HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1197

SUBJECT/SHORT TITLE Diversion Programs

SPONSOR(S): Ahern and others

COMPANION BILLS: CS/CS/SB 1392

FINAL HOUSE FLOOR ACTION:

116 **Y's** 0 **N's**

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/HB 1197 passed the House on March 7, 2018, as CS/CS/SB 1392 as amended. The Senate concurred in the House amendment to the Senate Bill and subsequently passed the bill as amended on March 9, 2018.

The bill implements several criminal justice reforms aimed at improving recidivism and outcomes by increasing diversion opportunities and streamlining data to identify strengths and weaknesses in the criminal justice system. The bill:
- Establishes a model adult prearrest diversion program.
- Requires each judicial circuit to develop a civil citation or similar program for juvenile misdemeanor offenses, but allows counties and local agencies to opt out of the program.
- Expands eligibility criteria for juvenile diversion program records expunction.
- Requires diversion programs to submit data regarding participants and nonparticipants in diversion programs to the Department of Juvenile Justice (DJJ) for online publication.
- Requires DJJ to initially enter information of a juvenile who is arrested for a misdemeanor offense into the Juvenile Justice Information System Prevention Web, pending formal charges.
- Centralizes criminal justice data by requiring the clerks of court, state attorneys, public defenders, county jail operators, and the Department of Corrections (DOC) to collect specific data bi-weekly and transmit it, on a monthly basis, to the Department of Law Enforcement (FDLE), who must maintain a database with the information and publish the data on the department's publicly-accessible and searchable website.
- Digitizes the Criminal Punishment Code scoresheet used in sentencing defendants and requires the information contained in the scoresheet to be reported to FDLE on a monthly basis.
- Requires pretrial release programs to annually report data regarding pretrial risk assessment tool usage, surety or cash bail or bond, and types of charges accepted into the programs.
- Requires DOC to publish inmate admissions by offense type and the recidivism rate. Residential burglaries must be reported as a separate property crime offense, and the recidivism rate is expanded to mean an inmate's rearrest, reconviction, reincarceration, and probation revocation in the state within a three-year period following the inmate's release from incarceration.
- Establishes a pilot project in the 6th Judicial Circuit to allow the clerk of court, the state attorney, the public defender, or a sheriff to enter into a Memorandum of Understanding with a national, nonpartisan, not-for-profit entity to place a data fellow, funded by the entity, in the agency or office. The data fellow will assist with data extraction, validation, and quality and assist the office or agency in compiling and reporting data.

For the 2018-19 fiscal year, the bill appropriates $665,884 in recurring funds and $1,084,116 in nonrecurring funds from the General Revenue Fund to FDLE. It also authorizes nine full-time equivalent positions. The appropriations to FDLE are to implement the data collection portion of this bill and to begin the transition to incident-based crime reporting as required by the Federal Bureau of Investigations.

The bill was approved by the Governor on March 30, 2018, ch. 2018-127 L.O.F., and will become effective on July 1, 2018.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

<u>Creation and Disposition of a Criminal Case</u>

Generally, when a law enforcement officer has probable cause to believe that an adult has committed a misdemeanor[1] offense in Florida, the officer may arrest the individual – with or without a warrant[2] – or issue a notice to appear.[3] Both an arrest and the issuance of a notice to appear refer the matter to the clerk of courts, where a criminal case is generated.

A misdemeanor case may be resolved in any of the following ways:
- The case may be dismissed, by a no action or no information,[4] *nolle prosequi*,[5] or court dismissal.[6]
- The defendant may participate in pretrial intervention,[7] pretrial diversion, drug court, veterans' court, mental health court, or other intervention program.[8] Successful completion of a diversion program may result in the dismissal of the case.[9]
- The defendant may plead guilty or no contest to the charges.[10]
- The case may proceed to trial, at which the defendant may be found guilty or acquitted.

If the defendant pleads to the charges or is found guilty at trial, the court may either adjudicate the defendant guilty or withhold adjudication of guilt.[11] Regardless of the resolution, the case remains on an adult defendant's criminal record unless the court grants a petition to seal[12] or expunge[13] the record.[14]

Some jurisdictions have developed a civil citation or other prearrest diversion program as an alternative to referring the case to the court for disposition. These programs allow an officer to issue a citation or refer a person to the prearrest diversion program rather than make an arrest or issue a notice to appear. If the person successfully completes the requirements of the civil citation or prearrest diversion program, the offense is never referred to the court and does not appear on the individual's criminal, or delinquency for a juvenile, record.

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[1] Misdemeanor offenses are classified into two degrees. A first degree misdemeanor is punishable by up to one year in the county jail and a $1,000 fine. A second degree misdemeanor is punishable by up to sixty days in the county jail and a $500 fine. SS. 775.082 & 775.083, F.S.

[2] Section 901.15, F.S., outlines the circumstances in which an officer may make a warrantless arrest, which include when a person has committed a misdemeanor in the presence of the officer and when there is probable cause that the person committed an act of domestic violence, dating violence, battery, or criminal mischief.

[3] A notice to appear is a written order issued by a law enforcement officer in lieu of physical arrest requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time. Officers may issue a notice to appear in misdemeanor cases under certain circumstances. R. 3.125, Fla. R. Crim. P.

[4] A 'no action' is a dismissal of the pending charges before an information or indictment has been filed. *Genden v. Fuller*, 648 So.2d 1183, 1183 n. 1 (Fla. 1994).

[5] A *nolle prosequi* is the dismissal of a pending information or indictment. Id.

[6] The court may dismiss a case under certain circumstances, including on a defense motion to dismiss under Rule 3.90(c)(4), Fla. R. Crim. P., upon expiration of the speedy trial period under Rule 3.191, Fla. R. Crim. P., or upon granting Stand Your Ground immunity under s. 776.032, F.S.

[7] S. 948.08, F.S.

[8] S. 948.16, F.S.

[9] SS. 948.08(7)(c) & 948.16, F.S.

[10] R. 3.172, Fla. R. Crim. P.

[11] R. 3.670, Fla. R. Crim. P.

[12] Sealing of a criminal history record means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein. S. 943.045(19), F.S.

[13] Expunction of a criminal history record means the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order, except that criminal history records in the custody of the department must be retained in all cases. S. 943.045(16), F.S.

[14] SS. 943.0581, 943.0585 & 943.059, F.S.

Juvenile Civil Citation and Prearrest Diversion Programs

Florida first adopted a civil citation program for juveniles in 1990.[15] The juvenile civil citation program allows each circuit, with assistance from the Department of Juvenile Justice (DJJ), to establish a civil citation or other prearrest diversion program.[16] Implementation of such a program is discretionary and requires consultation with and the consent of the state attorney and local law enforcement agencies.[17] In a participating jurisdiction, an officer making contact with an eligible child who admits to committing a misdemeanor offense may do any of the following in lieu of referring the child to DJJ:[18]
- Issue a warning;
- Notify the child's parent or guardian; or
- Issue a civil citation or require participation in a similar prearrest diversion program.[19]

Section 985.125, F.S., additionally authorizes a law enforcement agency or a school district, in cooperation with the state attorney, to establish a prearrest or postarrest diversion program.

Permissible conditions of a juvenile civil citation or other prearrest diversion program include up to fifty community service hours, family counseling, urinalysis monitoring, or substance abuse and mental health treatment services.[20] The program is available to a child for up to his or her first three misdemeanor offenses.[21] A child who refuses the citation, fails to successfully complete the required conditions, or commits a third or subsequent misdemeanor is referred to DJJ for the original offense.[22]

In fiscal year 2016-2017, DJJ reported a 55% utilization rate of the civil citation and prearrest diversion programs for eligible children. Dade and Pinellas counties reported utilization rates of 96% and 92%, respectively.[23] Nine counties did not offer any eligible child the civil citation program.[24]

Adult Civil Citation and Prearrest Diversion

Pinellas County Adult Pre-Arrest Diversion

In October 2016, Pinellas County launched its Adult Pre-Arrest Diversion program.[25] Eligible misdemeanor offenses for this program include:
- Assault;
- Battery;
- Criminal mischief;
- Disorderly conduct;
- Littering;
- Petit theft;

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[15] Ch. 90-209, Laws of Fla.

[16] S. 985.12(1), F.S.

[17] Id.

[18] Every youth under the age of 18 charged with a crime in Florida is referred to the Department of Juvenile Justice. A referral is similar to an arrest in the adult criminal justice system. The Department provides a recommendation to the State Attorney and the Court regarding appropriate sanctions and services for the youth. *See* Department of Juvenile Justice, *Probation and Community Intervention*, available at: http://www.djj.state.fl.us/services/probation (last viewed March 12, 2018).

[19] S. 985.12(1), F.S.

[20] Id.

[21] Id.

[22] S. 985.12(5), F.S.

[23] Department of Juvenile Justice, *Civil Citation & Other Similar Diversion Program Dashboard*, available at: http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/civil-citation-dashboard/cc-dashboard (last viewed March 12, 2018).

[24] Counties that did not utilize the juvenile civil citation program in FY 16-17 include Hardee, Dixie, Holmes, Bradford, Madison, Taylor, Gulf, Calhoun, and Washington. Id.

[25] Mark Puente, *Pinellas Sheriff Bob Gualtieri: New diversion program for minor offenses is working*, TAMPA BAY TIMES (April 12, 2017), available at: http://www.tampabay.com/news/publicsafety/crime/pinellas-sheriff-bob-gualtieri-new-diversion-program-for-minor-offenses-is/2319960 (last viewed March 12, 2018).

- Possession of alcohol by a person less than 21 years old;
- Possession of marijuana;
- Possession of marijuana paraphernalia;
- Retail theft; and
- Trespassing.[26]

A person who commits an eligible offense in Pinellas county may participate in the program if he or she does not have a prior misdemeanor conviction within the past two years or a felony conviction within the past five years.[27] The program does not charge participants any fees or costs.[28] Since October 2016, 1,851 people have been accepted into the adult pre-arrest diversion program in Pinellas.[29] The top three offenses referred to the program were marijuana possession, retail theft, and battery.[30] Participants have completed approximately 24,874 community service hours and paid $17,553 in restitution to victims.[31]

Leon County Adult Civil Citation

Leon County adopted its adult civil citation program in 2013.[32] As with juvenile civil citations, the adult civil citation program in Leon County provides an alternative to arrest for eligible offenders, and law enforcement officers have sole discretion over whether to offer the program.[33] To be eligible for the program, an offender must:
- Be at least 18 years old;
- Reside within the Second Judicial Circuit of Florida;
- Be a first-time offender, with no prior arrests as an adult and no prior civil citations;
- Have committed an eligible offense; and
- Admit to the offense.[34]

Leon County stakeholders identified the following as eligible offenses:
- Non-domestic battery and assault;
- Petit theft with restitution less than $50;
- Criminal mischief with restitution less than $50;
- Possession of alcohol by a person less than 21 years old;
- Trespass;
- Misdemeanor possession of marijuana;
- Disorderly conduct;
- Allowing an open house party where drugs or alcohol are consumed by minors; and
- Selling or giving a minor alcoholic beverage.[35]

The following offenses are ineligible for the adult civil citation program in Leon County:
- Traffic offenses;
- Domestic violence offenses;
- Stalking;
- Exhibition of sexual organs;

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[26] Laura Morel, *Pinellas Sheriff calls pre-arrest diversion program a success amid challenges by St. Petersburg lawyer*, Tampa Bay Times (January 12, 2018), available at: http://www.tampabay.com/news/courts/criminal/Pinellas-Sheriff-calls-pre-arrest-diversion-program-a-success-amid-challenges-by-St-Petersburg-lawyer_164377717 (last viewed March 12, 2018).
[27] Supra, FN 25.
[28] Id.
[29] Id.
[30] Supra, FN 26.
[31] Id.
[32] Civil Citation Network, *Implementation Guide*, (August 2013), available at: http://www.civilcitationnetwork.com/docs/Implementation-Guide.pdf (last viewed March 12, 2018).
[33] Id. at 4.
[34] Id. at 2.
[35] Id. at 3.

- Loitering and prowling; and
- Theft or criminal mischief with more than $50 in restitution.[36]

An offender must contact the program provider within seven days of receiving the citation.[37] He or she must sign a participation agreement, outlining the conditions assigned and additional program requirements.[38] At a minimum, the program must include a condition of twenty-five community service hours.[39] If the offender fails to successfully complete the program, law enforcement may either issue a notice to appear or request an arrest warrant for the case to proceed to a court disposition.[40] The program is entirely funded by the participants, who are assessed fees that must be paid or waived in order to successfully complete the program.[41]

Broward County Adult Civil Citation

Broward County passed an ordinance in 2015 allowing an officer to issue an adult civil citation in lieu of arrest for possession of twenty grams or less of marijuana.[42] A person is eligible for the program for up to a third violation,[43] unless:
- The person was also charged with a felony, driving under the influence, a violent crime, or an incident of domestic violence; or
- The person has previously failed to complete the requirements of the adult civil citation program.[44]

As part of the program, participants must choose one of the following sanctions:
- Pay a fine;
- Perform community service; or
- Complete an educational program or drug treatment.[45]

Expunction for Minors Who Complete Diversion

The Department of Law Enforcement (FDLE) must expunge the nonjudicial arrest record of a minor who successfully completes a prearrest or post arrest diversion program if that minor:
- Submits an application for prearrest or postarrest diversion expunction;
- Participated in a prearrest or postarrest diversion program based on the commission of a nonviolent misdemeanor that would not qualify as a crime of domestic violence;
- Has not committed any other criminal offense or comparable ordinance violation;
- Participated in a program that expressly allows for such expunction; and
- Submits certification from the state attorney that the minor meets the qualifications for the expunction.[46]

The term expunction in the prearrest or postarrest diversion setting has the same meaning and effect as expunction of criminal history records under s. 943.0585, F.S., except that:
- FDLE may make available an expunged juvenile diversion criminal record to:

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[36] Id.

[37] Id. at 2.

[38] Id. at 11.

[39] Id. at 2.

[40] Id. at 12.

[41] Id.

[42] S. 21-6, Code of Broward County; Ord. No. 2015-45 § 1, available at: https://library.municode.com/fl/broward_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH21MIOFPR_ARTIINGE_S21-6POTW20GRLECA (last viewed February 16, 2018).

[43] Id.

[44] Id.

[45] Id.; Broward County, *Adult Cannabis Citation Program: A New Option for Misdemeanor Marijuana Possession*, available at: http://www.broward.org/HumanServices/JusticeServices/Documents/AdultCannibusBroch.pdf (last viewed March 12, 2018).

[46] S. 943.0582(3), F.S.

- o Criminal justice agencies for the purpose of determining eligibility for prearrest, postarrest, or teen court diversion programs;
  - o When the record is sought as part of a criminal investigation; or
  - o When the subject of the record is a candidate for employment with a criminal justice agency;[47] and
- Records maintained by local criminal justice agencies in the county in which the arrest occurred must be sealed instead of destroyed.[48]

Section 943.0582, F.S., authorizes FDLE to adopt rules allowing for the expunction of any nonjudicial record of arrest of a minor who has successfully completed a prearrest or postarrest diversion program as authorized by s. 985.125, F.S.[49] FDLE established the procedures for such expunction in Rule 11C-7.009, F.A.C. FDLE is also authorized to charge a $75 processing fee for each request received for juvenile diversion program expunction.[50]

A juvenile who participates in a civil citation or similar prearrest diversion program has his or her information entered into the Juvenile Justice Information System Prevention Web, which by agency rule is confidential and not shared with outside agencies.[51] For these juveniles, a criminal record is never generated to expunge.

Data Collection by Florida's Criminal Justice Agencies

Data collection is the process of gathering and measuring information on variables of interest, in an established systematic fashion, to answer research questions, test hypotheses, and evaluate outcomes.[52] In order for data to be effective, it must be accurate, reliable, and valid.[53] A strong foundation in research methods and data analysis techniques allows for evidence-based decisionmaking, greater understanding, and identifying strengths, weaknesses, or potential issues.[54]

Currently, Florida does not have a publicly accessible website containing comprehensive criminal justice data. Data is collected and maintained by several state departments, local agencies and local offices, including clerks of court, state attorney's offices, public defender's offices, county jails, and the Department of Corrections (DOC). Each entity collects and maintains data in different ways and for different purposes. As a result, available criminal justice data is fractured and unstructured.

Florida law currently requires some inter-agency data collection and data reporting requirements. However, the requirements do not apply to all agencies or cover the entire criminal justice process from arrest to disposition.

Clerks of Court

The clerks of court use a secured single point-of-search database portal for statewide court case information, the Comprehensive Case Information System (CCIS).[55] CCIS was implemented in 2002 as an initiative to view court case information across county and circuit lines.[56] All clerks are statutorily

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[47] S. 943.0582(2)(a)1., F.S.
[48] S. 943.0582(2)(a)2., F.S.
[49] Section 985.125, F.S., authorizes a law enforcement agency or school district to establish a prearrest or postarrest diversion program, in cooperation with the state attorney.
[50] S. 943.0582(4), F.S.
[51] R. 63D-10.002, F.A.C.
[52] Responsible Conduct of Research, Northern Illinois University, available at: https://ori.hhs.gov/education/products/n_illinois_u/dfront.html (last visited March 14, 2017).
[53] Id.
[54] Kristie R. Blevings, Ph.D., Eastern Kentucky University, March 26, 2013, available at: http://plsonline.eku.edu/insidelook/importance-research-and-analysis-policing (last visited March 14, 2017).
[55] Comprehensive Case Information System access site, available at: https://www.flccis.com/ocrs/login.xhtml (last visited March 14, 2018).
[56] Upgraded versions of this system have since been implemented in 2009 and again in 2016.

required to participate in CCIS and submit data for criminal, civil, juvenile, probate and traffic cases.[57] Section 28.24(12)(e), F.S., directs the clerks to maintain CCIS as the custodian of records generated by the system.

CCIS collects the following data, searchable by name or case information:
- Individual name demographic information
- Case/charge information.
- Court events.
- Progress dockets.
- Financial (assessments/collections).
- Warrant/summons information.
- Sentencing information.
- Document images.[58]

CCIS contains approximately 150 million cases and 400 million names.[59] There are approximately 80 governmental organizations that use CCIS, with over 45,000 active users.[60] These organizations include federal, state, and local level entities.[61] Each user or organization is assigned a security level that allows them to view certain data available on CCIS.[62] For example, an assistant public defender may not have the same level of access as a deputy sheriff. Not all data elements are available to all users, and CCIS is not publicly available.

A government organization granted access to CCIS may use the database to search information on past or present cases. A user may search for information by using a person's name, social security number or date or birth.[63] There is also an option to narrow the search field results to within a date range or specific county.[64] In order to search by case number, the user will need to know the county where the case originated, the court case type, and the year.[65] A user may also enter a party name to see if any active warrants are issued in a case.[66]

CCIS is limited to person and court case information, and allows a user to search a person's case history and the information within each case. However, CCIS in not interactive, meaning a user cannot search data using other elements, such as offense charges or race and ethnicity.

Below is a chart of organizations with over 100 users currently using CCIS:[67]

CCIS Users	
Organization	**Active Users**
Department of Children and Families	6825
County Sheriff	3650
Department of Corrections	3211
State Attorney	2349
Local Police	1972
U.S. Department of Homeland Security	1777

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[57] S. 28.2405, F.S.

[58] Florida Court Clerks & Comptrollers, *Criminal Court Case Data Collection*, power point presentation to House Judiciary Committee on November 14, 2017 (on file with Judiciary Committee staff).

[59] Id.

[60] Email from the Association of Court Clerks & Comptrollers, January 26, 2018 (on file with Judiciary Committee staff).

[61] Supra, FN 58.

[62] Id.

[63] CCIS User Guide, February 21, 2017, available at:
http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/Temporary_Files/CCIS_User_Guide.pdf (last visited March14, 2018).

[64] Id. at 5.

[65] Id. at 9.

[66] Id. at 10.

[67] Supra, FN 60.

Department of Revenue	1665
Public Defender	1527
Judicial Circuits	928
Department of Juvenile Justice	706
Department of Law Enforcement	576
Department of Highway Safety and Motor Vehicles	504
Fish and Wildlife Commission	474
U.S. Probation Office	461
Attorney General	433
County Office	304
Department of Financial Services	297
Justice Administrative Commission	268
Department of Health	267
Highway Patrol	215
Department of Education	196
Department of Agriculture and Consumer Services	191
Guardian Ad Litem	180
Department of Business and Profession Regulation	178
FL District Court of Appeals	135
Offices of Criminal Conflict and Civil Regional Council	114
Commission on Offender Review	112

County Detention Facilities

A county detention facility is a jail, stockade, work camp, residential probation center, or any other place, except a municipal detention facility, used by a county or county officer for the detention of persons charged with or convicted of a crime.[68]

There are 67 county jail facilities in Florida:
- 59 jail facilities are operated by the sheriff's office. [69]
- 7 jail facilities are operated by the county. [70]
- 1 jail facility is operated by a private company. [71]

Data collection and storage by jail facilities varies greatly from county to county.[72] Larger jails, such as Miami-Dade and Duval, have data systems allowing for direct data input and report generation.[73] Smaller jails have created databases using Microsoft Access or other commercially available templates.[74]

Administrators of county detention facilities are required by statute to collect and report to the Department of Corrections (DOC) the following information:
- The number of persons housed per a day, admitted per month, and housed on the last day of the month, by age, race, and sex, who are:
  - Felons sentenced to cumulative sentences of incarceration of 364 days or less.
  - Felons sentenced to cumulative sentences of incarceration of 365 days or more.
  - Sentenced misdemeanants.
  - Awaiting trial on at least one felony charge.

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[68] S. 951.23(1)(a), F.S.
[69] Email from Florida Sheriffs Association, October 10, 2017 (on file with Judiciary Committee).
[70] Escambia, Gulf, Jefferson, Miami-Dade, Okaloosa, Orange, Osceola, and Volusia. Id.
[71] Citrus county. Id.
[72] Florida Sheriffs Association, *Criminal Justice Data Collection*, Power Point presentation to Judiciary Committee on November 14, 2017 (on file with Judiciary Committee staff).
[73] Id.
[74] Id.

- o Awaiting trial on misdemeanor charges only.
- o Convicted felons and misdemeanants who are awaiting sentencing.
- o Juveniles.
- o State parole violators.
- o State inmates who were transferred from a state correctional facility to a county detention facility.
- The number of persons housed per day, admitted per month, and housed on the last day of the month, by age, race, sex, county of citizenship, country of birth, and immigration status, classified as one of the following:
  - o Permanent legal resident of the United States.
  - o Legal visitor.
  - o Undocumented or illegal alien.
  - o Unknown status.
- The number of persons housed per a day, and admitted per month by age, ace, and sex under part I of chapter 394, "The Florida Mental Health Act," or pursuant to chapter 397, "Substance Abuse Services." [75]

DOC uses such data to analyze and evaluate county detention facilities.[76]

Many jails also collect data relating to jail capacity, per diems, demographic data, criminal charges, custody levels, and medical information for internal purposes.[77] This data can be used to manage daily operations, including custody level and safety trends, verifying total jail costs and budgets, and ensuring proper staffing and training.[78]

State Attorneys and Public Defenders

The roles, duties and obligations of state attorneys and public defenders are prescribed in parts II and III of ch. 27, F.S., respectively. There is no statutory requirement for a state attorney or public defender to collect, publish or report specific data. Many circuits, on their own initiative, may collect data elements for internal purposes. However, this data is not publicly available or consistently shared among agencies.

Department of Corrections

The Offender Based Information System (OBIS) is the DOC data system.[79] OBIS is maintained by the Agency for State Technology's State Data Center and accessed by employees around the state.[80] The data collected includes sentencing information and scoresheets from the clerks of court, the criminal history information from the Department of Law Enforcement (FDLE), and background information self-reported by inmates.[81]

The data maintained in OBIS includes:
- **Sentencing Information**: offense of conviction, offense data, imposed date, presentence credit, sentence length, special provisions, county of conviction and scoresheet calculated points.
- **Criminal History Information**: arrest history, offense dates and dispositions.
- **Demographic and Background Information**: marital status, employment history and education.

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[75] S. 951.23(2), F.S.
[76] S. 951.23(3), F.S.
[77] Supra, FN 72.
[78] Id.
[79] S. 20.315(10), F.S.
[80] Florida Department of Corrections, *Overview of FDC Criminal Justice Data*, Power Point presentation to Judiciary Committee on November 14, 2017 (on file with Judiciary Committee staff).
[81] Id.

- **Operational Information**: gang affiliation, substance abuse treatment needs, Tests of Adult Basic Education, spectrum assessment, job assignments, program participation, disciplinary reports and employer (for probationers).[82]

The information in OBIS is shared with law enforcement and other state and federal agencies per statute, federal law or other directives, such as Memoranda of Understanding or Data Sharing Agreements.[83]

The Bureau of Research and Data Analysis (Bureau) at DOC analyzes OBIS data to generate information for the department, staff, the Governor's office, the Legislature and other state agencies.[84] One of the reports issued by the Bureau is the recidivism rate.[85] DOC defines recidivism as a return to prison due to a new conviction or a violation of post-prison supervision, within three years of an inmate's prison release date.[86] DOC uses the data on recidivism to analyze factors that influence an inmate's likelihood to recidivate, as well as recidivism based on gender, race, and primary offenses.[87] A report issued in December 2017 examined recidivism from 2009 to 2015 and found:
- Female inmates' recidivism rate was 13.2% compared to male inmates' recidivism rate at 27.1%.
- Inmates with the primary offense of burglary were most likely to recidivate at 31%.
- Inmates with the primary offense of murder/manslaughter were least likely to recidivate at 18%.
- Inmates less than twenty-five years old were most likely to recidivate at a rate of 31%.
- Other factors that increases recidivism include homelessness, gang membership, and supervision following prison time.[88]

Other reports and statistical information published by the Bureau include reports on the most common primary offenses committed by imprisoned inmates, inmate population by primary offense, and the per diem cost of each inmate.[89] Reports and statistics are updated on a yearly basis and the reports are publicly accessible; however, users are only able to download and view these reports.[90] Users cannot search the data DOC collects to create the reports.

[82] Supra, FN 80.

[83] Id.

[84] Florida Department of Corrections, *Bureau of Research and Data Analysis*, available at: http://www.dc.state.fl.us/orginfo/research.html (last visited March 14, 2018).

[85] Florida Department of Corrections, *Florida Prison Recidivism Study*, December 2017, available at: http://www.dc.state.fl.us/pub/recidivism/2016/index.html (last visited March 14, 2018).

[86] Id.

[87] Florida Department of Corrections, *Florida Prison Recidivism Report: Releases form 2009 to 2015*, December 2017, available at: http://www.dc.state.fl.us/pub/recidivism/2016/RecidivismReport2017.pdf (last visited March 14, 2018).

[88] Id.

[89] Florida Department of Corrections, *Quick Facts about the Florida Department of Corrections*, December 2017, available at: http://www.dc.state.fl.us/oth/Quickfacts.html (last visited March 14, 2018).

[90] Florida Department of Corrections, *Index to Statistics & Publications*, available at: http://www.dc.state.fl.us/pub/index.html (last visited March 14, 2017).

<u>Data Transparency in Other Industries</u>

Healthcare Industry

In 2016, the Legislature passed HB 1175, which promoted greater consumer access to health care price and quality information by requiring certain health care providers, insurers and health maintenance organizations (HMOs) to give that information to patients. The bill was in response to record numbers of newly-insured persons enrolling in both public and private health insurance and bearing a greater share of the health care costs associated with higher deductible health plans.[91] Clear, factual information about the cost and quality of health care was necessary for consumers to select value driven health care options and for consumers and providers to be involved in and accountable for decisions about health and health care services[92]. In order to reach this goal and promote consumer involvement, the bill required health care pricing and other data to be free, timely, reliable, and reflect individual health care needs and insurance coverage.[93]

The bill created pre-treatment transparency obligations for hospitals, ambulatory surgical centers, health care practitioners providing non-emergency services in these facilities, and insurers and HMOs. Facilities must post online the average payments and payment ranges received for bundles of health care services defined by the Agency of Health Care Administration (AHCA).[94] The information must be searchable by consumers.[95] The facilities must also provide, within 7 days of a request, a written, good faith, personalized estimate of charges, including facility fees, using either bundles of health care services defined by AHCA or patient-specific information.[96] Facilities must inform patients of health care practitioners providing their nonemergency care in hospitals and these practitioners must publish information on their financial assistance policies and procedures.[97]

A website is now available for all consumers to research and compare the cost of health care services and procedures in Florida.[98] Patients can search the information without a password or registration requirement.[99] As a result of the data collection and the requirement for public access, consumers now have access to a database that provides the average cost of health care service bundles for procedures and treatment.[100] This tool empowers consumers to plan for health care and negotiate prices for medical services and treatment.

Transportation

The transportation industry continually collects and analyzes data in order to improve safety. In Florida, the Department of Transportation houses the Transportation Data and Analytics Office, which offers highway, traffic, multimodal, and freight and passenger data information.[101] The goal of the office is to provide lawmakers and community leaders with evidence-based information to make transportation decisions and improve safety.[102] For example, the website offers a web-based mapping application that provides real-time traffic count information during emergencies such as hurricanes and wildfires.[103]

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[91] Final Analysis of HB 1175, Florida House of Representatives Committee on Health & Human Services, April 15, 2016, at 2.
[92] Id.
[93] Id.
[94] Id. at 1.
[95] Id.
[96] Id.
[97] Id.
[98] Agency for Health Care Administration, Florida Health Price Finder, available at: https://pricing.floridahealthfinder.gov/#! (last visited March 14, 2018).
[99] Supra, FN 91 at 19.
[100] Supra, FN 91 at 20.
[101] The Florida Department of Transportation, *Transportation Data and Analytics Office*, available at: http://www.fdot.gov/planning/statistics/ (last visited March 14, 2018).
[102] Id.
[103] Id.

Efforts to collect data are not limited to ground transportation. In 2015, Boeing donated $7.5 million to establish a data analytics lab at Carnegie Mellon,[104] with the goal of improving flight experience and aircraft maintenance and design. Using data, a maintenance schedule for aircrafts can be based on actual flight history and component performance instead of historic norms.[105] This allows for automatic analysis of written reports for the evidence-based predictive maintenance of aircrafts.[106]

Education

Many schools and education facilities have expanded the ways they use student data information to inform them on needed changes and ways to improve the education system.[107] Student data, as part of the education record from each student's school experience, is an important tool for teachers, administrators, districts and states to identify trends, show patterns, and evaluate the success of educational changes to ensure that new programs or services achieve the desired results.[108] Schools are using data to identify which students might be at risk of dropping out of school, or what groups of students may need more help in particular learning areas.[109] The information gathered from data can assist teachers in adjusting their plans and teaching style.[110] Through data collection and analysis, policymakers can predict trends throughout the school year. For example, students score lower on standardized tests at the end of summer vacation than they do on the same test at the beginning of summer.[111]

<u>Data-Driven Decision Making in Other States and Organizations</u>

Data-driven decision making in criminal justice is the objective, evidence-based decision process based on data collection. Data allows the public, as well as lawmakers, researchers, and analysts, to track how criminal cases are handled from arrest to post-conviction.[112] It allows users to break down data by race and ethnicity, gender, indigent status, age, offense type and attorney type. In addition to tracking the experience of offenders, data collection provides information on victims.[113] Data can project what demographic or age group is more likely to be targeted, which can assist lawmakers in developing preventative and safety measures for the community.[114]

Measures for Justice

Measures for Justice is a not-for-profit research organization founded in 2011 to develop a data-driven set of performance measures to assess and compare the criminal justice process from arrest to post-conviction on a county-by-county basis.[115] The organization is headquartered in Rochester, New York,

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[104] Carnegie Mellon, *Boeing Join Forces on New Aerospace Data Analytics Lab*, September 30, 2015, available at: https://www.lti.cs.cmu.edu/news/carnegie-mellon-boeing-join-forces-new-aerospace-data-analytics-lab (last visited MArch 14, 2018).

[105] Aerospace Manufacture and Design, *Boeing establishes analytics lad at Carnegie Mellon*, October 7, 2015, available at: http://www.aerospacemanufacturinganddesign.com/article/boeing-establishes-analytics-lab-carnegie-100715/ (last visited March 14, 2018).

[106] Id.

[107] Allie Bidwell, *More States are Collecting and Using Student Data to Improve Education*, November 19, 2013, available at: https://www.usnews.com/news/articles/2013/11/19/more-states-are-collecting-and-using-student-data-to-improve-education (last visited March 14, 2018).

[108] Elana Zeide, *19 Times Data Analysis Empowered Students and Schools*, March 2016, available at: https://fpf.org/wp-content/uploads/2016/03/Final_19Times-Data_Mar2016-1.pdf (last visited March 14, 2018).

[109] Id.

[110] Id.

[111] Lindsey Ravis, *Curriculum News: Data Collection and Its Importance in the Classroom*, May 2013, available at: http://ensc.ss5.sharpschool.com/UserFiles/Servers/Server_3056961/File/Migration/Curriculum/Newsletters/Curriculum_Newsletter_-_May_2013.pdf (last visited March 14, 2018).

[112] MacArthur Foundation, *Enhancing Transparency in the Criminal Justice System*, May 23, 2017, available at: https://www.macfound.org/press/publications/enhancing-transparency-criminal-justice-system/ (last visited March 14, 2018).

[113] Ryan Sibley, *The benefits of criminal justice data: Beyond policing*, Sunlight Foundation, available at: https://sunlightfoundation.com/2015/05/01/the-benefits-of-criminal-justice-data-beyond-policing/ (last visited March 14, 2018).

[114] Bureau of Justice Statistics, *Data Collection: National Crime Victimization Survey (NCVS)*, available at: https://www.bjs.gov/index.cfm?ty=dcdetail&iid=245 (last visited March 14, 2018).

[115] Measures for Justice, available at: https://measuresforjustice.org/about/overview/ (last visited March 14, 2018).

and has a staff of over thirty researchers and technologists with PhD and Master degrees in Criminal Justice, Public Administration, Cognitive Science, and Computer Science, working on cleaning and coding criminal justice data. The organization also works on software automation to streamline the process of cleaning and standardizing data from disparate sources.

Measures for Justice has developed a web-based platform that contains all its data and analyses and offers them free to the public. This platform is searchable and can be configured to break down performance data across multiple factors including race/ethnicity, sex, indigent status, age, and offense type. The platform also allows for county-to-county comparison within and across states. It currently has information for counties in: Washington, Utah, Wisconsin, Pennsylvania, North Carolina, and Florida. The organization's goal is to measure twenty states by the year 2020.

Hot Spot Policing

Data collection can also assist cities and municipalities in identifying "hot-spot" or high crime areas to focus on crime prevention and better policing.[116] Using accessible data, crime-mapping technologies can collect and analyze crime statistics so that police districts can produce information about the level, rate, and geographic location of crimes in any given area.[117] The data can assist law enforcement in formulating plans to reduce crime in certain areas and possibly even prevent crime before it occurs.[118]

Police Data Initiative

Accessible and open data can also create trust among criminal justice agencies and the public. For example, since 2016, over 129 law enforcement agencies across the nation have adopted the Police Data Initiative (PDI).[119] The PDI supports local police departments in their efforts to increase transparency and accountability in order to build trust in their communities.[120] Jurisdictions participating in the PDI commit to releasing at least three policing datasets to the public.[121] The datasets may include data on stops and searches, uses of force, officer-involved shootings, or other police actions.[122] The following Florida jurisdictions are listed as participating in the PDI: Jacksonville Sheriff's Department, Gainesville Police Department, Orlando Police Department, Ft. Lauderdale Police Department, Doral Police Department, and Miami Beach Police Department.[123]

North Carolina Jail Data

North Carolina recently highlighted the lack of a centralized database for jail operations and public awareness.[124] Without uniform collection of data across counties, the state found that the public and lawmakers were unable to determine the number of people in jail due to their inability to post bond, or the number of people pleading guilty to be released for time served.[125] To obtain this information, several state agencies are acting independently to track, and make publicly accessible, the data.[126]

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[116] Andrew Guthrie Ferguson, *Crime Mapping and the Fourth Amendment: Redrawing "High-Crime Areas,"* 63 Hastings L.J. 179 (Dec. 2011).

[117] Id.

[118] Anthony Braga, Andrew Papachristos, David Hureau, *Hot spots policing effects on crime*, available at: https://www.campbellcollaboration.org/media/k2/attachments/Braga_Hot_Spots_Policing_Review.pdf (last visited March 14, 2018).

[119] The Police Data Initiative, *Public Safety Open Data Portal*, available at: https://www.policedatainitiative.org/ (last visited March 14, 2018).

[120] Id.

[121] Id.

[122] Id.

[123] Supra, FN 51.

[124] Jordan Wilkie, *Media Hub: Holding Jails Accountable*, November 27, 2017, available at: http://mediahub.unc.edu/housing-jails-accountable-wheres-data/ (last visited March 14, 2018).

[125] Id.

[126] Id.

<u>Criminal Punishment Code Sentencing Scoresheets</u>

In 1997, the Legislature implemented the Criminal Punishment Code (CPC) sentencing scoresheet to be used in sentencing felony offenders. [127] Felony offenses subject to the CPC are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe (1) to most severe (10). [128] Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute. [129] The points assigned from the felony offense level are used to determine an offender's lowest permissible sentence in prison months. [130] Typically, a sentencing judge has discretion to impose a sentence anywhere from the lowest permissible sentence according to the CPC, up to the statutory maximum.

Design and Development of the Criminal Punishment Code Scoresheet

DOC develops and submits the CPC scoresheet to the Florida Supreme Court each year by June 15.[131] In developing the scoresheet, DOC may consult with the Office of State Courts Administrator (OSCA), state attorneys, and public defenders.[132] Once the Supreme Court approves of the scoresheet, DOC has until September 30 of each year to produce and provide sufficient copies of the CPC scoresheet to agencies throughout the state.[133] Hard copies of the form are printed and mailed to every state attorney.[134] If state attorneys run low on the hard copy forms, DOC will deliver more[135]. There is also an electronic option for the state attorneys to log in and complete and print the scoresheet.[136]

Preparation and Transmission of the Criminal Punishment Code Scoresheets

The assistant state attorney assigned to a case is required to prepare a CPC scoresheet for every defendant sentenced for a felony offense.[137] The CPC scoresheet is given to defense counsel in all cases unless the judge directs otherwise.[138] The sentencing judge must approve and sign the CPC scoresheet.[139]

At the conclusion of a felony criminal case in which an offender was sentenced pursuant to the CPC scoresheet, the clerks of court must transmit a copy of the CPC scoresheet used in sentencing to DOC.[140]

<u>Annual Reports from Pretrial Release Programs</u>

Pretrial release allows a defendant to stay in the community while his or her criminal case is pending. The judge determines the conditions of a defendant's pretrial release at a first appearance hearing held within 24-hours of arrest.[141] As forms of pretrial release, a judge may impose a bail bond[142],

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[127] SS. 921.002-921.0027, F.S.
[128] Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.
[129] Id.
[130] Id.
[131] S. 921.0024(4), F.S.
[132] Id.
[133] Id.
[134] Email from Department of Corrections, January 26, 2018 (on file with Judiciary Committee staff).
[135] Id.
[136] Id.
[137] S. 921.0024(3), F.S.
[138] Id.
[139] Id.
[140] S. 921.0024(6), F.S.
[141] Fla. R. Crim. P. 3.130.
[142] Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S., and requires an arrestee to pay a set sum of money, commonly called a cash bond, to the court to be released from jail. As an alternative to posting the entire bail amount, a

nonmonetary pretrial release conditions[143], or any combination thereof. A judge must presume that nonmonetary conditions are sufficient for any person granted pretrial release[144] and not charged with a dangerous crime.[145]

Pretrial Release Programs

In determining the conditions of pretrial release, a pretrial release program may assess the individual and make recommendations. A pretrial release program is a public or private entity that conducts investigations of pretrial inmates and makes recommendations to the court.[146] If an offender is released, a program may also be responsible for supervising or electronically monitoring that individual.[147] The program may select defendants for participation or defendants may be assigned to the program by a judge.[148] There are twenty-nine pretrial release programs in Florida, primarily funded by counties.[149] In evaluating and determining a defendant's suitability for release, a pretrial release program or the court may use a pretrial risk assessment tool that uses variables to objectively assess a defendant's potential for re-offense or failing to appear in court and for posing a danger to the community.[150]

Pretrial Release and the Citizens' Right-to-Know Act

Each pretrial release program is required to submit an annual report no later than March 31 to the Office of State Courts Administrator and the clerk of court in the county where the program is located.[151] This report must be publicly accessible and include:

- Name, location and funding source of the pretrial release program;
- Operating and capital budget of the pretrial release program;
- Percent of the program's total budget that is publicly funded;
- Number of persons employed by each program;
- Number of defendants assessed for pretrial release;
- Number of defendants recommended for pretrial release;
- Number of defendants for whom the pretrial release program recommended against non-secured release;[152]
- Number of defendants assessed for pretrial release who were declared indigent by the court;

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defendant may use a criminal surety bail bond executed by a bail bond agent licensed. A criminal surety bail bond requires a defendant to pay the bail bond agent a nonrefundable fee equal to 10 percent of the bail bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond. SS. 903.011 F.S., 903.105 F.S., and 903.045, F.S.

[143] Nonmonetary conditions include any condition that does not require the payment of a financial guarantee, such as releasing the arrestee on his or her recognizance, placement in a pretrial release program, or placing restrictions on the arrestee's travel, association, or place of abode. Fla. R. Crim. P. 3.131.

[144] S. 907.041(3)(a), F.S.

[145] "Dangerous crimes" include arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of chapter 893; and attempting or conspiring to commit any such crime. S. 907.041, F.S.

[146] S. 907.043(1)(b), F.S.

[147] Id.

[148] Office of Program Policy Analysis and Government Accountability, *County Pretrial Release Programs*, December 2016, available at: http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1610rpt.pdf (last visited March 14 2018).

[149] Id.

[150] Pretrial Justice Institute, *Pretrial Risk Assessment*, available at: http://www.pretrial.org/solutions/risk-assessment/ (last visited March 14, 2018), *see also* Deborrah Brodsky, The James Madison Institute, *Reforming Florida's Pre-trial Decision Making*, available at: https://www.jamesmadison.org/library/docLib/Journal-Spr2017-ReformingFloridasPreTrialDecisionMaking.pdf.

[151] S. 907.043(4)(a), F.S.

[152] "Nonsecure release" means the release of a defendant from pretrial custody when no secured surety or cash bond is required as a condition of the release. S. 907.043(2)(a), F.S.

- The name and case number of each person granted nonsecure release who failed to attend a scheduled court appearance, who had a warrant issued for failure to appear, or who was arrested for a new criminal offense while on release to a pretrial release program;
- Amount of feed paid by defendants to the program; and
- Any additional informed deemed necessary by the governing body to assess the performance and cost efficiency of the pretrial release program.

A study by the Office of Program Policy Analysis and Government Accountability, found that all twenty-nine of the pretrial release programs complied with the annual statutory reporting requirements.[153]

DOC Annual Reporting Requirement

Section 20.315(5), F.S., requires DOC to report annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives, recounting its activities and making recommendations for improvements to the performance of the department. The most recent annual report contained inmate statistics on:
- Number of inmates admitted during fiscal year;
- Inmate admissions by offense type;
- General characteristics of inmate population;
- General characteristics of inmate population by offense type;
- Inmate drug testing and the testing results;
- Number of elderly inmates (over the age of 50);[154]
- Elderly inmate characteristics;
- Elderly population by offense type;
- Youthful offender population;[155]
- Death row population;
- Execution of death row inmates;
- Race and gender of death row inmates;
- Inmates released;
- Inmates released by offense type;
- Recidivism data for sexually violent predators;[156] and
- Inmate escapes.[157]

The annual reports also discuss education/vocational programs and substance abuse programs available to inmates.[158]

FDLE and Incident-Based Reporting

FDLE currently submits crime reports to the Federal Bureau of Investigation (FBI) using the Summary Reporting System (SRS).[159] The SRS reports crime in the aggregate.[160] If several offenses were committed in one criminal episode, the SRS reports only the highest ranking criminal offense.[161] The FBI will require National Incident Based Reporting (NIBRS) by January 1, 2021.[162] NIBRS reports incident based data for every reportable incident in a criminal episode.[163] NIBRS improves the overall

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[153] Supra, FN 148.
[154] Reporting required pursuant to s. 944.8041, F.S.
[155] S. 958.04, F.S.
[156] Reporting required pursuant to s. 394.931, F.S.
[157] Florida Department of Corrections, Agency Annual Reports, available at: http://www.dc.state.fl.us/pub/annual/index.html (last visited March 14, 2018).
[158] Id.
[159] Email from the Florida Department of Law Enforcement, January 6, 2018 (on file with Judiciary Committee staff).
[160] Id.
[161] Id.
[162] Id.
[163] Id.

quality of crime data collected by capturing details on each single crime incident, as well as on separate offenses within the same incident, including information on victims, known offenders, relationship between victims and offenders, arrestees, and property involved in the crimes.[164] The chart highlights the difference between SRS and NIBRS:[165]

Area	SRS (Summary)	NIBRS (Incidents)
Level of Detail	Sum total for most offence categories	Detailed, incident-based data for every reportable incident
Reporting Frequency	Semi-annual submission	Monthly submission
Data Reported	10 reportable offense types (including number of offenses, clearances, and arrests) and 29 arrest-only offense types	52 reportable offense types that include a broad range of specific incident details and 10 arrest-only offense types
Data Elements	6 per offense type and 9 per arrest type	58 per reported incident
Reporting Hierarchy	Only most severe crime reported per single incident. i.e. if incident includes robbery, aggravated assault, and murder, only murder is reported	Up to 10 crimes per incident can be reported. i.e. murder, robbery, and aggravated assault can all reported for one incident.
Victim & Offender Information	Limited victim/offender data collected: age, race, sex, etc.	Expanded victim/offender data collected: ex. Relationship between offender and victim, types and quantities of drugs involved, types of property damaged or stolen.
Submission Requirements	7 individual files, plus 2 optional files	1 combined file

Application Programming Interface

An application programming interface (API) is a computer software intermediary that establishes a clearly defined method of communication between various software components.[166] An API is capable of running data from one software application to another and allows the two systems to communicate.[167] API is described as a "door" or "window" between two systems to allow them to "talk" to one another.[168] APIs are widespread among major Internet services, making it possible for services like Google Maps or Facebook to let other sites "piggyback" on their offerings.[169] For example, Yelp may display nearby restaurants on a Google Map. Facebook APIs allow users to sign into many

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[164] Id.
[165] Id.
[166] David Orenstein, Computer World, *Application Programming Interface*, available at: https://www.computerworld.com/article/2593623/app-development/application-programming-interface.html (last visited March 14, 2018).
[167] Id.
[168] Brian Proffitt, *What APIs Are and Why They're Important*, September 2013, available at: https://readwrite.com/2013/09/19/api-defined/ (last visited March 14, 2018).
[169] Id.

applications and web sites using their Facebook ID.[170] APIs expose some of the program's internal functions to the outside world in a limited fashion, which makes it possible for applications to share data and take actions without requiring developers to share all of the software code.[171]

Governments are using APIs to share data internally and with citizens.[172] At the federal level, the U.S. Department of Defense used APIs to effectively interconnect all data available within the department.[173] To protect sensitive information maintained by government entities, API can include security elements.[174] At the local level, APIs allowed municipalities to interact and share data with residents.[175] For example, complaints about potholes in the road or other service related calls can be shared through API.[176] Other examples include:

- The National Weather Service publishes an API that makes weather data available to developers within and outside of the organization.
- The Federal Aviation Administration provides travel websites and mobile apps with live airport status and delay information through its Airport Service API.
- The Pillbox API from the National Library of Medicine serve consumers who need to quickly identify an unknown pill.[177]

Effect of Proposed Changes

Adult Prearrest Diversion

CS/CS/SB 1392 establishes a model adult prearrest diversion program that local entities may, but are not mandated to, adopt. The model program incorporates several components of the juvenile civil citation program and existing adult prearrest diversion programs, including law enforcement officers' sole discretion to offer an eligible offender the program and a requirement that the offender admit to the offense. Representatives from local law enforcement agencies, the program services provider, the public defender, the state attorney, and the clerk of the court, in consultation with other interested stakeholders, have wide latitude to develop the program, including defining eligibility criteria, program implementation and operation, and fees, if any. However, violent misdemeanors, crimes of domestic violence, injunction violations, stalking, and violations of pretrial release for crimes of domestic and dating violence are not eligible for a prearrest diversion program.

Participants in a prearrest diversion program must be provided appropriate assessment, intervention, education, and behavioral health care services. The program must also require the participant to perform community service hours and pay restitution to the victim. If the participant does not successfully complete the program's requirements, the law enforcement officer will determine whether there is good cause to arrest the individual for the original offense and, if so, refer the case to the state attorney.

The bill explicitly does not preempt local governments from enacting noncriminal sanctions for ordinance or other violations, nor does it preempt local entities from using a different model to establish an adult prearrest diversion program.

The bill requires a program operator to submit a participant's personal identifying information to the clerk of the circuit court, who must maintain the information in a statewide database. The personal identifying information of a program participant is confidential. If the local representatives assess a fee

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[170] Id.
[171] Id.
[172] Greg Sleet, Government Technology, *What's an API and Why Do You Need One?*, May 29, 2014, available at: http://www.govtech.com/applications/whats-an-api-and-why-do-you-need-one.html (last visited March 14, 2018).
[173] Id.
[174] Id.
[175] Id.
[176] Id.
[177] Gary Brooks, Digital Gov, *APIs in Government*, April 30, 2013, available at: https://www.digitalgov.gov/2013/04/30/apis-in-government/ (last visited March 14, 2018).

as part of the program, a reasonable portion of that fee must be paid to the clerk of the circuit court for maintaining the information.

Juvenile Civil Citation

The bill requires each judicial circuit to estalish a juvenile civil citation or similar prearrest diversion program for misdemeanor offenses through the collaboration of the state attorney, public defender, clerk of court for each county in the circuit, and representatives of participating law enforcement agencies in the circuit. The bill requires the Department of Juvenile Justice (DJJ) to develop and provide guidelines for the best practice models for citivil citation programs to use as a resource in developing and refining circuit-wide programs. The bill allows a county or local agency to opt out of the program.

The circuit must specify:
- The misdemeanor offenses that qualify a juvenile for participation in the program;
- Eligibility criteria for the program;
- The program's implementation and operation;
- The programs requirements, including but not limited to:
  - Completion of community service hours;
  - Payment of restitution; and
  - Intervention services; and
- A program fee, if any;

The bill requires the state attorney to operate the program; however, if a sheriff, police department, county, municipality, or public or private education institution has an independent program in operation as of October 1, 2018, it may continue to operate its program with the approval of the state attorney.

If a juvenile does not successfully complete the program, the arresting officer must determine if there is good cause to arrest the child for the original offense and refer the case to the state attorney for prosecution or allow the juvenile to continue in the program.

Prevention Web

The bill requires DJJ to input the information of a juvenile who is brought to a Juvenile Assessment Center on a first-time misdemeanor charge into the Juvenile Justice Information System Prevention Web (Prevention Web), pending formal charges. If a juvenile is referred to a diversionary program in lieu of formal charges, the information remains in Prevention Web. However, if the state opts to pursue formal charges, the information may be input into the standard Juvenile Justice Information System.

Expunction for Minors Who Complete Diversion

The bill changes the requirements for diversion program expunction by allowing juveniles who have successfully completed a diversion program for any misdemeanor offense to have their nonjudicial arrest records expunged. The bill defines eligible diversion programs as the juvenile civil citation program,[178] prearrest and postarrest diversion programs,[179] a neighborhood restorative justice program,[180] a community arbitration program,[181] or a program to which a referral is made by a state attorney under s. 985.15, F.S. The bill's definition expands the current statute's applicability to include all juvenile diversion programs, rather than only prearrest and postarrest diversion programs under s. 985.125, F.S.

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[178] S. 985.12, F.S.
[179] S. 985.125, F.S.
[180] The state attorney may establish a neighborhood restorative justice center for the purposes of operating a deferred prosecution program for first-time, nonviolent juvenile offenders. S. 985.155, F.S.
[181] Under a community arbitration program, a juvenile faces an arbitrator or arbitration panel instead of being prosecuted in juvenile court. S. 985.16, F.S.

The bill amends the exceptions for when FDLE may make an expunged juvenile diversion record available. FDLE may no longer disclose the record when the subject of the record is a candidate for employment with a criminal justice agency. The bill adds an exception that FDLE may disclose the record when the record is needed by the state attorney to make a filing decision under s. 985.15, F.S.

The bill further deletes the provision that gives the individual agency establishing a prearrest or postarrest diversion program the discretion to make expunction available to participants or not.[182] This change ensures that a one-time expunction is available under the section. Under current law, the availability of such expunction depends on whether the agency that established the prearrest or postarrest diversion program authorized expunction.[183] The bill also repeals FDLE's authority to charge a child a $75 processing fee for diversion program expunction.

The bill requires all juvenile diversion programs to provide data to DJJ for each participant, including:
- The race, ethnicity, gender, and age of the child;
- The offense committed with citation to the specific law establishing the offense; and
- The judicial circuit and county in which the offense was committed and the law enforcement agency that had contact with the child for the offense.

In addition to data on diversion program participants, each diversion program must submit data on children who are eligible for the diversion program, but who, instead, are referred to DJJ, given a notice to appear, or arrested. The data regarding children who did not participate must contain all of the information required for those children who did participate and information on whether the child was offered an opportunity to participate in a diversion program. If the child was not given an opportunity to participate in a diversion program, the program must provide the reason an offer was not made. If the child was offered the opportunity, the program must indicate whether the child or his or her parent or guardian declined to participate in the program.

DJJ is required to compile the data and publish it on its website in a sortable format based on judicial circuit, county, law enforcement agency, race or ethnicity, gender, age, and offense committed.

Criminal Justice Data Collection and Transparency

Data Definitions

CS/CS/HB 1197 creates s. 900.05, F.S., establishing a multi-agency data collection and sharing process. The bill establishes a definition for each data element and assigns the data element to be collected and reported by certain state agencies or local offices or entities. The dictionary of terms makes the data consistent among the different agencies involved in criminal justice, and will result in reliable, accurate, valid and structured data. The bill defines the following:
- "Annual felony caseload" means the yearly caseload of each full-time state attorney and assistant state attorney or public defender and assistant public defender for cases assigned to the circuit criminal division, based on the number of felony cases reported to the Supreme Court under s. 25.075. The term does not include the appellate caseload of a public defender or assistant public defender. Cases reported pursuant to this term must be associated with a case number and each case number must only be reported once regardless of the number of attorney assignments that occur during the course of litigation.
- "Annual misdemeanor caseload" means the yearly caseload of each full-time state attorney and assistant state attorney or public defender and assistant public defender for cases assigned to the county criminal division, based on the number of misdemeanor cases reported to the Supreme Court under s. 25.075. The term does not include the appellate caseload of a public defender or assistant public defender. Cases reported pursuant to this term must be associated

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- with a case number and each case number must only be reported once regardless of the number of attorney assignments that occur during the course of litigation.
- "Attorney assignment date" means the date a court-appointed attorney is assigned to the case or, if privately retained, the date an attorney files a notice of appearance with the clerk of court.
- "Attorney withdrawal date" means the date the court removes court-appointed counsel from a case or, for a privately retained attorney, the date a motion to withdraw is granted by the court.
- "Case number" means the identification number assigned by the clerk of court to a criminal case.
- "Case status" means whether a case is open, inactive, closed, or reopened due to a violation of probation or community control.
- "Charge description" means the statement of the conduct that is alleged to have been violated, the associated statutory section establishing such conduct as criminal, and the misdemeanor or felony classification that is provided for in the statutory section alleged to have been violated.
- "Charge modifier" means an aggravating circumstance of an alleged crime that enhances or reclassifies a charge to a more serious misdemeanor or felony offense level.
- "Concurrent or consecutive sentence flag" means an indication that a defendant is serving another sentence concurrently or consecutively in addition to the sentence for which data is being reported.
- "Daily number of correctional officers" means the number of full-time, part-time, and auxiliary correctional officers who are actively providing supervision, protection, care, custody, and control of inmates in a county detention facility or state correctional institution or facility each day.
- "Defense attorney type" means whether the attorney is a public defender, regional conflict counsel, or other counsel court-appointed for the defendant; the attorney is privately retained by the defendant; or the defendant is represented pro se.
- "Deferred prosecution or pretrial diversion agreement date" means the date a contract is signed by the parties regarding a defendant's admission into a deferred prosecution or pretrial diversion program.
- "Deferred prosecution or pretrial diversion hearing date" means each date that a hearing, including a status hearing, is held on a case that is in a deferred prosecution or pretrial diversion program, if applicable.
- "Disciplinary violation and action" means any conduct performed by an inmate in violation of the rules of a county detention facility or state correctional institution or facility that results in the initiation of disciplinary proceedings by the custodial entity and the consequences of such disciplinary proceedings.
- "Disposition date" means the date of final judgment, adjudication, adjudication withheld, dismissal, or nolle prosequi for the case and if different dates apply, the disposition dates of each charge.
- "Domestic violence flag" means an indication that a charge involves domestic violence as defined in s. 741.28.
- "Gang affiliation flag" means an indication that a defendant is involved in or associated with a criminal gang as defined in s. 874.03.
- "Gain-time credit earned" means a credit of time awarded to an inmate in a county detention facility in accordance with s. 951.22 or a state correctional institution or facility in accordance with s. 944.275.
- "Habitual offender flag" means an indication that a defendant is a habitual felony offender as defined in s. 775.084 or a habitual misdemeanor offender as defined in s. 775.0837.
- "Judicial transfer date" means a date on which a defendant's case is transferred to another court or presiding judge.
- "Number of contract attorneys representing indigent defendants for the office of the public defender" means the number of attorneys hired on a temporary basis, by contract, to represent indigent clients who were appointed a public defender.
- "Pretrial release violation flag" means an indication that the defendant has violated the terms of his or her pretrial release.

- "Prior incarceration within the state" means any prior history of a defendant being incarcerated in a county detention facility or state correctional institution or facility.
- "Tentative release date" means the anticipated date that an inmate will be released from incarceration after the application of adjustments for any gain-time earned or credit for time served.
- "Sexual offender flag" means an indication that a defendant required to register as a sexual predator as defined in s. 775.21 or as a sexual offender as defined in s. 943.0435.

<u>Data Collection–Departments and Agencies</u>

The bill centralizes the majority of criminal justice data by requiring the clerks of court, state attorneys, public defenders, administrators of county detention facilities, and DOC to collect specific data and transmit it to FDLE on a monthly basis beginning January 1, 2019.

Clerks of Court

Clerks of court must collect and transmit 56 data elements. The clerks currently collect most of the data elements required, with the exception of defendant's ethnicity, citizenship and immigration status and whether the defendant has a domestic violence, gang affiliation, sexual offender or habitual offender flag.

CLERKS OF COURT (56 Data Elements)			
Arraignment date/ initial appearance	Court fees amount	Defendant's citizenship	Nonmonetary conditions of pretrial release
Arrest date or date notice to appear was issued	Court fees amount balance/payment	Defendant's immigration status	Pretrial release decision
Attorney assignment date	Date alleged offense occurred	Whether the defendant is indigent	Pretrial release offender flag
Attorney withdrawal date	Date defendant is released on bail or bond or pretrial release	Digitized sentencing scoresheet information	Restitution amount paid
Bail/bond modifications	Date of court appearance	Discovery motion date	Restituation amount ordered
Bond revocation due to a new offense, failure to appear or a technical violation	Dates defendant failed to appear at court if attendance was required	Dismissal motion hearing date	Sentence date
Case number	Defense attorney type	Dismissal motion date	Sentence type
Case status	Defendant's name	Disposition date	Sentence length
Cash bail/bond amount	Defendant's date of birth	Drug type for drug charges, if known	Speedy trial motion date
Cash bail/bond payment	Defendant's age	Domestic violence flag	Speedy trial motion hearing date
Charge description	Defendant's zip code of primary residence	Filing Date	Time served credit and length
Charge modifier	Defendant's primary language	Gang affiliation flag	Trial date
Charges sentenced to, including charge sequence number, charge description, statute, type, and charge class severity	Defendant's race and ethnicity	Habitual offender flag	Sex offender flag
County where offense was committed	Defendant's gender	Judicial transfer date	The number of judges who see adult criminal cases in each circuit

County Detention Facilities

The administrators of county detention facilities must collect 22 data elements. Data collection varies from county to county, so this requirement will standardize data collection for all county jails.

ADMINISTRATORS OF COUNTY DETENTION FACILITIES (22 Data Elements)		
Annual jail budget	Daily number of correctional officers	Pretrial jail population at year-end
Booking date and reason	Domestic violence flag	Pretrial release offender flag
Daily jail population	Gang affiliation flag	Revenue generated from the temporary incarceration of federal defendants or inmates
Daily jail pretrial population	Habitual offender flag	Sexual offender flag
Daily jail presentence population	Jail capacity	Total jail population at year-end
Daily jail postsentence population	Number of federal and state inmates held in jail at year-end	Weekly admission to jail for probation revocation
Daily federal and state inmates held in jail	Post-sentence jail population at year-end	
Daily cost of jail bed	Presentence jail population at year end	

State Attorney

The state attorneys in each circuit are required to collect 11 data elements.

STATE ATTORNEY (11 Data Elements)		
Annual felony caseload	Number of cases in which no information was filed	Victim's gender
Annual misdemeanor caseload	Number of full-time assistant prosecutors	Victim's age
Charge referred to the office by law enforcement	Number of part-time assistant prosecutors	Victim's relationship to offender
Drug type for drug charge	Victim's race and ethnicity	

Public Defenders

The public defenders in each circuit are required to collect 5 data elements.

PUBLIC DEFENDER DATA ELEMENTS (5 Data Elements)		
Annual felony caseload	Number of contract attorneys representing indigent defendants for the public defender's office	Number of part-time assistant public defenders
Annual misdemeanor caseload	Number of full-time assistant public defenders	

Department of Corrections

DOC is required to collect 35 data elements, all of which are currently collected by the department.

DEPARTMENT OF CORRECTIONS (35 Data Elements)		
Inmate's name	Inmate's reason for admission (new conviction or violation of probation)	Daily cost of prison bed
Inmate's DOC number	Specific offense codes for admission	Probationer's name
Inmate's date of birth	Concurrent/consecutive sentence flag	Probationer's date of birth
Inmate's race and ethnicity	Length of sentence/concurrent or consecutive sentences served	Probationer's race and ethnicity
Inmate's number of children	Tentative release date	Probationer's sex
Inmate's education level	Gain time earned	Probationer's department-assigned case number
Inmate's admission date	Prior incarceration within the state	Length of probation imposed and length of probation sentence served
Inmate's current institution and institution security level	Disciplinary violation and action	Probation release date or projected release date
Inmate's sex offender flag	Participation in rehabilitative or educational correctional programs	Probation revocation due to a violation
Inmate's habitual offender flag	Budget for each correctional institution	Probation revocation due to a new offense
Inmate's gang affiliation flag	Daily prison population	Daily cost per probation or community control
Inmate's committing county	Daily number of correctional officers	

Department of Law Enforcement - Collection of Data and Publication

Data Publication

The bill requires FLDE to publish all datasets in its possession beginning January 1, 2019. On March 1, 2019, FDLE will begin publishing the data received from the agencies and offices, with all data from the agencies and offices published and publicly available no later than July 1, 2019.

The data must be published on FDLE's website in an open, electronic format that is machine-readable and readily accessible by the public. The data must be searchable by each data element, county, circuit, and unique identifier number. The unique identifier number is a number FDLE will assign to a person who is the subject of each criminal case. The unique identifier must be the same for the person in any court case and used across local and state entities for all information related to that person. The unique identifier number will allow data to track an individual's experience in the criminal justice system.

Guidelines for Data Publication

The bill creates s. 943.687, F.S., requiring FDLE to facilitate the availability of comparable and uniform criminal justice data. FDLE must:
- Collect, compile, maintain and manage the data submitted by the agencies under s. 900.05, F.S.;

- Make the data free to access or receive and allow users to determine the electronic format in which the information will be provided. FDLE will create an API for the efficient communication and transmission of data between the department and agencies.
- Not require a license or charge a fee to access or receive information from the database.
- Consult with local, state, and federal criminal justice agencies and other public and private users of the database on the data elements collected, the use of such data, and adding data elements to be collected.
- Monitor data collection procedures and test data quality to promote the distribution of accurate, valid, reliable, and complete criminal justice data.
- Develop methods for archiving data, retrieving archived data, and data editing and verification.

Rulemaking Authority

The bill requires FDLE to adopt rules to implement the provisions of the bill, including:
- Requirements for the submission of data by the agencies;
- A data catalog defining data objects, describing data fields, and detailing the meaning of and options for each data element;
- How the collected data is compiled, processed, structured, used, or shared;
- Tagging all information associated with each case number and unique identifier;
- Requirements for implementing and monitoring the interned based data; and
- How the information contained in the interned database is accessible by the public.

The rules will facilitate the publicly available website, allow users to determine their research parameters and data elements to explore, and download the data in a format of their choice.

Make the data free to access or receive and allow users to determine the electronic format in which the information will be provided. FDLE will create an API for the efficient communication and transmission of data between the department and agencies.

6th Judicial Circuit Data Fellow Pilot Project

The bill establishes a pilot project in the 6th Judicial Circuit, consisting of Pasco and Pinellas counties, to allow the clerk of court, the state attorney, the public defender, or a sheriff to enter into a Memorandum of Understanding with a national, nonpartisan, not-for-profit entity which provides data and measurement for county-level criminal justice systems to establish the duties and responsibilities of a data fellow, funded by the entity, to be embedded with the office or agency. The data fellow will assist with data extraction, validation, and quality and publish such data consistent with the terms of the memorandum. The data fellow will also assist the office or agency in compiling and reporting data required by the bill. The pilot project expires pursuant to the terms of the memorandum.

Criminal Punishment Code Sentencing Scoresheets

The bill amends s. 921.0024, F.S., to require the digitization of the CPC scoresheet. The CPC scoresheet must have entry fields for each data point capable of being input to a computer and searchable by data field or data element. The bill also requires the clerk of circuit courts to electronically transmit copies of the CPC scoresheets to DOC.

Pretrial Release Program Annual Reporting

The bill amends s. 907.043, F.S., requiring pretrial release programs to include in the annual report:
- The number of defendants in which a pretrial risk assessment tool was used and the number of defendants in which the tool was not used;
- The number of defendants accepted into a pretrial release program who paid a surety or cash bond; and
- The type of criminal charges of defendants accepted into a pretrial release program to include the number of defendants charged with dangerous crimes, non-violent felonies, misdemeanors only, or no prior criminal convictions.

Pretrial risk assessment tools can be effective in determining which defendants should be released on pretrial. By having the programs report the numbers, data will be available for policy and lawmakers to better track the success and predictive ability of pretrial risk assessment tools.

Pretrial release programs are currently unable to consistently report the types of offenses for defendants admitted into the programs. The information is beneficial in understanding the types of defendants afforded the opportunity to participate in a pretrial release program, and the success associated with participation.

<u>Department of Corrections Data Reports</u>

The bill creates s. 945.041, F.S., requiring DOC to publish on its website information on inmate admissions by offense type and the recidivism rate, and update the information quarterly. When publishing information on inmate admission by offense type, DOC must include a separate category for residential burglary offenses.[184]

The bill expands DOC's current definition of recidivism, which is a return to prison, as a result of either a new conviction or a violation of post-prison supervision, within three years of release from prison, to include rearrest, reconviction, or probation revocation. DOC's definition does not capture offenders who may be reconvicted but not sentenced to prison, offenders who violate probation but are reinstated on probation, or offenders who are rearrested and may receive only jail time. The expanded definition of recidivism will capture a more accurate and complete picture of recidivism in Florida.

<u>Appropriations</u>

For the 2018-19 fiscal year, the bill appropriates $665,884 in recurring funds and $1,084,116 in nonrecurring funds from the General Revenue Fund to FDLE. It also authorizes nine full-time equivalent positions at a specified salary rate. The purpose of the appropriations to FDLE are to implement the provisions of the data collection portion of this bill, and to begin the transition to incident-based crime reported as required by the Federal Bureau of Investigations.

The bill provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill will likely have an indeterminate significant impact on agencies required to collect data due to the increased demand of transmitting data to FDLE. The department and agencies collect the majority of information requiring under the bill. However, the fiscal impact may vary from agency to county based on the technical capabilities to meet the weekly transmission requirements. The additional data and transmission may require more workforce with the department and agencies, as well as updated or new technology.

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[184] Includes offenses under SS. 810.02(2) F.S. (burglary with assault or battery upon any person; burglary while armed with dangerous weapon), 810.02(3)(a) F.S. (burglary of occupied dwelling), and 810.02(3)(b), F.S. (burglary of unoccupied dwelling).

The bill will likely have an indeterminate significant impact on FDLE for receiving, publishing, maintaining, and storing the data. The PCB requires upkeep and maintenance of the data. FDLE may need to contract with other vendors to facilitate the publicly available website, allow users to determine their research parameters and data elements to explore, and download the data in a format of their choice.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill will have an indeterminate impact on local administrators of county detention facilities by requiring the reporting and transmission of data from the facilities to FDLE on a weekly basis. Depending on the size of the facility and current data capabilities, some counties may need to hire additional positions to input and maintain the data and the requirements may involve technology upgrades or installing new systems.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.