or of a private detention facility under contract with
246 a county commission who engages in sexual misconduct, as defined
247 in s. 944.35(3)(c)1. ~~s. 944.35(3)(b)1.~~, with an inmate or an
248 offender supervised by the facility without committing the crime
249 of sexual battery commits a felony of the third degree,
250 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
251 The consent of an inmate to any act of sexual misconduct may not
252 be raised as a defense to prosecution under this section.

253 Section 7. For the purpose of incorporating the amendment
254 made by this act to section 216.136, Florida Statutes, in a
255 reference thereto, paragraph (a) of subsection (1) of section
256 944.023, Florida Statutes, is reenacted to read:

257 944.023 Comprehensive correctional master plan.—

258 (1) As used in this section, the term:

259 (a) "Criminal Justice Estimating Conference" means the
260 Criminal Justice Estimating Conference referred to in s.
261 216.136(5).

591-00528-16

20167006pb

262 Section 8. For the purpose of incorporating the amendment
 263 made by this act to section 944.35, Florida Statutes, in a
 264 reference thereto, paragraph (uu) of subsection (2) of section
 265 435.04, Florida Statutes, is reenacted to read:

266 435.04 Level 2 screening standards.—

267 (2) The security background investigations under this
 268 section must ensure that no persons subject to the provisions of
 269 this section have been arrested for and are awaiting final
 270 disposition of, have been found guilty of, regardless of
 271 adjudication, or entered a plea of nolo contendere or guilty to,
 272 or have been adjudicated delinquent and the record has not been
 273 sealed or expunged for, any offense prohibited under any of the
 274 following provisions of state law or similar law of another
 275 jurisdiction:

276 (uu) Section 944.35(3), relating to inflicting cruel or
 277 inhuman treatment on an inmate resulting in great bodily harm.

278 Section 9. For the purpose of incorporating the amendment
 279 made by this act to section 944.35, Florida Statutes, in a
 280 reference thereto, paragraph (f) of subsection (3) of section
 281 921.0022, Florida Statutes, is reenacted to read:

282 921.0022 Criminal Punishment Code; offense severity ranking
 283 chart.—

284 (3) OFFENSE SEVERITY RANKING CHART

285 (f) LEVEL 6

286

Florida	Felony	
Statute	Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a

287

591-00528-16

20167006pb

crash involving serious
bodily injury.

288

316.193 (2) (b)

3rd

Felony DUI, 4th or
subsequent conviction.

289

400.9935 (4) (c)

2nd

Operating a clinic, or
offering services
requiring licensure,
without a license.

290

499.0051 (3)

2nd

Knowing forgery of
pedigree papers.

291

499.0051 (4)

2nd

Knowing purchase or
receipt of prescription
drug from unauthorized
person.

292

499.0051 (5)

2nd

Knowing sale or transfer
of prescription drug to
unauthorized person.

293

775.0875 (1)

3rd

Taking firearm from law
enforcement officer.

294

784.021 (1) (a)

3rd

Aggravated assault;
deadly weapon without
intent to kill.

591-00528-16

20167006pb

295
296
297
298
299
300
301
302

784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048 (3)	3rd	Aggravated stalking; credible threat.
784.048 (5)	3rd	Aggravated stalking of person under 16.
784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081 (2)	2nd	Aggravated assault on specified official or employee.

591-00528-16

20167006pb

303
304
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307
308
309

784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083 (2)	2nd	Aggravated assault on code inspector.
787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164 (1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.

591-00528-16

20167006pb

310	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
311	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
312	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
313	800.04 (5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
314	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
315	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.

591-00528-16

20167006pb

316	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
317	810.145 (8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
318	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
319	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
320	812.015 (9) (a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
321	812.015 (9) (b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
	812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).

591-00528-16

20167006pb

322

817.4821 (5) 2nd Possess cloning paraphernalia with intent to create cloned cellular telephones.

323

825.102 (1) 3rd Abuse of an elderly person or disabled adult.

324

825.102 (3) (c) 3rd Neglect of an elderly person or disabled adult.

325

825.1025 (3) 3rd Lewd or lascivious molestation of an elderly person or disabled adult.

326

825.103 (3) (c) 3rd Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.

327

827.03 (2) (c) 3rd Abuse of a child.

328

827.03 (2) (d) 3rd Neglect of a child.

329

827.071 (2) & (3) 2nd Use or induce a child in

591-00528-16

20167006pb

a sexual performance, or
 promote or direct such
 performance.

330

836.05 2nd Threats; extortion.

331

836.10 2nd Written threats to kill
 or do bodily injury.

332

843.12 3rd Aids or assists person
 to escape.

333

847.011 3rd Distributing, offering
 to distribute, or
 possessing with intent
 to distribute obscene
 materials depicting
 minors.

334

847.012 3rd Knowingly using a minor
 in the production of
 materials harmful to
 minors.

335

847.0135(2) 3rd Facilitates sexual
 conduct of or with a
 minor or the visual
 depiction of such
 conduct.

591-00528-16

20167006pb

introduced into county
facility.

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343

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Section 10. This act shall take effect July 1, 2016.



Review of Correctional Officer Misconduct and Disciplinary Procedures

Presentation to the Senate Committee on Criminal Justice

Jim Clark, Ph.D.
Senior Legislative Analyst

October 5, 2015

Scope

- ▶ Disciplinary processes for correctional officer misconduct
- ▶ Trends in correctional officer misconduct and disciplinary actions
- ▶ Disciplinary commissions in other states

Background

- ▶ 16,005 correctional officers in Department of Corrections
- ▶ Correctional officers complete training requirements and pass a criminal background check
- ▶ Certification from the Criminal Justice Standards and Training Commission

Violations of Moral Character

Commission of a
Felony

73 Violations
Outlined in
Administrative Code



Department of Corrections

Employment
Investigates violations
of administrative rules
and regulations

Disciplinary Actions
Written Reprimand
Suspension
Demotion
Dismissal

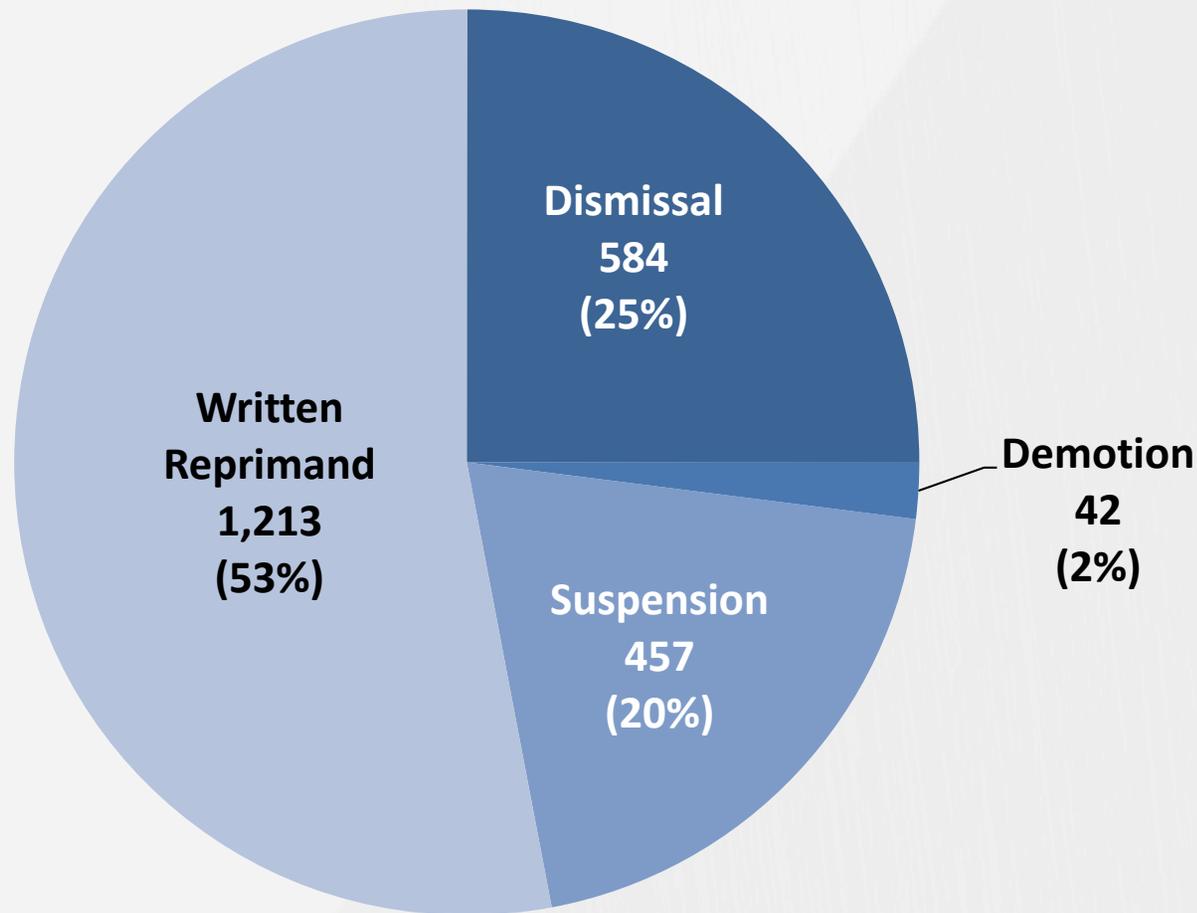


Criminal Justice Standards and Training Commission

Certification
Reviews moral
character violations

Disciplinary Actions
Letter of Guidance
Probation
Suspension
Revocation

Department of Corrections Disciplinary Actions Were Mostly Written Reprimands in 2014



Source: OPPAGA analysis of 2014 data from the Florida Department of Corrections.

Commission Staff and Probable Cause Panel Review Cases Before Presentation to Full Commission

5,308 Cases
Received by the Commission
Regarding Department Correctional Officers

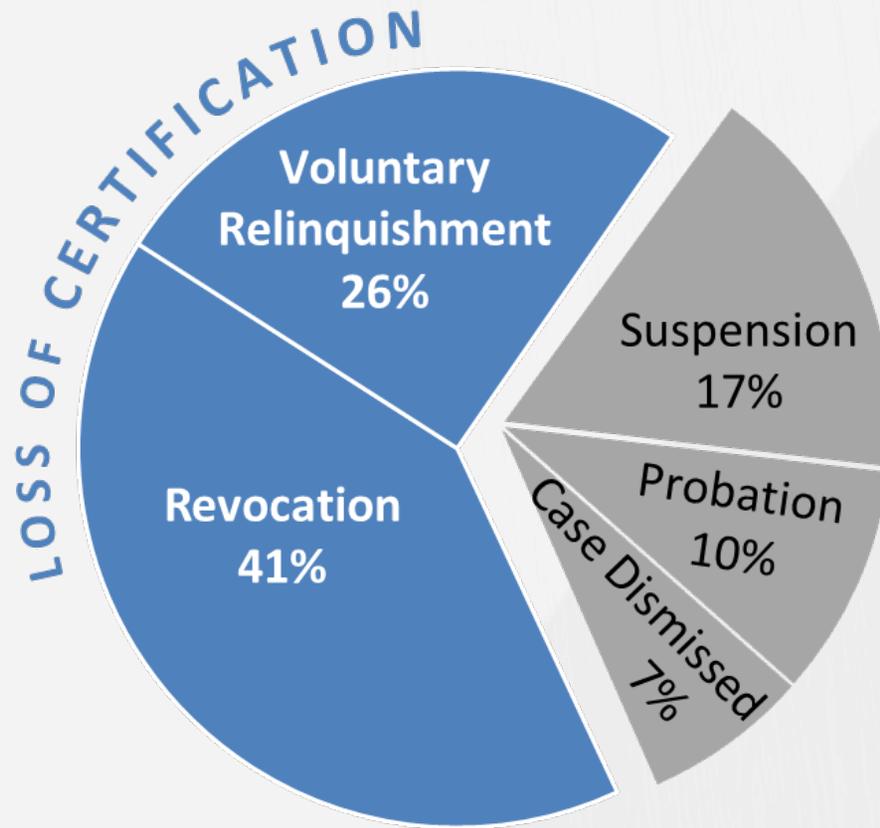
2,858 Cases
Referred by Commission Staff
to Probable Cause Panel

Letter of Guidance Most Common
Alternative to Presenting to Full
Commission (253 cases)

2,558 Cases
Found to Have Probable Cause;
Presented to Full Commission

Source: OPPAGA analysis of Criminal Justice Standards and Training Commission data January 2004-June 2015.

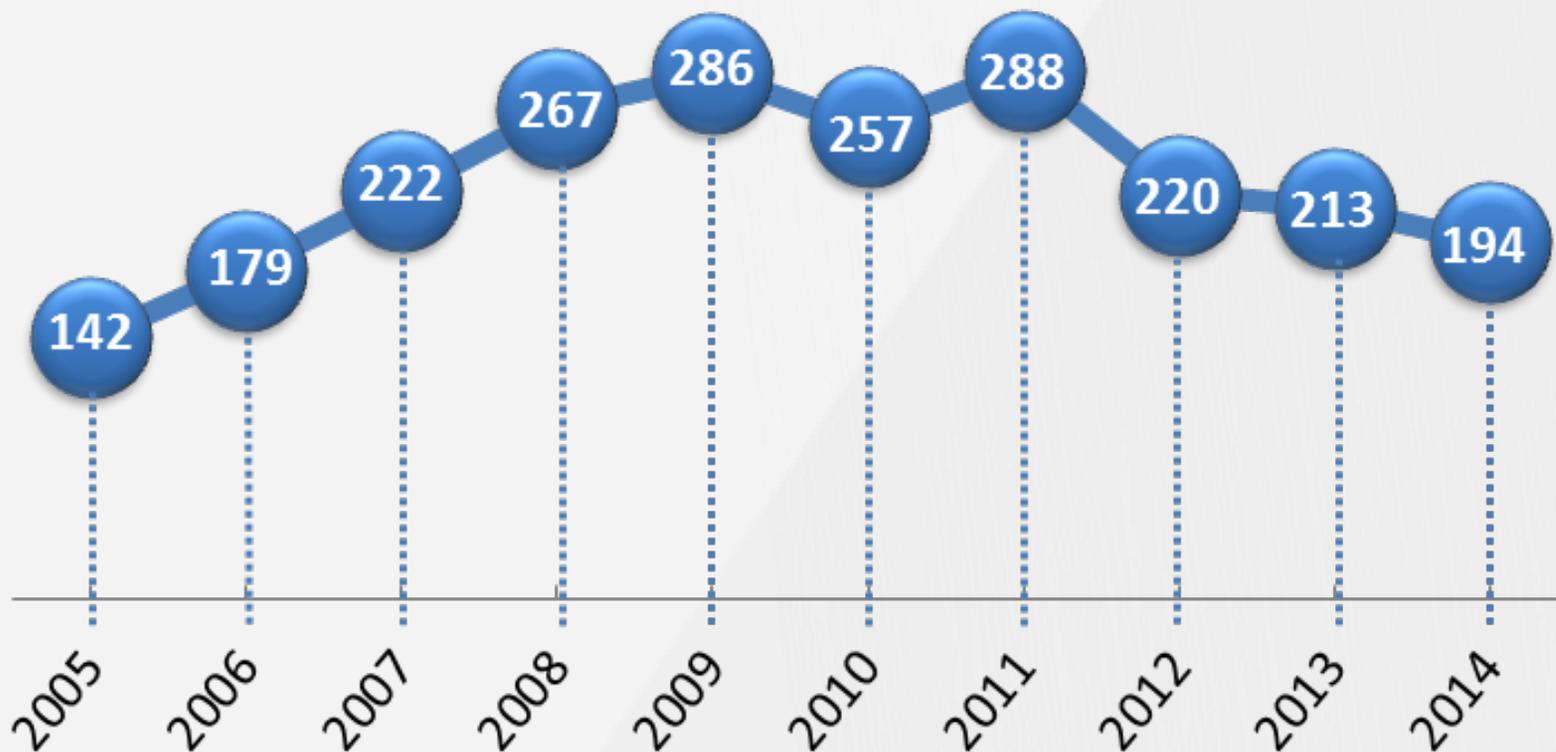
Outcomes of Cases Heard by the Full Commission



Source: OPPAGA analysis of Criminal Justice Standards and Training Commission data January 2004-June 2015.

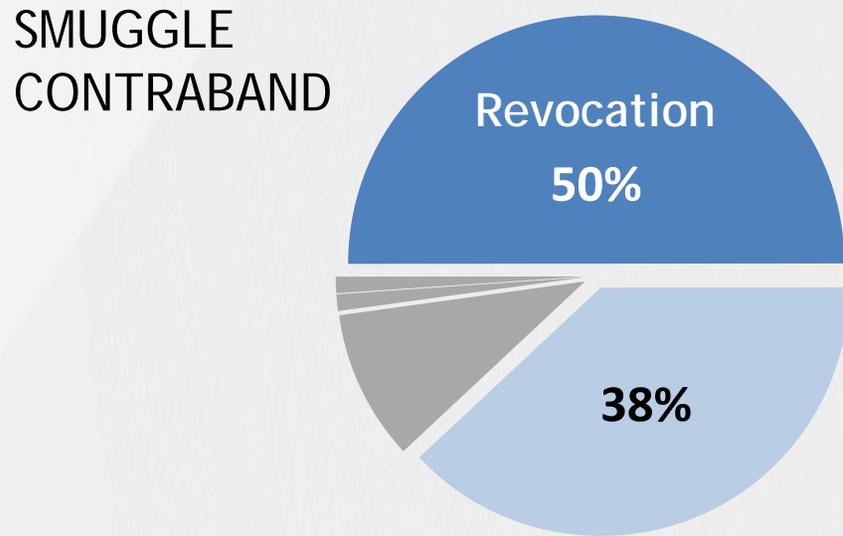
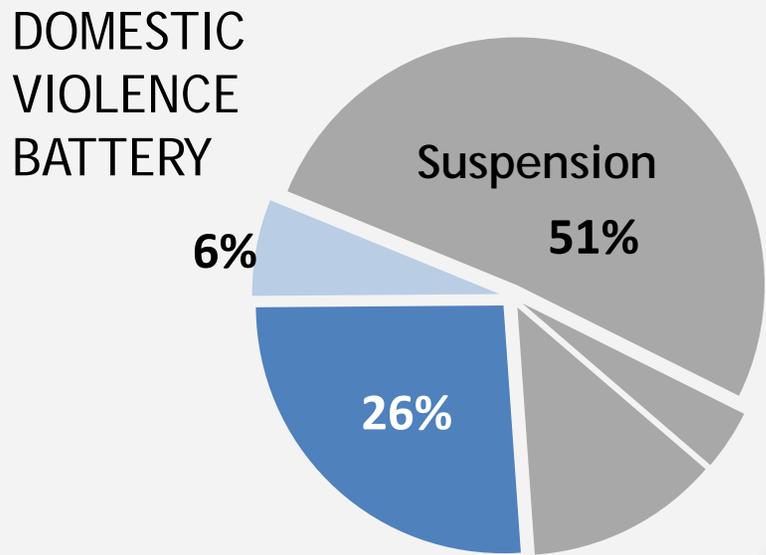
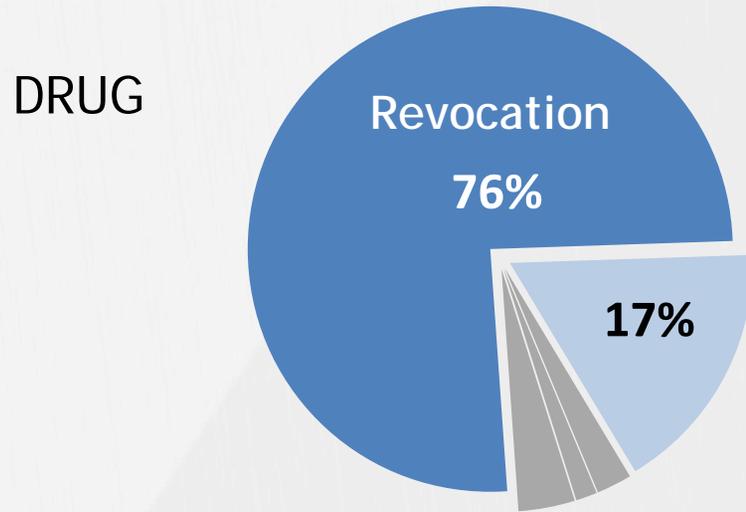
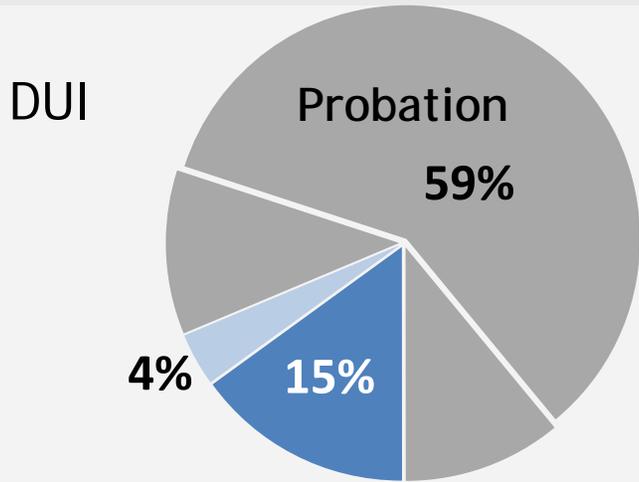
Trend in Commission Discipline

Number of DOC Correctional Officers Disciplined



Source: OPPAGA analysis of Criminal Justice Standards and Training Commission data January 2004-June 2015.

Outcomes of Cases Before the Full Commission



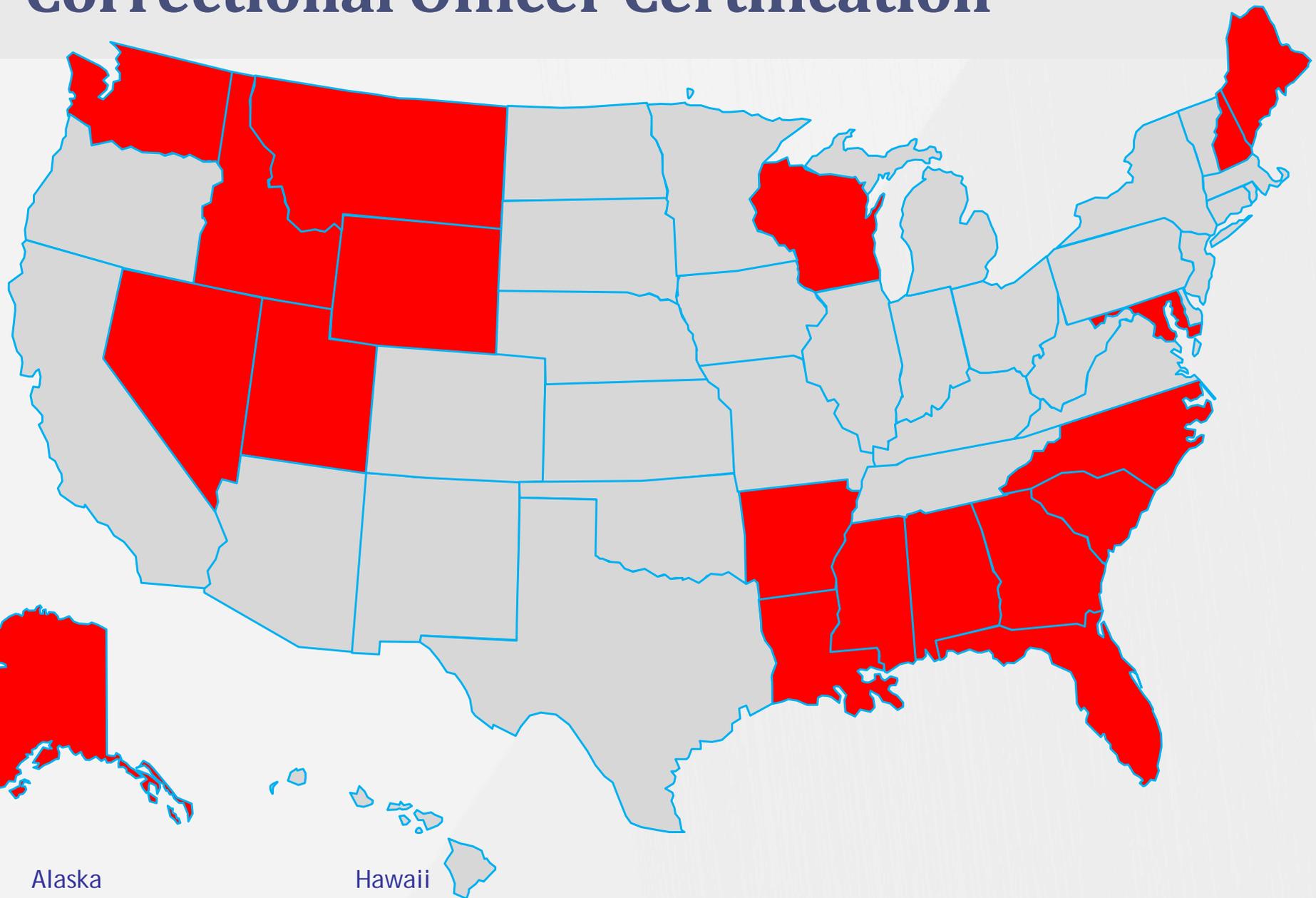
■ Revocation
 ■ Suspension, Probation, or Dismissal
 ■ Voluntary Relinquishment

Source: OPPAGA analysis of Criminal Justice Standards and Training Commission data January 2004-June 2015.

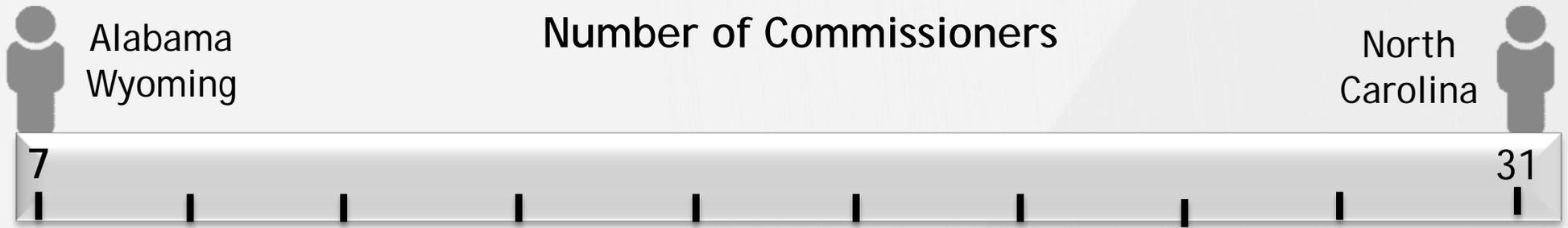
The Commission Includes 3 Standing Members and 16 Members Appointed by the Governor for Four-Year Terms



18 Other State Commissions Can Revoke Correctional Officer Certification



Other State Commission Membership Composition Varies



Type of Commissioners

Law Enforcement



Corrections



General Public



Other State Representatives



Other Local Representatives



The Legislature may want to consider reviewing the membership of the commission

Questions?

THE FLORIDA LEGISLATURE'S
OFFICE OF PROGRAM POLICY ANALYSIS & GOVERNMENT ACCOUNTABILITY

OPPAGA supports the Florida Legislature by providing data, evaluative research, and objective analyses that assist legislative budget and policy deliberations.

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October 2015

Report No. 15-08

Review of Department of Corrections and Criminal Justice Standards and Training Commission Processes for Correctional Officer Misconduct

at a glance

Department of Corrections (DOC) correctional officers must obtain certification and maintain good moral character. In instances of alleged misconduct, both DOC and the Florida Department of Law Enforcement's Criminal Justice Standards and Training Commission can be involved in disciplinary actions.

The Department of Corrections investigates and disciplines correctional officers for misconduct. When officers have violated certification requirements, the department refers the case to the commission. Commission staff reviewed over 5,300 DOC correctional officer misconduct cases since 2004. Staff referred 54% of these cases for a probable cause hearing; of these, 90% were presented to the commission for disciplinary action. Approximately two-thirds (67%) of the correctional officers disciplined by the commission lost their certification. Although there are three times as many law enforcement officers as DOC correctional officers, the commission hears more correctional officer cases.

Over time, the commission has added new violations and revised existing penalties and the Legislature has modified the commission's jurisdiction and membership. The Legislature may wish to consider revising the commission's membership again by adding new commission members or changing some positions.

Scope

As directed by the Legislature, this report describes correctional officer misconduct and discipline in Florida, including an analysis of the number and types of disciplinary actions, the policies related to disciplinary measures against correctional officers, and correctional officer disciplinary practices in other states.

Background

Florida Department of Corrections (DOC) correctional officers are responsible for the supervision, protective care, and control of Florida's prison inmates.¹ Correctional officers provide security to prisons, with duties ranging from supervising inmates in housing units and on work assignments to patrolling the perimeter of prisons. As of August 2015, the department employed 16,005 correctional officers in its facilities across the state.²

¹ This report focuses on correctional officers employed by the Department of Corrections and does not include correctional officers who work in private facilities or county jails.

² This includes 10,939 correctional officers, 4,180 sergeants, 447 lieutenants, 313 captains, 82 majors, and 44 colonels employed at 144 facilities, including 49 major institutions.

OPPAGA Report

The minimum qualifications for becoming a correctional officer in Florida are the same as the minimum qualifications to become a law enforcement officer, except for different basic training. An officer must be a United States citizen who is at least 19 years of age and a high school graduate or its equivalent.³ They must not have pled guilty, *nolo contendere*, or have been convicted of any felony or a misdemeanor involving perjury or false statement.⁴ Also, individuals must undergo a background investigation to determine if they have good moral character.⁵

In addition to meeting these minimum qualifications, individuals must obtain correctional officer certification. To do this they must complete correctional officer training and pass a standardized certification exam.⁶ The Criminal Justice Standards and Training Commission, located within the Florida Department of Law Enforcement (FDLE), oversees the certification process.

The Criminal Justice Standards and Training Commission seeks to ensure that Florida's criminal justice officers are ethical, qualified, and well trained. The commission is an independent policy making body that oversees the certification, employment, training, and conduct of law enforcement, correctional, and correctional probation officers. Specifically, the commission establishes minimum standards for certification and employment, creates and maintains instructional curricula, and conducts

testing. The commission meets on a quarterly basis and uses FDLE staff for research, reporting, and implementation of its programs.

Through its professional compliance process, the commission works to achieve increased professionalism by disciplining individual officers for misconduct. Once an officer is certified, the commission has the authority to revoke or suspend the officer's certification or otherwise sanction the officer who fails to comply with the requirements for certification, which include maintaining good moral character.⁷

The commission has discretion to sanction moral character violations. Officers commit a moral character violation by committing any felony, whether or not they are criminally charged, or by committing 1 of 73 officer discipline violations outlined in *Florida Administrative Code*.^{8,9} Commission rules provide guidelines for disciplinary sanctions for moral character violations and the commission can impose one or more sanctions such as reprimand, remedial training, suspension, or certificate revocation. For example, the guidelines recommend revocation for grand theft, tampering with evidence, and bribery; and suspension to revocation for petit theft. The commission does not have disciplinary discretion and must revoke the officer's certificate if they have pled guilty, *nolo contendere*, or have been convicted of any felony or a misdemeanor involving perjury or false statement.¹⁰ If the commission revokes a correctional officer's certificate, the officer can no longer work as a correctional officer in Florida.¹¹

³ Other minimum requirements in s. [943.13, F.S.](#), include having fingerprints on file with the Department of Corrections or the Criminal Justice Standards and Training Commission, and passing a physical. This section also disallows individuals who received a dishonorable discharge from the military from becoming a certified correctional officer.

⁴ Section. [943.13\(4\), F.S.](#)

⁵ The commission defines moral character in Rule [11B-27.0011, F.A.C.](#)

⁶ An individual must successfully complete training offered through 1 of 37 certified correctional training schools located throughout the state. Individuals who have completed a basic recruit training program and served as correctional officers for at least one year in another state may be exempt from the Florida training requirement. There is also a provision that, if a critical need exists, otherwise qualified individuals who have not been through basic training can be temporarily employed as a correctional officer for up to 30 months, during which time they must attend and complete the certification training.

⁷ Discipline of an officer's certification is separate and distinct from any disciplinary action taken by the officer's employing agency. The commission's action may or may not reflect upon the investigation, findings, conclusions, or disciplinary action of the employing agency.

⁸ Rule [11B-27.0011, F.A.C.](#)

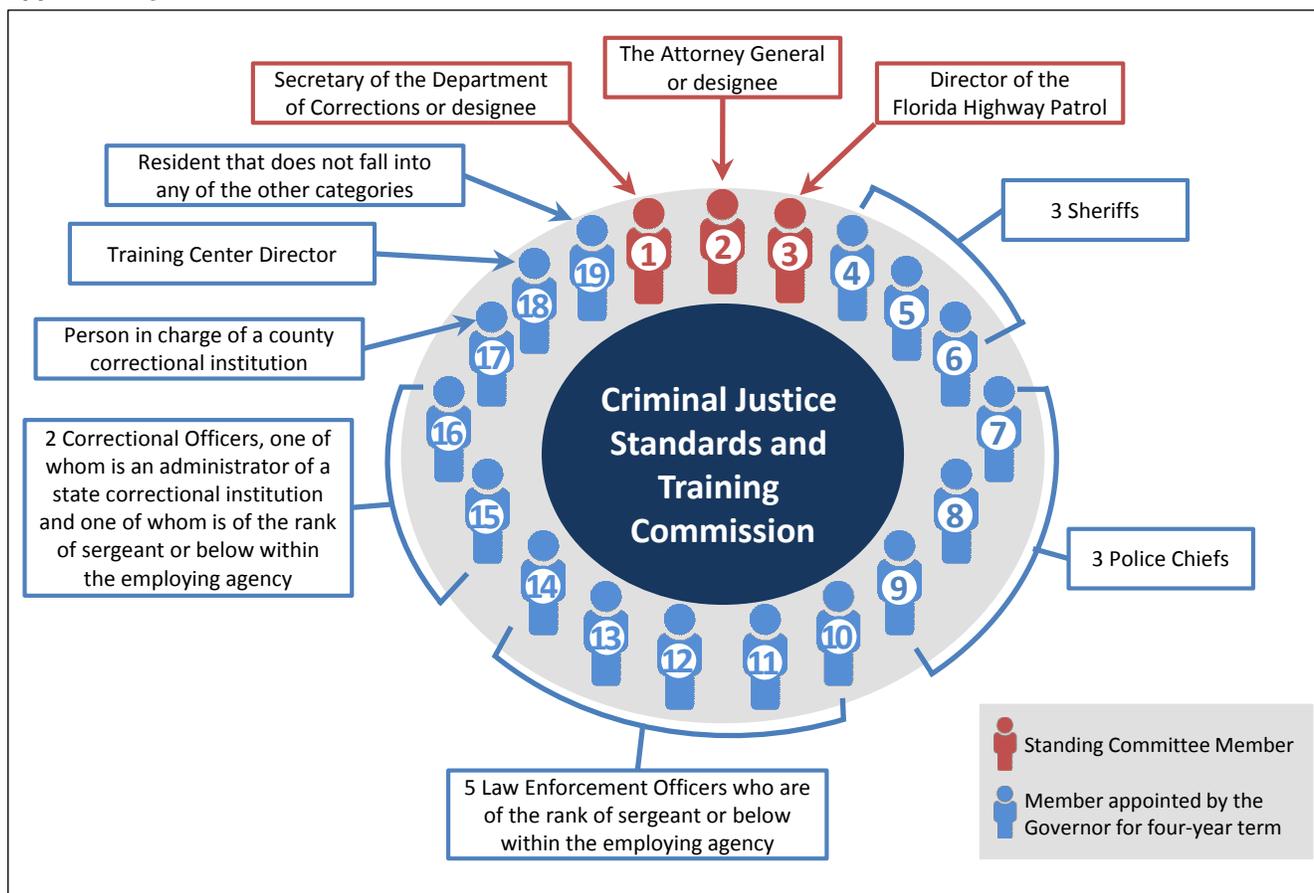
⁹ There are 59 misdemeanor violations, 14 non-criminal offenses, and positive drug tests outlined in commission rules.

¹⁰ Section [943.1395\(6\), F.S.](#)

¹¹ A certified officer who has had his or her certification revoked by the Criminal Justice Standards and Training Commission may be reconsidered for certification under certain circumstances. The individual would first need to find a criminal justice agency in Florida that would be willing to hire them, conduct a background check, and submit an application for certification to FDLE. The application for certification would be denied due to

Exhibit 1

The Criminal Justice Standards and Training Commission Includes 3 Standing Members and 16 Members Appointed by the Governor for Four-Year Terms



Source: OPPAGA analysis of s. [943.11 F.S.](#)

The Criminal Justice Standards and Training Commission is composed of 19 members. As shown in Exhibit 1, the three standing members include the attorney general or designee, secretary of the Department of Corrections or designee, and the director of the Florida Highway Patrol. The remaining 16 members are appointed by the Governor to four-year terms. These members include three sheriffs; three police chiefs; five law enforcement officers who

are of the rank of sergeant or below within the employing agency; two correctional officers, one of whom is an administrator of a state correctional institution and one of whom is of the rank of sergeant or below within the employing agency; one training center director; one person who is in charge of a county correctional institution; and one Florida resident that falls into none of the previous categories.¹²

the prior revocation, but the individual would be sent a letter of denial with an election of rights form allowing them to have an informal hearing before the commission. Once commission staff receives the form, the individual would be scheduled for a reconsideration hearing before the next available meeting of the commission.

¹² Prior to their appointments, the sheriff, chief of police, law enforcement officer, and correctional officer members must have had at least four years of experience as law enforcement officers or correctional officers.

Findings

DOC investigates allegations and imposes disciplinary actions; it refers violations of certification requirements to the commission

The DOC inspector general receives allegations of correctional officer misconduct through a variety of ways and investigates them. If sustained, the department may take corrective or disciplinary actions; in 2014 DOC dismissed 584 correctional officers. It also issued written reprimands, suspensions, and demotions. In addition, the department referred cases in which correctional officers violated certification requirements to the Florida Department of Law Enforcement Criminal Justice Standards and Training Commission for possible further disciplinary action. (See Appendix A for a flow chart outlining the major phases of a correctional officer disciplinary case.)

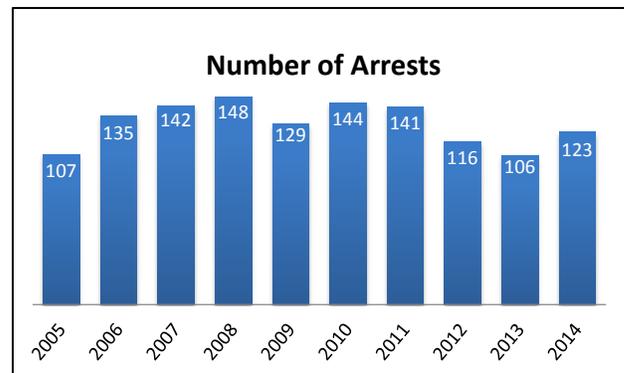
The Department of Corrections Inspector General receives allegations of correctional officer misconduct in a variety of ways. The primary source of this information is through the department’s Management Information Notification System (MINS), a database that compiles all unusual occurrences regarding agency policies, including arrests and other disciplinary actions by DOC staff, inmates, and contractors. A MINS case typically begins as an incident report entered into the system at a correctional institution. The inspector general also receives allegations of correctional officer misconduct by mail, email, phone calls, or from the DOC Secretary’s Office, the Governor’s Office, or the Attorney General’s Office. In Fiscal Year 2014-15, the inspector general received 63,832 internal and external complaints; of these complaints, 21,722 resulted in inquiries and investigations.

The inspector general also obtains information from arrest notifications. All correctional officers have fingerprints on file that the Florida Department of Law Enforcement (FDLE) analyzes with each new arrest. If the arrested person’s fingerprints match a set from the correctional officer database, FDLE notifies the

inspector general of the correctional officer’s arrest.¹³

Correctional officer arrest rates have remained relatively constant. As shown in Exhibit 2, arrests have ranged from 106 to 148 per year for the past 10 years. To place these statistics in a broader context, in 2014, the arrest rate for DOC correctional officers was 8.2 per 1,000, whereas the overall arrest rate in Florida was 44.3 per 1,000. Among DOC correctional officers, the most common arrest offenses were battery (21%), driving under the influence (13%), traffic-related offenses (10%), and drug-related offenses (7%).

Exhibit 2
Over the Past Decade, Annual Arrest Rates for DOC Correctional Officers Have Remained Relatively Constant



Source: OPPAGA analysis of data from the Florida Department of Corrections and the Florida Department of Law Enforcement.

DOC investigates allegations of correctional officer misconduct. The Office of the Inspector General conducts internal investigations of correctional officers for alleged violations of administrative rules and regulations promulgated in Title 33 of *Florida Administrative Code*.¹⁴ These violations include

¹³ The secretary of the Department of Corrections and the Criminal Justice Standards and Training Commission are also notified of correctional officer arrests. Furthermore, correctional officers are required to report an arrest or notice to appear within 24 hours of the incident to their supervisor.

¹⁴ The Office of the Inspector General has 10 geographic districts that are responsible for investigating cases that fall within their jurisdictions. Sworn investigators conduct criminal, administrative, and internal affairs investigations throughout the state, and work closely with state attorneys and other local, state, and federal law enforcement entities.

use of abusive or malicious language towards inmates, use of force, or conduct unbecoming of a public employee, and may not necessarily be actions that fall under the purview of the Criminal Justice Standards and Training Commission.¹⁵ Additionally, s. 943.1395(5), *Florida Statutes*, requires the department to conduct internal investigations of allegations that fall under the purview of the commission (moral character violations, misdemeanors involving perjury or false statement, or any felony).¹⁶

The inspector general investigatory process typically begins with an inquiry to determine if the circumstances of the case warrant a full investigation. If evidence supports the allegation, then the case proceeds as a criminal or administrative investigation.¹⁷ Investigatory activities may include interviewing officers, inmates, and other staff; collecting and securing evidence; and writing reports detailing their findings.

While being investigated, some correctional officers retire or resign to avoid department disciplinary actions. From January 2010 to July 2015, 15,581 correctional officers separated from employment at the Department of Corrections. Of these separations, 2,136 retired, 6,408 resigned, and the department dismissed 3,020.¹⁸ Of those that resigned or retired, the department reported that 123 officers left in lieu of dismissal for a moral character violation and 292 left while being investigated for a moral character violation.

The Department of Corrections issued over 2,000 disciplinary actions for correctional officer misconduct in 2014. If the inspector general sustains a case through a criminal or administrative investigation, the department may take corrective or disciplinary actions against the correctional officer. Corrective actions are official notifications intended to change an officer’s behavior. For example, the department may require that an officer receive counseling about a behavior that needs to improve in order to avoid further disciplinary action. In 2014, the department issued 1,664 supervisory counseling memos. Disciplinary actions, described in Exhibit 3, are more severe than corrective actions.¹⁹ The department provides supervisors recommended ranges of disciplinary actions based on the infraction and the employee’s prior history of violations. In 2014, the department issued 2,296 disciplinary actions. Written reprimands were the most common type of action (1,213), followed by dismissals (584).

Exhibit 3
The Department of Corrections Issued Over 2,000 Correctional Officer Disciplinary Actions in 2014

Disciplinary Actions	Number in 2014
Written Reprimand – notifies the correctional officer of the violation and the corrective action that is required	1,213
Suspension – places a correctional officer on leave without pay	457
Demotion – moves a correctional officer into a lower level of salary and employment classification with less responsibility	42
Dismissal – terminates the employment of the correctional officer	584

Source: Florida Department of Corrections.

In addition, DOC refers all sustained cases where correctional officers have violated certification requirements to the Criminal Justice Standards and Training Commission, even if the

¹⁵ Rule [33-208.003](#), *F.A.C.*

¹⁶ As described in ss. [943.13\(4\)](#) and [\(7\)](#), *F.S.*

¹⁷ If it appears that the correctional officer has committed a criminal violation, the inspector general will start a criminal investigation and refer the case to the local state attorney’s office to determine if probable cause exists to prosecute the case. Administrative investigations into allegations of a non-criminal nature essentially mirror a criminal investigation, except that the inspector general must abide by the Officer Bill of Rights, outlined in s. [112.532](#), *F.S.* It requires the investigator to disclose all case documents to the correctional officer to review before interviewing the officer.

¹⁸ Correctional officers may separate from the department for other reasons, such as layoffs, transferring to another position, failing to successfully to complete probationary hiring period, or death.

¹⁹ Rule [33-208.003](#), *F.A.C.*, provides the ranges of disciplinary sanctions. Violation of more than one rule is considered in the application of discipline and may result in greater discipline than specified for one offense alone.

officers are no longer employed by the department.^{20, 21}

The Criminal Justice Standards and Training Commission finds probable cause in many correctional officer cases

Since 2004, the commission received over 5,300 case referrals involving Department of Corrections correctional officers.²² For 54% of these cases, staff found evidence that the correctional officer committed a moral character violation and the case was reviewed by the commission's probable cause panel. The probable cause panel referred 90% of these cases to the full commission for action against a correctional officer's certification.

The Criminal Justice Standards and Training Commission staff reviewed over 5,300 DOC correctional officer misconduct cases since 2004. From January 2004 to June 2015, the commission received 5,308 cases related to DOC correctional officer misconduct.²³ Most correctional officer cases were related to alcohol and drug violations. Driving under the influence (DUI) was the single most common violation, followed by drugs, domestic violence, and perjury. In addition, acts unique to prisons, such as smuggling contraband and unprofessional relationships with inmates were also common. (See Appendix B for additional information on common violations committed by DOC correctional officers.)

Cases come from the Department of Corrections and other sources such as complaints, arrest notifications, media reports, and employment separation data from FDLE's Automated Training Management System.²⁴ After the commission receives a case, staff reviews all available information to determine whether it should proceed to the probable cause panel. For example, for cases received from DOC, staff may review inspector general internal investigation reports, transcribed statements, arrest and prosecution reports, and court judgment and sentencing documentation.²⁵

The staff review may result in the case being closed with no further commission action against the correctional officer's certification. This can result from two determinations.

- **"No cause."** Commission rule stipulates certain cases that must be "no caused" by staff.²⁶ This includes cases in which the facts presented to commission staff are inconclusive, lack reliability, are insufficient to permit a reasonable determination of what occurred, or fail to demonstrate that the alleged misconduct meets the statutory criteria for commission action.²⁷
- **Letter of acknowledgement.** Commission staff may determine that no further action is required because the department's discipline of the correctional officer meets the commission's sanction guidelines.

Staff did not refer 2,331 or 44% of the 5,308 DOC correctional officer cases to the probable cause panel for review and further action. (See Exhibit 4.)

²⁰ Per s. [943.1395\(5\)](#), F.S.

²¹ The Office of the Inspector General reported that in some circumstances, they also send cases which may not be violations of ss. [943.13\(4\)](#) or [\(7\)](#), F.S., to commission staff for their review.

²² An individual officer may have more than one case referred to the commission from January 2004 to June 2015. However, approximately 87% had only one case.

²³ Among correctional officers that currently work for the department, very few have had disciplinary cases before the commission. As of May 2015, 641 (4.4%) of the department's 14,449 certified correctional officers had been referred at least once to the Criminal Justice Standards and Training Commission. Most (65%) of the cases for these officers had been closed by commission staff prior to a probable cause hearing. The most common offenses for correctional officers employed by the department were for driving under the influence and domestic violence.

²⁴ The Automated Training Management System (ATMS) provides criminal justice agencies and training centers throughout Florida with the ability to view information on training, exam results, employment, and certification of officers in the state.

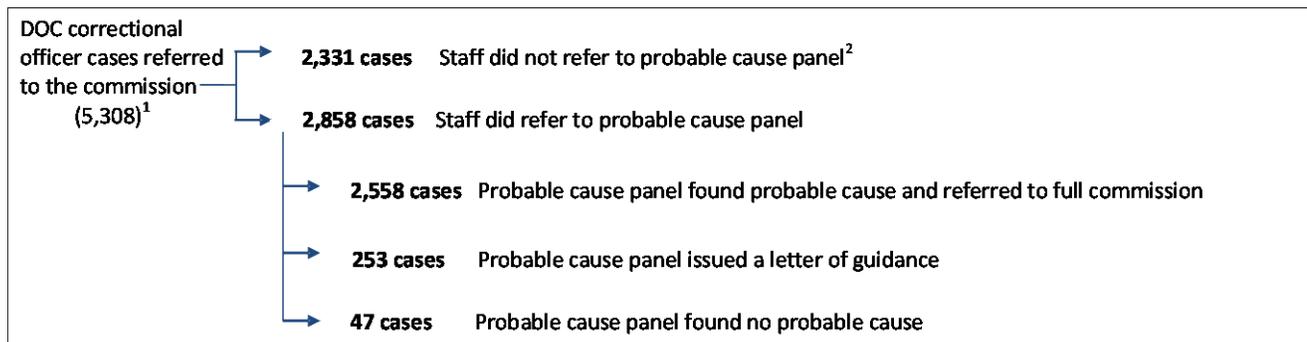
²⁵ Commission staff includes eight case specialists and three staff attorneys who review and process cases involving officer misconduct. They present cases to the commission if they identify violations and make recommendations to the commission concerning penalties for officer misconduct.

²⁶ Per Rule [11B-27.004\(12\)\(a\)](#), F.A.C., "no cause" means that there is not a determination of probable cause to proceed with the case.

²⁷ In addition, staff must "no cause" a case under the commission's recantation rule if a correctional officer recants a false statement.

Exhibit 4

From January 2004 to June 2015, More Than Half of the DOC Correctional Officer Cases Received by the Commission Were Referred to a Probable Cause Panel



¹ Included in the 5,308 cases referred to the commission are 119 cases that are still pending and do not yet have an outcome reported in the flowchart. Additionally, three cases that received only a probable cause intervention program were omitted from the flowchart due to missing data on the total number of intervention programs required. Commission staff reported that there are between 16 to 24 officers that receive a probable cause intervention program per year, which does not appear in the data. The panel orders the officer to complete an intervention program in lieu of a finding of probable cause.

² Of the 2,331 cases that were not referred to the probable cause hearing, 1,850 cases were “no caused” or never opened by staff and 481 cases received a letter of acknowledgment.

Source: OPPAGA analysis of Criminal Justice Standards and Training Commission data.

Commission staff referred 54% of correctional officer cases for a probable cause hearing; 90% of these cases were presented to the full commission for disciplinary action. Staff referred 54% of correctional officer cases (2,858) to the probable cause panel. Staff schedules a probable cause hearing if the case fits within the commission’s jurisdiction and they find clear and convincing evidence that the correctional officer committed a moral character violation.²⁸ At the hearing, a panel of three voting commission members and two alternates determine if there are grounds to move the case forward in the disciplinary process.²⁹ Commission staff reads the case into the record and provide a recommendation. The panel may also hear testimony from the correctional officer or the correctional officer’s attorney. After the case is presented, a panel member must propose an action for a vote, with a majority vote needed to reach a decision.

In 2,558 cases (90%), the panel found probable cause and moved the case to a full commission

²⁸ The commission holds eight probable cause hearings each year in locations throughout the state. The commission hears several cases at each hearing and panel members receive case-related materials to review beforehand.

²⁹ Commission staff assigns the membership of the probable cause panel and it may change at each commission meeting.

disciplinary hearing. In 47 cases, the panel did not find probable cause. For 253 cases, the probable cause panel issued a letter of guidance to the officer, which is essentially a written reprimand. (See Exhibit 4.)

After the finding of probable cause, the correctional officer chooses how to proceed through the disciplinary process. An officer can choose to dispute the allegation in a formal hearing at the Division of Administrative Hearings in front of an administrative law judge.³⁰ The administrative law judge determines findings of fact and if a violation is found, makes a disciplinary recommendation, which is sent to the full commission for a vote.³¹ Correctional officers who do not contest their case may choose to have an informal disciplinary hearing before the full commission.³²

³⁰ At a formal hearing, the correctional officer disputes facts of the case and may be represented by private attorneys; staff legal counsel prosecutes the case.

³¹ The commission may vote to accept the administrative law judge’s recommendation or issue a different penalty, which would require the commission to provide a list of exceptions and explain why it was departing from the administrative law judge’s decision.

³² The commission holds four informal disciplinary hearings per year in locations throughout the state. The commission hears several cases at each hearing. Correctional officers may choose to appear or be represented by an attorney.

Approximately two-thirds of correctional officers disciplined lose certification

Over the past decade, the number of DOC correctional officers disciplined by the commission has varied; 67% who appeared before the commission had their certification revoked or voluntarily relinquished their certification, with approximately 1,500 DOC correctional officers losing certification over a 10-year period.

From 2005 to 2014, the number of DOC correctional officers disciplined by the commission varied.³³ As shown in Exhibit 5, the number of DOC correctional officers receiving discipline has varied over the past 10 years from a low of 142 officers in 2005 to a high of 288 officers in 2011. Over time, this equates to roughly 1% to 2% of all DOC correctional officers.

Exhibit 5 Over the Past Decade, the Number of DOC Correctional Officers Disciplined by the Commission Has Varied



Source: OPPAGA analysis of Criminal Justice Standards and Training Commission data.

Approximately 67% of correctional officers who appear before the commission lose certification through revocation or voluntary relinquishment. At commission disciplinary hearings, staff legal counsel reads cases into the record and provides staff recommendations for disciplinary actions.³⁴

Commission members must vote to accept the staff's recommendation, adopt an alternative sanction, or dismiss the case. All commission actions are final; however, correctional officers may appeal final orders to District Courts of Appeal. A correctional officer may also enter into a settlement agreement or voluntarily relinquish their certification.³⁵

Commission rules provide guidelines for disciplinary sanctions that include certificate revocation, suspension, and probation.³⁶ As shown in Exhibit 6, from January 2004 to June 2015, 67% of the DOC correctional officers who appeared before the full commission lost their certification. Specifically, 946 (41%) had their certification revoked and 590 (26%) voluntarily relinquished their certification. (See Appendix B for a detailed description of disciplinary outcomes for the 10 most common DOC correctional officer offenses presented to the commission.)

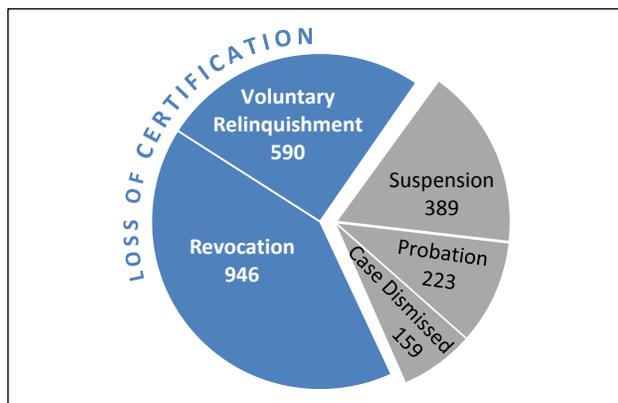
³⁵ A settlement agreement can be offered prior to an informal hearing. The officer must accept the terms of the settlement agreement and the terms typically fit within the commission's punishment guidelines. The settlement agreement is presented to the commission for a vote. The commission can vote to accept the agreement, offer an alternative agreement, or reject the agreement and send the case to a formal hearing in the Department of Administrative Hearings.

³⁶ Rule [11B-27.005](#), *F.A.C.*, provides the set of guidelines for disciplinary sanctions. According to ss. [943.1395\(7\) and \(8\)](#), *F.S.*, the commission can require one or a combination of disciplinary sanctions and may deviate from the guidelines if there are aggravating or mitigating factors. Additionally, the suspension period cannot exceed two years and the probation period cannot exceed two years. According to s. [943.1395\(6\)](#), *F.S.*, if an officer pleads guilty, *nolo contendere*, or is found guilty of any felony or of a misdemeanor involving perjury or false statement, the commission does not have any discretion on the sanction and must revoke the correctional officer's certificate.

³³ An officer may have more than one case appear before the commission.

³⁴ Before the disciplinary hearing, commission members review case documents, commission staff reports, and other supporting evidence.

Exhibit 6
Approximately 67% of Correctional Officers Who
Appeared Before the Full Commission Lost Their
Certification



¹ Approximately 93% of the 389 cases that received suspension also received a period of probation. Data does not include 237 cases that were denied certification while the individual was under temporary employment status before receiving a correctional officer certification; 8 cases that did not receive a sanction; 3 cases that received a reprimand, which is a verbal punishment; and 3 cases that received a probable cause intervention program. In addition, some cases received a sanction of retraining, which requires correctional officers to take remedial training courses.

Source: OPPAGA analysis of Criminal Justice Standards and Training Commission data from January 2004 to June 2015.

The commission hears more correctional officer cases than law enforcement officer cases

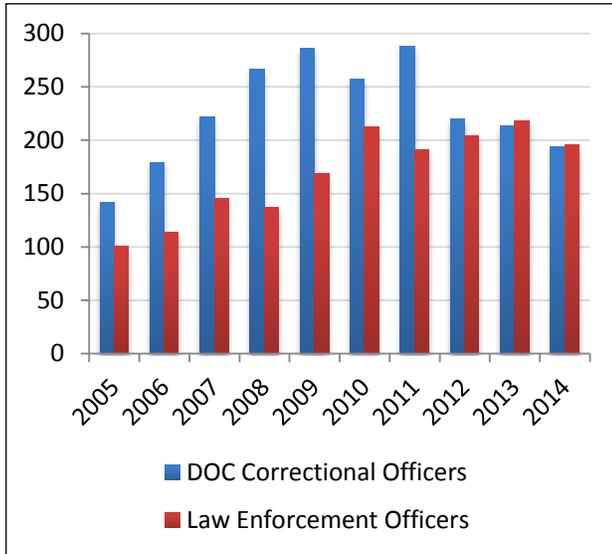
The Criminal Justice Standards and Training Commission rules and procedures related to discipline are the same for DOC correctional officers and law enforcement officers. However, while there are roughly three times as many law enforcement officers as DOC correctional officers, the commission receives a greater number of correctional officer cases for review. Additionally, the commission finds probable cause and sends correctional officer cases to the full commission for a disciplinary hearing more often. In recent years, the commission has disciplined a similar number of law enforcement and DOC correctional officers; however, the types of sanctions varied.

The commission received more correctional officer cases than law enforcement cases and found probable cause more often for correctional officers. Since 2004, the Criminal Justice Standards and Training Commission received 5,308 correctional officer cases. During this same time-period, the commission received 4,425 law enforcement cases. However, there are roughly three times as many law enforcement officers as DOC correctional officers. For example, in 2014 there were 15,041 DOC correctional officers and 45,498 law enforcement officers in Florida. Staff refers both types of cases to the probable cause panel at similar rates (54% of the 5,308 correctional officer cases and 47% of the 4,425 law enforcement officer cases).

However, there were some differences in cases that did not go to the full commission. DOC correctional officers had a higher rate of receiving letters of guidance from the commission’s probable cause panel than law enforcement officers (84.3% vs. 63.2%). Cases against law enforcement officers had more “no cause” findings than correctional officer cases (36.8% vs. 15.7%).

For cases disciplined by the probable cause panel and the full commission, the numbers of law enforcement and correctional officers disciplined were similar to each other. As shown in Exhibit 7, the total numbers of law enforcement officers and DOC correctional officers disciplined in 2014 were almost the same, 196 to 194; however, there were almost three times as many law enforcement officers as DOC correctional officers. Thus, in 2014, the commission disciplined 1.3% of 15,041 DOC correctional officers, compared to only 0.4% of 45,498 law enforcement officers.

Exhibit 7
Recently, the Number of Disciplined Law Enforcement Officers Has Become Similar to the Number of Disciplined DOC Correctional Officers



Source: OPPAGA analysis of Criminal Justice Standards and Training Commission data.

There were differences in commission sanctions between law enforcement and correctional officers. For example, as shown in Exhibit 8, while law enforcement officers and correctional officers have a similar rate of certificate loss, more correctional officers lost their certificates through revocation (41.0% vs. 34.4%); however, more law enforcement officers voluntarily relinquished their certificates (30.2% vs. 25.6%).

Exhibit 8
Some Differences Exist in Outcomes Imposed by the Commission for Law Enforcement Officers and Correctional Officers

Case Outcomes	DOC Correctional Officers	Law Enforcement Officers
Revocation	946 (41.0%)	594 (34.4%)
Voluntary Relinquishment	590 (25.6%)	522 (30.2%)
Suspension	389 (16.9%)	406 (23.5%)
Probation	223 (9.7%)	85 (4.9%)
Case Dismissed	159 (6.9%)	120 (6.9%)
Total	2,307 (100%)	1,727 (100%)

Source: OPPAGA analysis of Criminal Justice Standards and Training Commission data from January 2004 to June 2015.

Several changes have affected the correctional officer disciplinary process

The Department of Corrections is in the process of revising correctional officer oversight and disciplinary procedures. The Criminal Justice Standards and Training Commission’s jurisdiction and membership composition have been modified over the past 25 years due to statutory changes. Additionally, the commission has added new violations and revised existing penalties.

The Department of Corrections is revising correctional officer disciplinary policies and practices. The department reports that it plans to update employee disciplinary policies. These updates will include a new employee handbook in October 2015 and new disciplinary procedures, which the department reports will better communicate expectations and hold employees accountable.

In 2015, the department created the Disciplinary Action Review Team (DART) to help ensure more consistent application of disciplinary policies and to educate staff on department disciplinary issues. The DART reviews disciplinary actions resulting in suspension or dismissal for all department employees, including correctional officers. The DART is comprised of several department staff that meets as needed (typically weekly) to review synopses of each disciplinary action, including the associated penalty, and compare them to the ranges in the disciplinary actions matrix from the department’s administrative code.^{37, 38} The DART also reviews any other disciplinary issues pertaining to the employee and information regarding past or current grievances the employee may have filed against other department employees to stay abreast of existing workplace conflicts and potential retaliatory actions.

³⁷ Rule [33-208.003](#), F.A.C.

³⁸ DART members include the lead human resources attorney, the chief of staff, the human resources director, the employee relations manager, and leadership from the agency division of the employee being reviewed (e.g., corrections, community corrections, administration, etc.).

The Legislature has made changes over time that have expanded correctional officer discipline. Dating back to 1992, the Legislature has amended Florida statutes to increase the jurisdiction of the Criminal Justice Standards and Training Commission.^{39, 40} These changes included allowing the commission to do the following.

- The commission could revoke the certification of an officer that had not maintained good moral character. Prior to 1992, the commission could not revoke an officer's certification for a moral character violation, only suspend, place on probation, or issue a reprimand. Additionally, the commission was required to set forth aggravating and mitigating circumstances to consider when imposing penalties relating to maintaining good moral character and to apply the penalties consistently.⁴¹
- The commission gained authority to review sustained disciplinary charges and disciplinary penalties in situations in which an officer remains employed or is reinstated by their employer after disciplinary action. The commission could determine whether the penalty conforms to the disciplinary penalties prescribed by rule and notify the employing agency and officer by a letter of acknowledgement that no further action would be taken. If the penalty did not conform, commission staff would notify the officer and employer of further action to be taken by the commission.⁴²

³⁹ In 1981, the Legislature transferred the Correctional Standards Council, which developed standards and training for corrections personnel and was administratively assigned to the Florida Department of Corrections, to the Florida Department of Law Enforcement. The functions of the council were merged with the Police Standards and Training Commission, creating the Criminal Justice Standards and Training Commission.

⁴⁰ For more information about historical changes to Florida's Criminal Justice Standards and Training Commission, see Goldman, R., and Puro, S. [Revocation of Police Officer Certification: A Viable Remedy for Police Misconduct?](#) 45 St. Louis University Law Journal, 541-579, 2001.

⁴¹ Chapter [92-131](#), *Laws of Florida*, also required that deviations from the disciplinary guidelines or prescribed penalties must be based upon circumstances or factors that reasonably justify the aggravation or mitigation of the penalty.

⁴² Chapters [95-408](#) and [2004-289](#), *Laws of Florida*.

- The commission could discipline officers who were temporarily employed or appointed by an agency but had not yet been certified by the commission.⁴³ The commission was also required to set disciplinary guidelines and penalties for non-certified officers in rule.^{44, 45}

The commission added new violations to and revised existing penalties in officer discipline rules. An officer commits a moral character violation by committing any felony, whether or not they are criminally charged, or by committing 1 of 73 officer discipline violations outlined in *Florida Administrative Code*.^{46, 47} The commission chair appoints a 12-member advisory panel every other year to evaluate disciplinary guidelines and penalties and make recommendations to the commission to modify disciplinary guidelines.⁴⁸ From 2006 through 2014, the commission added 5 new violations to officer discipline rules and revised 14 violations to add specific enumerated penalties.⁴⁹ For example, voyeurism was added in 2008; making obscene or harassing telephone calls was added in 2012; and misuse of electronic databases was added in 2014. (See Appendix C for a full list of new violations or enumerated penalties added to rule.)

⁴³ Per s. [943.131\(1\)\(a\)](#), *F.S.*, an employing agency may temporarily employ or appoint a person who complies with the qualifications for employment in s. [943.13\(1\)-\(8\)](#), *F.S.*, but has not completed a commission-approved basic recruit training program for the applicable criminal justice discipline; or achieved an acceptable score on the officer certification examination for the applicable criminal justice discipline, if a critical need exists to employ or appoint the person and such person is or will be enrolled in the next approved basic recruit training program available in the geographic area or that no assigned state training program for state officers is available within a reasonable time.

⁴⁴ Chapter [2003-278](#), *Laws of Florida*.

⁴⁵ Rule [11B-27.005\(10\)](#), *F.A.C.*

⁴⁶ Rule [11B-27.0011](#), *F.A.C.*

⁴⁷ There are 59 misdemeanor violations, 14 non-criminal offenses, and positive drug tests outlined in commission rules.

⁴⁸ Per s. [943.1395\(8\)\(b\)2.](#), *F.S.*, the 12-member panel is composed of six officers and six representatives of criminal justice management positions.

⁴⁹ Commission staff also recommended adding one specified enumerated penalty back into rule. During the 2004 rule promulgation process, s. [837.02](#), *F.S.*, involving perjury in an official proceeding, was inadvertently removed from Rule [11B-27.005\(5\)\(a\)8.](#), *F.A.C.*

OPPAGA Report

The membership composition of the commission has changed over time. Currently, the Criminal Justice Standards and Training Commission is composed of 19 members, including 3 standing members (the attorney general or designee, secretary of the Department of Corrections or designee, and the director of the Florida Highway Patrol); the remaining 16 members are appointed by the Governor. Prior to 2004, the commission included the head of the Department of Education, but this requirement was amended by the Legislature to replace the educator with an additional law enforcement officer, thereby increasing the number of law enforcement officers of the rank of sergeant or below from four to five.⁵⁰

The Legislature made changes to the way members are nominated in 2005.⁵¹ These changes require the Governor to choose the three sheriff appointments from a list of six nominees submitted by the Florida Sheriffs Association. In appointing the three chiefs of police, the Governor is required to choose each appointment from a list of six nominees submitted by the Florida Police Chiefs Association.

In addition, the changes increased the role of law enforcement collective bargaining units or unions in selecting commission members. Specifically, the Governor is required to choose appointments of the five law enforcement officers and one correctional officer of the rank of sergeant or below from a list of six nominees submitted by a six-member committee. This committee is comprised of union members from certified law enforcement bargaining units. Finally, at least one of the names submitted for each of the five appointments who are law enforcement officers must be an officer who is not a union member.

The Legislature may wish to consider reviewing the membership of its commission. Many states have criminal justice standards and training commissions similar to Florida. However, Florida is 1 of only 19 states whose commission

is authorized to revoke correctional officer certification.⁵² The other 18 commissions vary in size and composition; only 2 are larger than Florida's 19-member commission. North Carolina and Oregon have 31 and 24 member commissions, respectively. Georgia's commission also has 19 members. Alabama and Wyoming have the smallest commissions with only seven members. (See Appendix D for more information on the membership compositions of other state commissions.)

The commissions are typically comprised of a variety of law enforcement and correctional administrators and officers, as well as a variety of other members, some of whom are part of the criminal justice system, and some who are not. Twelve of Florida's 19 members are directly affiliated with law enforcement, while only 4 work for correctional entities. Correctional officials typically comprise a smaller portion of the commissions that provide oversight to both law enforcement and corrections.⁵³

Some other states have as many as six members of the public on their commissions, and may have other non-justice system officials on the commission. Other state commissions include members who are district attorneys, educators, state law enforcement officers, municipal officials or local government representatives such as city managers or county commissioners, federal law enforcement representatives, and representatives of juvenile corrections and private security. Maryland requires the president of a university or college in the state with a correctional education curriculum, while New Hampshire requires the chancellor of the community college system.⁵⁴

⁵² States without such commissions may discipline correctional officers within their employing agency like regular state employees. In many cases, these correctional officers may appeal to a state employment board following the application of discipline.

⁵³ Only one state, Maryland, has two commissions—one for law enforcement and one for corrections.

⁵⁴ Prior to 2004, Florida's commission included the head of the Department of Education, but this requirement was amended in 2004, replacing the educator with an additional law enforcement officer of the rank of sergeant or below.

⁵⁰ Chapter [2004-289](#), *Laws of Florida*.

⁵¹ Chapter [2005-103](#), *Laws of Florida*.

The Legislature could consider revising the membership of the commission to either add new members or replace existing positions. These revisions could include representatives of the general public or officials from other parts of state and local government. In addition, given the proportion of correctional officer cases heard by the commission, the Legislature may want to consider revising the membership composition to include additional individuals with correctional expertise and experience.

Agency Response —————

In accordance with the provisions of s. 11.51(2), *Florida Statutes*, we submitted a draft of our report to the Secretary of the Department of Corrections and the Commissioner of the Florida Department of Law Enforcement for their review and response. The Florida Department of Law Enforcement's written response has been reproduced in Appendix E.

OPPAGA supports the Florida Legislature by providing data, evaluative research, and objective analyses that assist legislative budget and policy deliberations. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021), by FAX (850/487-9213), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

OPPAGA website: www.oppaga.state.fl.us

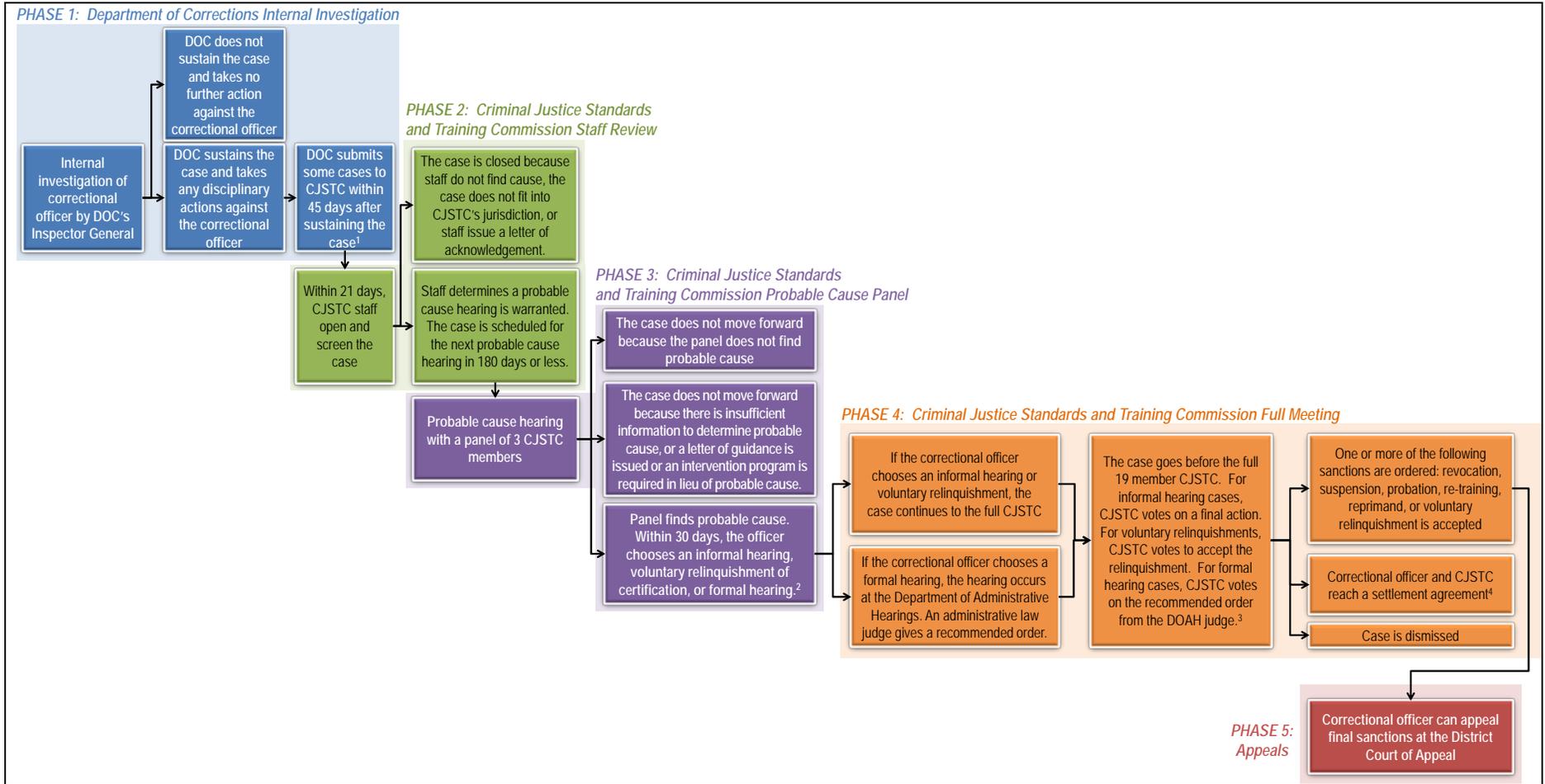
Project supervised by Claire K. Mazur (850/717-0575)

Project conducted by Jim Clark, Matthew Moncrief, and Marina Byrd (850/717-0519)

R. Philip Twogood, Coordinator

Appendix A

Correctional Officer Disciplinary Process



¹ The commission may also be notified of a case through arrest hits, public complaints, or other sources.

² If the officer does not choose a formal hearing, informal hearing, or voluntary relinquishment, the case is presented to the commission as a default.

³ Commission staff reports that recommended orders usually follow the commission's disciplinary guidelines.

⁴ Commission staff reports that settlement agreements usually follow the commission's disciplinary guidelines.

Source: Criminal Justice Standards and Training Commission.

Appendix B

The Ten Most Common Correctional Officer Misconduct Cases With Related Commission Outcomes

Outcomes varied greatly by the type of case. For example, 73.5% of drug-related cases resulted in certificate revocation. However, 12.0% of DUI cases and 20.4% of domestic violence with battery cases resulted in certificate revocation. In cases with no criminal charges (of which 61% resulted from DOC correctional officers failing to repay the department for training costs), 96.1% resulted in the loss of certification through voluntary relinquishment.¹

Exhibit B

Number (Percentage) of Violations by Outcome From January 2004 to June 2015

Violations	Letter of Guidance	No Cause Found by Probable Cause Panel	Revocation	Voluntary Relinquishment	Suspension	Probation	Dismissed	Total
Driving Under the Influence – Liquor	67 (19.6%)	1 (0.3%)	41 (12.0%)	10 (2.9%)	31 (9.1%)	161 (47.2%)	30 (8.8%)	341
Failure to Reimburse/No Criminal Charge ²	0 (0%)	0 (0%)	3 (1.2%)	246 (96.1%)	0 (0%)	0 (0%)	7 (2.7%)	256
Drugs	3 (1.4%)	3 (1.4%)	161 (73.5%)	36 (16.4%)	5 (2.3%)	3 (1.4%)	8 (3.7%)	219
Perjury, False Statement, or False Report	31 (14.6%)	4 (1.9%)	86 (40.6%)	21 (9.9%)	51 (24.1%)	2 (0.9%)	17 (8.0%)	212
Battery – Domestic Violence	27 (16.7%)	8 (4.9%)	33 (20.4%)	8 (4.9%)	65 (40.1%)	5 (3.1%)	16 (9.9%)	162
Assault	19 (16.0%)	10 (8.4%)	33 (27.7%)	10 (8.4%)	38 (31.9%)	0 (0%)	9 (7.6%)	119
Smuggle Contraband	9 (8.9%)	0 (0%)	46 (45.5%)	35 (34.7%)	9 (8.9%)	1 (1.0%)	1 (1.0%)	101
Unprofessional Relationship ³	1 (1.1%)	1 (1.1%)	44 (46.3%)	42 (44.2%)	2 (2.1%)	2 (2.1%)	3 (3.2%)	95
Excessive Force by Correctional Officer	9 (21.4%)	2 (4.8%)	10 (23.8%)	6 (14.3%)	13 (31.0%)	1 (2.4%)	1 (2.4%)	42
Failure to Report Pursuant to s. 944.35, <i>F.S.</i>	6 (18.8%)	2 (6.3%)	8 (25.0%)	3 (9.4%)	10 (31.3%)	1 (3.1%)	2 (6.3%)	32
All Other Violations ⁴	64 (12.6%)	5 (1.0%)	220 (43.2%)	73 (14.3%)	79 (15.5%)	40 (7.9%)	28 (5.5%)	509
Multiple Violations	17 (3.3%)	11 (2.1%)	261 (50.3%)	100 (19.3%)	86 (16.6%)	7 (1.3%)	37 (7.1%)	519
Total	253 (9.7%)	47 (1.8%)	946 (36.3%)	590 (22.6%)	389 (14.9%)	223 (8.6%)	159 (6.1%)	2,607

¹ Per s. 943.16, *F.S.*, a trainee who attends a training program at the expense of the department must remain in the employment or appointment of the department for a period of not less than two years after graduation from the basic recruit training program. If employment or appointment is terminated on the trainee's own initiative within two years, he or she shall reimburse the employing agency for the full cost of his or her tuition and other course expenses.

² Approximately 61% of these cases are for failure to reimburse the department for training costs. The remainder of these cases are undeterminable due to missing data.

³ Approximately 77% of these cases are inappropriate relationships with inmates. The remainder of these cases are undeterminable.

⁴ All other violations include a wide variety of felonies and misdemeanors, including trespassing, stalking, sexual harassment, child abuse, and burglary.

Source: OPPAGA analysis of Criminal Justice Standards and Training Commission data.

Appendix C

Violations Added to Officer Discipline Rules

As shown in Exhibit C, from 2006 through 2014, 1 enumerated penalty was added back into officer discipline rules; 5 new violations were added to officer discipline rules; and 14 violations had specific enumerated penalties added to officer discipline rules. The rules highlighted in gray were new violations added to officer discipline rules.

**Exhibit C
From 2006 Through 2014, the Commission Added or Modified Officer Discipline Rules**

2006: Enumerated Penalty Added Back Into Rule			
Rule	Florida Statute	Violation	Recommended Penalty
11B-27.005(5)(a)8	Section 837.02, <i>F.S.</i>	During the 2004 rule promulgation process, perjury in an official proceeding was inadvertently removed from rule. Commission staff recommended adding the specific enumerated penalty back into rule.	Prospective suspension to revocation

2008: New Violations or Enumerated Penalties Added to Rule			
Rule	Florida Statute	Violation	Recommended Penalty
11B-27.0011(4)(b)	Section 810.14, <i>F.S.</i>	Voyeurism	Prospective suspension and probation with counseling to revocation
11B-27.0011(4)(b)	Section 837.055, <i>F.S.</i>	False information to law enforcement during a felony or missing persons investigation to the list of enumerated misdemeanor charges	Prospective suspension to revocation
11B-27.005(5)(a)9	Section 784.048, <i>F.S.</i>	Felony stalking	Revocation
11B-27.005(5)(a)10	Sections 794.011 and 794.05, <i>F.S.</i>	Sexual battery and unlawful sexual activity with a minor	Revocation
11B-27.005(5)(a)11	Section 800.04, <i>F.S.</i>	Lewd or lascivious offense child under 16	Revocation
11B-27.005(5)(a)12	Section 827.03, <i>F.S.</i>	Child abuse	Prospective suspension to revocation
11B-27.005(5)(a)13	Section 827.03, <i>F.S.</i>	Aggravated child abuse with violence	Revocation
11B-27.005(5)(a)14	Section 843.01, <i>F.S.</i>	Resisting an officer with violence	Prospective suspension to revocation
11B-27.005(5)(a)15	Sections 893.13, 893.135, 893.147, and 893.149, <i>F.S.</i>	Felony controlled substance	Revocation
11B-27.005(5)(b)13	Sections 741.31 and 784.047, <i>F.S.</i>	A second violation of domestic violence or other protective injunction that constitutes a misdemeanor offense	Prospective suspension to revocation
11B-27.005(5)(b)14	Section 784.048, <i>F.S.</i>	Stalking constituting a misdemeanor offense	Prospective suspension to revocation
11B-27.005(5)(b)15	Sections 741.28 and 784.03, <i>F.S.</i>	Battery involving domestic violence with slight or moderate victim physical injury that constitutes a misdemeanor offense	Prospective suspension to revocation

2010: Enumerated Penalties Added to Rule			
Rule	Florida Statute	Violation	Recommended Penalty
11B-27.005(5)(a)16	Section 838.015, <i>F.S.</i>	Bribery	Revocation
11B-27.005(5)(a)17	Section 838.016, <i>F.S.</i>	Unlawful compensation or reward for official behavior	Revocation
2012: New Violations Added to Rule			
Rule	Florida Statute	Violation	Recommended Penalty
11B-27-0011(4)(b)1	Section 365.16, <i>F.S.</i>	Obscene or harassing telephone calls	Probation to suspension
11B-27-0011(4)(b)1	Section 901.36, <i>F.S.</i>	Prohibition against giving false name or false identification by person arrested or lawfully detained; court orders added to the list of misdemeanor or criminal offenses whether criminally prosecuted or not	Prospective suspension to revocation
2014: New Violations or Enumerated Penalties Added to Rule			
Rule	Florida Statute	Violation	Recommended Penalty
11B-27.0011(4)(c)14.a.-e.	Not Applicable	Misuse of electronic databases	Probation to suspension
11B-27.005(5)(c)14	Not Applicable	Intentional abuse of temporary employment authorization	Suspension to revocation
11B-27.005(5)(c)15	Not Applicable	Any willful and offensive exposure or exhibition of his or her sexual organs in public or on the private premises of another or so near thereto as to likely be seen except in any place provided or set apart for that purpose	Suspension to revocation

Source: Criminal Justice Standards and Training Commission.

Appendix D

The Membership of the 19 State Commissions Authorized to Revoke Correctional Officer Certification Varies

As shown in Exhibit D, there are 19 states, including Florida, that have commissions with the ability to revoke correctional officer certification. The number of members on each commission ranged from 7 in Alabama and Wyoming to 31 in North Carolina. Like Florida, 14 states had commission positions for sheriffs or police chiefs; 10 states had positions for sheriff’s deputies or police officers; and 11 states had positions for the general public. Also similar to Florida, ten of the states required some form of correctional administrators or management, while five states had positions for correctional officers or employees.

**Exhibit D
Eighteen Other States Have Commissions With the Ability to Revoke Correctional Officer Certification**

State Commission	Total Members	Law Enforcement				Corrections			Other			
		Sheriff/Police Chief	Deputy/Police Officer	State Law Enforcement Agency Head	Law Enforcement Association or Fraternal Order	Correctional Administrators/Management	Correctional Officers/Employees	County Correctional Institution	Attorney General	Training Center Director	General Public	Other
Florida ¹	19	6	5	1	–	1	2	1	1	1	1	0
Alabama	7	–	–	–	3	–	–	–	–	–	4	0
Alaska	13	4	1	1	–	2	1	–	–	–	4	0
Arkansas	10	4	–	–	1	–	–	–	–	–	2	3 ²
Georgia	19	2	4	1	6	1	–	–	–	–	–	5 ³
Idaho	13	6	–	2	–	1	–	–	1	–	–	3 ⁴
Louisiana	12	6	–	1	1	–	–	–	1	–	–	3 ⁵
Maine	17	2	2	3	–	1	1	–	1	–	3	4 ⁶
Maryland	16	–	–	–	3	3	5	–	1	–	–	4 ⁷
Mississippi	13	3	1	1	5	–	–	–	1	–	–	2 ⁸
Montana	13	2	1	–	–	–	1	1	–	–	3	5 ⁹
Nevada	9	–	3	–	–	–	–	–	–	–	–	6 ¹⁰
New Hampshire	14	6	–	1	–	1	–	–	1	–	2	3 ¹¹
North Carolina	31	4	6	1	2	4	1	–	1	–	6	6 ¹²
Oregon	24	4	2	1	5	1	–	–	–	–	1	10 ¹³
South Carolina	11	4	–	3	–	1	–	1	1	–	–	1 ¹⁴
Utah	17	6	–	1	1	1	–	–	1	–	4	3 ¹⁵
Wisconsin	15	2	4	1	–	–	–	–	1	–	1	6 ¹⁶
Wyoming	7	–	2	–	–	–	–	–	1	–	2	2 ¹⁷

¹ In appointing the three sheriffs, the Governor is required to choose each appointment from a list of six nominees submitted by the Florida Sheriffs Association. In appointing the three chiefs of police, the Governor is required to choose each appointment from a list of six nominees submitted by the Florida Police Chiefs Association. In appointing the five law enforcement officers and one correctional officer of the rank of sergeant or below, the Governor is required to choose each appointment from a list of six nominees submitted by a committee comprised of six members of three different collective bargaining agents. At least one of the names submitted for each of the five appointments who are law enforcement officers must be an officer who is not in a collective

bargaining unit.

- ² Arkansas also includes one officer of the Department of Arkansas State Police; one educator in the field of criminal justice; and one member not be actively engaged in or retired from law enforcement. The member shall be 60 years of age and represent the elderly, appointed from the state at large, subject to confirmation by the Senate, and be a full voting member.
- ³ Georgia also includes one appointee of the governor who is not the attorney general; the director of investigation of the Georgia Bureau of Investigation or his or her designee; the chairperson of the State Board of Pardons and Paroles or his or her designee; one city manager or mayor; and one county commissioner.
- ⁴ Idaho also includes one county prosecuting attorney or designee; the special agent in charge of the Idaho division of the Federal Bureau of Investigation or designee; and the director of the department of juvenile corrections or designee.
- ⁵ Louisiana also includes two district attorneys and the executive director of the Louisiana Commission on Law Enforcement and Administration of Criminal Justice.
- ⁶ Maine also includes one educator who is not and has never been a sworn member of a law enforcement agency; one criminal prosecutor from the district attorney; one representative of a federal law enforcement agency; and one municipal official who is not and has never been a sworn member of a law enforcement agency.
- ⁷ Maryland also includes the secretary of Juvenile Services; one representative of the Department of Juvenile Services, designated by the secretary of Juvenile Services; one representative of the Federal Bureau of Prisons, designated by its director; and one president of a university or college in the state with a correctional education curriculum, appointed by the Maryland Higher Education Commission.
- ⁸ Mississippi also includes one district attorney and one representative of higher education.
- ⁹ Montana also includes one state law enforcement member; one tribal law enforcement member; one county attorney; and two members from the board of crime control.
- ¹⁰ Nevada also includes two members from Clark County, with one being from a metropolitan police department; one member from Washoe County; and three members from counties other than Clark and Washoe.
- ¹¹ New Hampshire also includes two judges of courts with criminal jurisdiction and the chancellor of the community college system.
- ¹² North Carolina also includes the president of the North Carolina Community Colleges System; one mayor selected by the League of Municipalities; one criminal justice professional selected by the North Carolina Criminal Justice Association; one district attorney selected by the North Carolina Association of District Attorneys; the president of the University of North Carolina; and the dean of the school of government at the University of North Carolina at Chapel Hill.
- ¹³ Oregon also includes one fire chief recommended to the governor by the Oregon Fire Chiefs Association; one representative of public safety telecommunicators; one district attorney recommended to the governor by the Oregon District Attorneys Association; the state fire marshal; the chief of the Portland Fire Bureau; one nonvoting member who is the special agent in charge of the Federal Bureau of Investigation for Oregon; one administrator of a municipality recommended to the governor by the executive body of the League of Oregon Cities; two members recommended by and representing the private security industry; and one member who is a non-management parole and probation officer employed by a community corrections program.
- ¹⁴ South Carolina also includes the director of the South Carolina Department of Probation, Parole and Pardon Services.
- ¹⁵ Utah also includes one incumbent mayor; one incumbent county commissioner; and one educator in the field of public administration, criminal justice, or a related area.
- ¹⁶ Wisconsin also includes one district attorney; two representatives of local government who occupy executive or legislative posts; the executive director of the Office of Justice Assistance; the secretary of Natural Resources or designee; and the special agent in charge of the Milwaukee office of the Federal Bureau of Investigation.
- ¹⁷ Wyoming also includes one representative of a state law enforcement agency and one person who is actively engaged in law enforcement training.

Source: OPPAGA review of other state commissions with authority to discipline correctional officer certification.

Appendix D



Florida Department of
Law Enforcement

Richard L. Swearingen
Commissioner

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Jeff Atwater, *Chief Financial Officer*
Adam Putnam, *Commissioner of Agriculture*

September 30, 2015

Mr. Phillip Twogood
Coordinator
Office of Program Policy Analysis and Government Accountability
111 West Madison Street
Claude Pepper Building, Room 312
Tallahassee, FL 32399-1475

Dear Mr. Twogood:

The Florida Department of Law Enforcement acknowledges receipt of your draft report entitled *Review of Department of Corrections and Criminal Justice Standards and Training Commission Processes for Correctional Officer Misconduct*. Thank you for the opportunity to review, comment and suggest clarifications to the early draft.

As you noted in the report, the Criminal Justice Standards and Training Commission (the Commission) is comprised of 19 members. The Commission represents a diverse cross section of the state and local criminal justice community in Florida. While we recognize that only two positions (secretary of the Department of Corrections, or designated assistant, and State Correctional Institution Administrator) represent state correctional officers, it is important to note that seven of the positions represent correctional officers when the county correctional officer population is factored in. Those seven positions include the above two positions, three sheriffs, one county correctional administrator, and one correctional officer at the rank of sergeant or below.

We realize that there are many other individuals within federal, state and local government and the community who might add a broader perspective to the Commission. We remain committed to upholding the Commission's mission, which is to ensure that all citizens of Florida are served by criminal justice officers who are ethical, qualified, and well trained. In addition, we stand ready to work with the Legislature on any proposed membership changes to the Commission.

Thank you for the time and attention your staff provided in the development of this report.

Sincerely,

Richard L. Swearingen
Commissioner

RLS/gh

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Tab 7

10/5/2015
Meeting Date

Bill Number (if applicable)

Topic Correctional officer misconduct

Amendment Barcode (if applicable)

Name Jim Clark

Job Title Sr. Legislative Analyst

Address 111 W. Madison St. Suite 312

Phone 850 717-0519

Street

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FL

32303

City

State

Zip

Email clark.james@oppaga.fl.gov

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing OPPAGA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 10/5/2015 4:03:08 PM

Ends: 10/5/2015 5:59:45 PM

Length: 01:56:38

4:03:08 PM Meeting called to order by Chair Evers
4:03:21 PM Roll Call
4:03:59 PM Tab 2 Senator Joyner SB 84
4:06:20 PM Jorge Chamizo waives in support
4:07:08 PM SB 84 passes favorably
4:07:45 PM Tab 3 Senator Hutson SB 218
4:08:53 PM Amendment barcode 211176
4:09:56 PM Amendment adopted
4:10:15 PM Senator Gibson question
4:11:25 PM Senator Hutson answers
4:11:32 PM Senator Gibson
4:12:20 PM Senator Clemens
4:12:59 PM CS/SB 218 passes favorably
4:14:08 PM Senator Bradley comments
4:14:54 PM Senator Evers comments
4:16:40 PM Senator Bradley further comments
4:17:15 PM Senator Gibson makes a comment
4:18:18 PM Senator Bradley answers Senator Gibson's point
4:19:15 PM Tab 4 Senator Bean SB 228
4:19:39 PM Senator Bean presents SB 228
4:20:58 PM Substitute amendment 223716 explained by Senator Bradley
4:22:44 PM Stacy Scott, Public Defender 8th Judicial Circuit
4:24:19 PM Amendment adopted
4:24:28 PM Back on bill as amended
4:25:24 PM Senator Clemens asks question
4:26:44 PM Greg Newburn
4:29:05 PM Senator Bean waives close on bill
4:29:26 PM CS/SB 228 passes favorably
4:29:50 PM Senator Evers turns chair over to Senator Gibson
4:30:14 PM Tab 5 Senator Dean SB 230
4:31:08 PM Senator Brandes asks question
4:31:45 PM Senator Dean's aide answers question
4:32:09 PM Senator Gibson asks question
4:32:31 PM Senator Dean's aide answers question
4:33:07 PM Michael Daniels, Fla Alliance for Assistive Services and Technology
4:35:12 PM Senator Gibson asks question of Mr. Daniels
4:35:34 PM Mr. Daniels responds to question
4:38:08 PM SB 230 passes favorably
4:38:38 PM Tab 6 SPB 7006 - Corrections
4:39:01 PM Staff presentation of SPB 7006
4:40:00 PM Senator Gibson
4:40:45 PM Senator Brandes
4:41:05 PM Senator Brandes moves that SPB 7006 be TP'd
4:41:31 PM Senator Bradley seconds motion
4:41:42 PM Tab 1 Secretary Julie Jones, Department of Corrections gives presentation
4:46:45 PM Senator Brandes asks question of Sec Jones
4:47:11 PM Secretary Jones responds to question
4:49:51 PM Senator Gibson asks question of Sec Jones
4:50:11 PM Sec Jones answers question
4:52:14 PM Secretary Jones continues presentation regarding Executive Orders
4:56:01 PM Senator Bradley asks question of Secretary Jones
4:56:27 PM Sec Jones responds to question

4:58:24 PM Senator Gibson comments
4:59:15 PM Senator Bradley makes comments
5:00:39 PM Secretary Jones continues presentation
5:02:24 PM Senator Clemens asks question
5:02:34 PM Secretary Jones responds to question
5:07:49 PM Senator Gibson asks questions
5:08:02 PM Secretary Jones responds to questions
5:08:16 PM Secretary Jones continues presentation
5:11:44 PM Senator Bradley asks question
5:12:37 PM Secretary Jones responds to Senator Bradley's question
5:18:14 PM Secretary Jones continues presentation
5:27:28 PM Secretary Jones concludes presentation
5:28:36 PM Senator Clemens comments
5:31:50 PM Senator Bradley adds further comments
5:33:19 PM Senator Gibson comments on Community part
5:36:12 PM Senator Gibson turns chair back over to Senator Evers
5:37:17 PM Tab 7 Presentation by Jim Clark, Sr. Legislative Analyst for OPPAGA
5:44:31 PM Senator Bradley asks question of Mr. Clark
5:45:50 PM Mr. Clark responds to question
5:46:23 PM Senator Gibson asks question
5:46:47 PM Mr. Clark responds to Senator Gibson
5:48:14 PM Mr. Clark continues presentation
5:51:05 PM Mr. Clark concludes presentation
5:51:58 PM Senator Brandes to followup
5:53:37 PM Mr. Clark responds
5:56:03 PM Senator Evers makes comments
5:58:39 PM Meeting adjourned