**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 Appropriations

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| BILL: | CS/CS/SB 1218 |
| INTRODUCER: | Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senator Brandes |
| SUBJECT: | Public Safety |
| DATE: | March 5, 2018 |
| REVISED: | |

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

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

CS/CS/SB 1218 makes changes to a number of provisions related to public safety and the criminal justice system, including:

- Creating the "Florida Correctional Operations Oversight Council" to oversee the criminal and juvenile justice systems;
- Clarifying that law enforcement mutual aid agreements may be used to increase law enforcement presence in the event of an emergency response or evacuation;
- Requiring sheriffs to provide security to the trial court and coordinate with the chief judge on security matters;
- Requiring each circuit to establish a "Driver License Reinstatement Days Program" (Reinstatement Days Program) involving specified entities and hold events through the Reinstatement Days Program on one or more days where a person can pay specified fees and obtain license reinstatement;
- Prohibiting issuance of an attorney's fee in protective injunctions for repeat, sexual, or dating violence or stalking;
- Increasing the threshold amounts of various theft offenses;
- Expanding the third-degree felony offense of grand theft of commercially farmed animals by including birds that are commercially farmed;
- Making it a third-degree felony for a person to commit any utility theft by removing the application of theft threshold amounts to this offense;

- Limiting the reclassification of specified theft offenses to adult convictions that have occurred a certain number of times within specified time frames;
- Authorizing a court to depart from the imposition of a mandatory minimum sentence in drug trafficking cases if certain circumstances are met;
- Establishing a centralized system of uniform data collection for the entire criminal justice system to ensure data transparency;
- Requiring specified criminal justice entities to collect certain data on a monthly basis and report such data to the Florida Department of Law Enforcement (FDLE) quarterly;
- For data reported pursuant to data transparency provisions, the FDLE must:
  - Establish a unique identifier for every person who is the subject of a criminal case, which will be used for all local and state entities' reported data related to that person in order to track that individual's entire experience in Florida's criminal justice system;
  - Create a publicly accessible and searchable database for the data reported;
- Modifying the sentencing scoresheet to a digital format and requiring information contained in the scoresheet to be reported to the FDLE and included in the publicly available database;
- Creating a pilot program in the 6th Judicial Circuit to ensure program data collected is valid and providing an appropriation, including nine FTEs, within the FDLE to support the implementation of data collection and transparency;
- Authorizing counties to establish a supervised bond program (Bond Program), which allows eligible defendants to be released on active electronic monitoring, continuous alcohol monitoring, or both subsequent to the administration of a risk assessment instrument (RAI) by the county's chief correctional officer (sheriff) and acceptance into the Bond program;
- Creating a Risk Assessment Pilot Program in Hillsborough, Pasco, and Pinellas Counties that requires the counties to administer a RAI to all persons arrested for a felony offense in the county for use in programming and sentencing;
- Requiring transition assistance staff within the Department of Corrections (DOC) to identify industry certifications or job assignment credentialing for which an inmate is eligible;
- Requiring the DOC to provide inmates with a comprehensive community reentry resource directory that includes specified information related to services and portals available in the county to which the inmate is to be released;
- Permitting specified entities to apply with the DOC to be registered to provide inmate reentry services and requiring the DOC to create a process for screening, approving, and registering such entities;
- Authorizing the DOC to contract with specified Veteran's Advocacy Clinics to assist qualified veterans with obtaining services in the community upon release;
- Authorizing the DOC to develop a Prison Entrepreneurship Program that includes education with specified curriculum;
- Creating a "certificate of achievement and employability" application process where the DOC may issue certificates to specified eligible inmates that require licensing agencies to individually consider licensing decisions of certificate holders;
- Prohibiting a licensing agency from denying a professional license to a certificate holder solely on the basis of a criminal conviction;
- Creating two new designations for conditional medical release (CMR) ("inmate with a debilitating illness" and "medically frail inmate") and modifying the current designation of "terminally ill inmate";

- Creating a new "Mandatory Conditional Medical Release" process that requires, rather than permits, the Florida Commission on Offender Review (FCOR) to release an inmate that meets one of four designations if specified factors are met;
- Requiring each circuit to create an alternative sanctions program to handle specified types and occurrences of technical violations of probation or community control outside of a hearing with the judge's concurrence;
- Authorizing a circuit to create a community court program for certain defendants charged with misdemeanors;
- Adding specified data to the information that must be reported in the Office of Program Policy Analysis and Government Accountability's (OPPAGA) annual pretrial programs report (s. 907.043, F.S.);
- Requiring the counties to report use and success of the supervised bond program and community court programs created by the act; and
- Modifying the submission date from October 10th to December 1st for the annual contraband seizure report (s. 932.7061, F.S.).

The bill makes the following appropriations:

- $205,000 from the General Revenue Fund to the Executive Office of the Governor and authorizes one full-time-equivalent position to administer the Florida Correctional Operations Council.
- $1.75 million from the General Revenue Fund to the Department of Law Enforcement and authorizes nine full-time-equivalent positions to crime reporting, and collecting and submitting crime statistics.

The Department of Corrections, the Department of Law Enforcement, and local governments are expected to incur significant costs associated with additional workload and the need for information technology updates for which no funds are provided to implement the provisions of this bill. The Department of Law Enforcement expects to experience a reduction in revenues associated with the criminal history records. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2018.

## II. Present Situation:

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

## III. Effect of Proposed Changes:

### Supervised Bond Program (Section 15)

***Pretrial Release Subsequent to an Arrest***

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

Bail and Surety Bond

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

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

Pretrial Release Conditions

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

- Release on the defendant's own recognizance; [8]
- Execute an unsecured appearance bond in an amount specified by the judge;

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

[2] *See* FLA. CONST. art. I, s. 14; *See also* ss. 903.046 and 907.041. F.S.

[3] Section 903.046(1), F.S.

[4] "Bail" Black's Law Dictionary (3rd Pocket Edition). The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges.

[5] *Universal Bail Bonds v. State*, 929 So.2d 697, 699 (Fla. 3d DCA 2006).

[6] Sections 903.011 and 903.105, F.S.

[7] OPPAGA, *County Pretrial Release Programs: Calendar Year 2016*, Report No. 17-12, at 2. (Dec. 2017) available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1712rpt.pdf (last visited February 23, 2018) (hereinafter cited as "OPPAGA Pretrial Report").

[8] A defendant released on his or her own recognizance (ROR) is released without a monetary requirement and without any conditions of release or supervision of any type. Release on recognizance is defined to mean the pretrial release of an arrested person who promises, usually in writing, but without supplying a surety of posting bond, to appear for trial at a later date. BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006).

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

A judge also can release a defendant to a pretrial release program. Generally, judges allow a defendant to be released to a pretrial release program without posting a bond; however, a judge can require a defendant to post a bond and participate in the program.[10] Specifically, s. 907.041, F.S., provides a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime.[11] These programs supervise defendants with various methods, including electronic monitoring[12] or phone contact.[13]

A Court's Determination of Pretrial Release

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

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

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

- Refrain from criminal activity of any kind;
- Refrain from contact of any type with the victim; and

[9] Rule 3.131(b)(1), Fla. R. Crim. Pro.
[10] *Id.* If a monetary bail is required, the judge must determine a separate amount for each charge or offense. Rule 3.131(b)(2), Fla. R. Crim. Pro.
[11] *See* s. 907.041, F.S., for a list of enumerated felonies that are included in the definition of a dangerous crime.
[12] An electronic monitoring device (EM) is a tamper-resistant device worn on the body that monitors the location of a person at all times of the day. The monitoring agency is notified for various violations of the terms of supervision, such as if the person travels to a location he or she is not authorized to be or if the device is removed by the person. EM systems can be either "passive" or "active" and are typically operated through ratio frequency or global positioning system (GPS) monitoring. Office of Juvenile Justice and Delinquency Prevention, *Home Confinement and Electronic Monitoring*, October, 2014, available at https://www.ojjdp.gov/mpg/litreviews/Home_Confinement_EM.pdf (last visited February 23, 2018).
[13] OPPAGA Pretrial Report, at 9.
[14] Section 903.046(2), F.S. *See also* Rule 3.131(b)(3), Fla. R. Crim. Pro.

- Comply with all conditions of pretrial release.

Standard Bond Schedule

Florida does not have a statewide bond schedule, but each circuit has developed a standard bond schedule. Courts create uniform bail bond schedules to ensure that alleged offenders are provided equal treatment when charged with similar crimes and generally apply to all felonies, misdemeanors and county or municipal ordinance violations as the presumptive bond to be set unless ordered differently by a judge.[15] Even though a county may have an established standard bond schedule, a judge may impose a bond that is above or below such schedule if he or she deems it is necessary based upon circumstances of the case.[16]

Violation of Pretrial Release Conditions

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

Supervised Bond Programs in Florida

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

The Pinellas County supervised bond program has been operating since 2014.[19] Sheriff Gualtieri, the chief correctional officer for Pinellas County, testified in the Senate Criminal Justice Committee on January 8, 2018, that this program was created in an effort to reduce the jail

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[15] Some common ways to address the bond schedules are to either have a standard based on the degree of the offense (for example a $5,000 bond for all second degree felonies, as seen in the Tenth Judicial Circuit) or a specific amount agreed upon for a specific offense, as seen in the Sixth Judicial Circuit. *See* Tenth Judicial Circuit, In and For Hardee, Highlands, and Polk Counties, *Administrative Order IN RE: Uniform Bond Schedule*, available at http://jud10.flcourts.org/sites/all/files/docs/2-49.8.pdf; Sixth Judicial Circuit, In and For Pasco and Pinellas Counties, *Administrative Order NO. 2009-021 PA-CIR, RE: Uniform Bond Schedule – Pasco County*, available at http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2009/2009-021.htm (last visited all sites January 22, 2018).

[16] *Mehaffie v. Rutherford*, 143 So.3d 432 at 434 (Fla. 1st DCA 2014). Under s. 903.286, F.S., the clerk of the court may withhold sufficient funds to pay any unpaid costs of prosecution, costs of representation, court fees, court costs, and criminal penalties from the return of a cash bond posted on behalf of a criminal defendant. If sufficient funds are not available to pay all unpaid costs associated with the criminal case, the clerk of the court must immediately obtain payment from the defendant or enroll the defendant in a payment plan. This section does not apply to the portion that is paid by a licensed bail bond agent.

[17] *See* s. 903.26, F.S.

[18] This discretion is provided regardless of the conditions for granting pretrial release provided for in s. 907.041, F.S.

[19] Presentation by Sheriff Bob Gualtieri, Pinellas County Sheriff's Office, in the Senate Criminal Justice Committee, January 8, 2018 (hereinafter cited as "Committee Presentation"); *See also* Sheriff Bob Gualtieri, PowerPoint Presentation, *ROR and Supervised Bond Presentation* (on file with the Criminal Justice Committee) (hereinafter cited as "Supervised Bond PowerPoint").

population in Pinellas County and avoid the need to build a larger facility.[20] Sheriff Gualtieri reported that while the bond amounts imposed by the court were proper to ensure public safety and compliance, judges could not lower the bail while still ensuring public safety and compliance without more oversight. As a result, a number of defendants remained in custody for months unable to meet the bail amount imposed.[21]

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

The Pinellas County Sheriff's Office averages approximately 200 people per day on active supervision through the supervised bond program.[24] Sheriff Gualtieri reported that of all the defendants who have been released on the supervised bond program, 99.5 percent have appeared for required court hearings and 94.9 percent did not commit a new crime while in the program.[25] Of the total cases supervised on the Supervised Bond Program, 45 percent were felonies, 30 percent were misdemeanors, and 25 percent were for felony or misdemeanor driving under the influence.[26] Sheriff Gualtieri reported that these programs have resulted in a $38.9 million annual savings.[27]

***Evidence-Based Risk Assessment Tools***

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

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[20] Sheriff Gualtieri testified that the Pinellas County jail was crowded in 2014 with approximately 70 percent of the inmates being pretrial detainees. Supervised Bond PowerPoint, at 3.
[21] Supervised Bond PowerPoint, at 2-4.
[22] Continuous Alcohol Monitoring systems are tamper-resistant automated alcohol-monitoring devices that use transdermal testing to measure the amount of alcohol in person's body, known as transdermal alcohol content (TAC). When alcohol is consumed, ethanol migrates through the skin and is excreted through perspiration. *See* National Institute of Justice, *Secure Continuous Remote Alcohol Monitoring (SCRAM) Technology Evaluability Assessment*, available at https://www.ncjrs.gov/pdffiles1/nij/secure-continuous-remote-alcohol.pdf (last visited February 23, 2018).
[23] *Id*. at 4-5.
[24] Supervised Bond PowerPoint, at 7.
[25] *Id*. at 9.
[26] *Id*. at 10.
[27] *Id*. at 16. This savings takes into account the cost it required to house an additional 900 inmates per day with the current per diem rate and the operational cost.
[28] Congressional Research Service, *Risk and Needs Assessment in the Criminal Justice System*, Nathan James, at 2 (October 13, 2015), available at https://fas.org/sgp/crs/misc/R44087.pdf (last visited February 23, 2018) (hereinafter cited at CRS Report).
[29] *Id*. 2-4.

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

Use of Risk Assessment Instruments by the Department of Corrections

The DOC has created a RAI, known as Spectrum, which is administered to an inmate at reception through motivational interviewing techniques.[34] Spectrum, as well as its predecessor, the Corrections Integrated Needs Assessment System (CINAS), is based on the RNR model and contains responsivity elements.[35] Inmates identified during the assessment as being in need of treatment or services become mandated program participants and are placed on the DOC's centralized statewide-automated priority list for placement in a program.[36]

Spectrum has been independently verified through the School of Criminology at Florida State University.[37]

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[30] Some examples of static factors considered include age at first arrest, gender, past problems with substance or alcohol abuse, prior mental health problems, or a past history of violating terms of supervision. CRS Report, p. 3.

[31] Dynamic risk factors, also called "criminogenic needs," can be affected through interventions and include factors such as current age, education level, or marital status; being currently employed or in substance or alcohol abuse treatment; and having a stable residence. "Criminogenic" is commonly understood to mean factors that can contribute to criminal behavior. CRS Report, at 3.

[32] The risk principle states that high-risk offenders need to be placed in programs that provide more intensive treatment and services while low-risk offenders should receive minimal or even no intervention. The need principle states that effective treatment should focus on addressing needs that contribute to criminal behavior. The responsivity principle states that rehabilitative programming should be delivered in a style and mode that is consistent with the ability and learning style of the offender. CRS Report, at 2 and 6.

[33] *Id*.

[34] DOC, Spectrum Video, available at https://www.youtube.com/watch?v=WRI5ldWf5MY&feature=youtu.be (last visited January 25, 2018) (hereinafter cited as "Spectrum Video"); DOC, *Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED* (on file with the Senate Criminal Justice Committee) (hereinafter cited as "DOC Program Information").

[35] DOC, *Agency Analysis for SB 1222*, p. 2, January 18, 2018 (on file with the Senate Criminal Justice Committee) (hereinafter cited as "The DOC SB 1222 Analysis"). The DOC reports that criminogenic needs are those factors that are associated with recidivism that can be changed (e.g. lack of education, substance abuse, criminal thinking, lack of marketable job skills, etc.). Offenders are not higher risk because they have a particular risk factor, but, rather, because they have multiple risk factors. Accordingly, a range of services and interventions is provided that target the specific crime producing needs of offenders who are higher risk. *See also Id*. and Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018) (on file with Senate Criminal Justice Committee).

[36] Substance Abuse Annual Report, at 6.

[37] Letter from Dr. William D. Bales and Jennifer M. Brown, ABD to DOC Secretary, Julie Jones, (January 19, 2018) (on file with the Senate Criminal Justice Committee). Dr. Bales provides that Spectrum "produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States."

Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education.[38] Spectrum calculates an individual's overall risk of returning to prison upon release and identifies needs that can be addressed to reduce his or her risk within seven criminogenic domains and three core program areas.[39] The DOC uses the results from the Spectrum assessment to create an evidence-driven performance plan that matches the inmate's needs with services and programming offered in the DOC. Data collected during administration of Spectrum is also used to assist with transitioning an inmate back into the community upon release through relaying the information to reentry service providers in the local community and community corrections.[40]

***Effect of the Bill***

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

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

- Require the sheriff to administer the Bond Program.
- Require the sheriff, or his or her designee, to administer the RAI to a potential defendant.
- Utilize a RAI to determine eligible defendants and determine an appropriate level of supervision for each defendant upon release.
- Review the bond of a defendant who is being accepted into the Bond Program to determine if a reduction of the court-ordered bond, up to its entirety, is appropriate.
- Provide that the findings of the RAI will be used to create an individualized supervision plan for each eligible defendant that is tailored to the defendant's risk level and supervision needs.
- Require, as part of the individualized supervision plan, that any defendant released in the Bond Program must be placed on active electronic monitoring or active continuous alcohol monitoring, or both, dependent upon the level of risk indicated by the RAI.
- Require weekly communication between the sheriff's office and the defendant as part of the individualized supervision plan, which can be satisfied via telephone or in person contact, dependent upon the level of risk indicated by the RAI.
- Establish procedures for reassessing or terminating defendants from the Bond Program who do not comply with the terms of the individualized supervision plan imposed through the program.

[38] DOC Program Information.
[39] The criminogenic domains include social awareness (antisocial personality); criminal associates; substance abuse history; family and marital relationships; wellness; criminal thinking or attitude; and employment and education history. Spectrum Video. The three core program areas include GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors. Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018) (on file with the Senate Criminal Justice Committee).
[40] *Id*.

Each county must utilize a RAI that conducts a criminogenic assessment for use in evaluating the proper level of supervision appropriate to ensure compliance with pretrial conditions and safety to the community. The RAI must consider, but need not be limited to, the following criteria:

- The nature and circumstances of the offense the defendant is alleged to have committed.
- The nature and extent of the defendant's prior criminal history, if any.
- Any prior history of the defendant failing to appear in court.
- The defendant's employment history, employability skills, and employment interests.
- The defendant's educational, vocational, and technical training.
- The defendant's background, including his or her family, home, and community environment.
- The defendant's physical and mental health history, including any substance use.
- An evaluation of the defendant's criminal thinking, criminal associates, and social awareness.

Further, a county may use a RAI that the county creates on its own for the purpose of operating a Bond Program and determining appropriateness of pretrial release, the defendant's risk of noncompliance on pretrial release, and risk to the community, that:

- The county has previously developed for a similar purpose;
- The DOC develops or modifies from a RAI that it has already developed;
- Another county has developed for a similar purpose; or
- An independent entity has previously developed for a similar purpose.

If a county opts to use a RAI that is developed by any entity listed above other than the DOC, such RAI must be independently validated by the DOC and contain the criteria listed above.

A county may begin to implement its Bond Program immediately upon securing a contract for the use of, or the completion of development or modification, of a RAI and, if applicable, validation of the RAI. Additionally, a county that has not established a Bond Program, but has created a RAI for a similar purpose as is intended in the act, may implement its Bond Program immediately upon the RAI being validated by the DOC. A county that has already implemented a Bond Program may continue to operate its program while the RAI it utilizes is being validated. Implementation must include training of all county staff that will administer the RAI.

The bill requires each county that establishes a Bond Program, or that has an existing Bond Program that operates in compliance with the act, to provide an annual report to the OPPAGA that details the:

- Results of the administration of the RAI;
- Programming used for defendants who received the assessment and were accepted into the Bond Program;
- Success rate of the Bond Program; and
- Savings realized by the county as a result of defendants being released from custody pending trial through the Bond Program.

The county's annual report must be submitted to the OPPAGA by October 1 each year. The OPPAGA must compile the results of the counties' reports for inclusion in an independent

section of its annual report developed and submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives in accordance with s. 907.044, F.S.[41]

Lastly, the bill also provides several legislative findings supporting the changes made in the act.

**Risk Assessment Pilot Program (Section 16)**

The bill creates a Risk Assessment Pilot Program. The bill provides the following legislative findings for the program:

- There is a need to use evidence-based methods to reduce recidivism.
- The use of actuarial instruments that classify offenders according to levels of risk to reoffend provides a more consistent and accurate assessment of an offender's risk and needs.
- Research indicates that using accurate risk and needs assessment instruments to identify appropriate interventions and programming for offenders reduces recidivism.

***Risk Assessment Instrument Criteria***

The bill directs the DOC to develop a RAI that conducts a criminogenic assessment by March 1, 2019, for use in evaluating the proper placement and programming needs for a person who is arrested. The RAI must consider at a minimum the following criteria:

- The nature and circumstances of the offense the person committed.
- The nature and extent of the person's prior criminal history, if any.
- Any prior history of the person failing to appear in court.
- The person's employment history, employability skills, and employment interests.
- The person's educational, vocational, and technical training.
- The person's background, including his or her family, home, and community environment.
- The person's physical and mental health history, including any substance use.
- An evaluation of the person's criminal thinking, criminal associates, and social awareness.

The DOC may use or modify an existing RAI if it contains the above-listed criteria.

***Implementation Requirements***

The bill authorizes the DOC to begin implementation of the RAI immediately upon completion, but requires implementation, including all staff training, to be completed no later than June 30, 2019.

***Administration of the Risk Assessment Instrument***

The bill provides that a representative of the sheriff's office must administer the RAI as early as reasonably possible after a person's arrest, but no later than 10 business days after the arrest. The RAI may be conducted via video teleconference. In the event that a person is released from custody on pretrial release before the RAI has been administered, the sheriff or his or her representative must schedule a time for the person to come back to the jail to have the RAI administered. The person must be provided written notice of the appointment upon release.

[41] Section 907.044, F.S., requires the OPPAGA to conduct an annual study to evaluate the effectiveness and cost efficiency of pretrial release programs in Florida. The OPPAGA is required to submit its report to the President of the Senate and the Speaker of the House of Representatives by January 1 of each year.

Upon completion of a RAI report, the report must be provided to the person that had the RAI administered upon him or her, the defense counsel, and the SA.

The DOC must submit the report to the court, but the court may not review the report without the consent of the person who is the subject of the report and his or her legal counsel.

***Pilot Program Creation and Requirements***

The bill creates a three-year pilot program, contingent upon appropriations and a contract with each participating county and the DOC. The bill provides that the counties eligible for participation include Hillsborough, Pasco, and Pinellas Counties. The sheriff from each participating county must enter into a contract with the DOC to use the RAI developed under the act.

The bill requires the counties participating in the program to administer the RAI to all persons arrested for a felony and use the results of the RAI as a tool for determining appropriate programming and sentencing with the goal of reducing recidivism. By July 1 of each year, each participating county must provide an annual report to the DOC detailing the results of the administration of the RAI, programming used for persons who received the RAI, and the success rate of such programming.

The DOC is required to compile the county reports and submit one annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year of the pilot program.

***Rulemaking Authority***

The bill provides rulemaking authority to the DOC to implement the act. The rules must be developed in consultation with the sheriff, chief judge, SA, and PD of each participating county.

**Theft Offenses (Section 9, 10, and 37)**

There are approximately 3,000 people currently incarcerated in the DOC for felony theft convictions and 31,000 on state community supervision for a felony theft crime in Florida.[42] Since 2000, 37 states have increased the threshold dollar amounts for felony theft crimes.[43] Such increases ensure that associated "criminal sentences don't become more severe over time simply because of natural increases in the prices of consumer goods."[44]

[42] Email from the DOC Staff (March 2, 2018) (on file with Senate Criminal Justice Committee).
[43] Pew Charitable Trusts, The Effects of Changing State Theft Penalties (February 2016), available at http://www.pewtrusts.org/~/media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en (last visited March 2, 2018); *See also* Alison Lawrence, *Making Sense of Sentencing: State Systems and Policies*, National Conference of State Legislatures, http://www.ncsl.org/documents/cj/sentencing.pdf (last visited March 2, 2018).
[44] John Gramlich and Katie Zafft, *Updating State Theft Laws Can Bring Less Incarceration – and Less*, Stateline, Pew Charitable Trusts, http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/03/31/updating-state-theft-laws-can-bring-less-incarceration-and-less-crime (March 2, 2018).

The majority of states (30 states) and the District of Columbia set a $1,000-or-greater property value threshold for felony grand theft. Fifteen states have thresholds between $500 and $950, and five states, including Florida, have thresholds below $500. Between 2003 and 2015, nine states, including Alabama, Mississippi, and Louisiana, raised their felony thresholds twice.[45]

***Property Theft***

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

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.[46]

Second degree petit theft, a second degree misdemeanor, is theft of property valued at less than $100.[47] First degree petit theft, a first degree misdemeanor, is theft of property valued at $100 or more but less than $300.[48] Second degree petit theft incurs greater penalties if there is a prior theft conviction: a first degree misdemeanor if there is one prior conviction,[49] and a third degree felony if there are two or more prior convictions.[50]

Third degree grand theft, a third degree felony,[51] is theft of:

- Property valued at $300 or more, but less than $20,000.
- Specified property including, but not limited to:
  - A will, codicil, or testamentary instrument;
  - A firearm;
  - Any commercially farmed animal, bee colony, aquaculture species or citrus fruit of over 2,000 pieces;
  - Any fire extinguisher;
  - Any stop sign;
  - Property taken from a designated, posted construction site;[52] and
- Property from a dwelling or its unenclosed curtilage if the property is valued at $100 or more, but less than $300.[53]

[45] *Id.*
[46] Section 812.014(1), F.S.
[47] Section 812.014(3)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to $500. Sections 775.082 and 775.083, F.S.
[48] Section 812.014(2)(e), F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to $1,000. Sections 775.082 and 775.083, F.S.
[49] Section 812.014(3)(b), F.S.
[50] Section 812.014(3)(c), F.S.
[51] A third degree felony is punishable by up to 5 years' incarceration and a fine of up to $5,000. Sections 775.082 and 775.083, F.S.
[52] Section 812.014(2)(c), F.S.
[53] Section 812.014(2)(d), F.S.

The last time the Legislature increased the minimum threshold property value for third-degree grand theft was in 1986.[54] The third-degree grand theft provisions related to property taken from a dwelling or its unenclosed curtilage were added in 1996. The petit theft provisions were amended, including the thresholds, in 1996.[55]

***Retail Theft***

Section 812.015(1)(d), F.S., defines retail theft as:

- The taking possession of or carrying away of merchandise, property, money, or negotiable documents;
- Altering or removing a label, universal product code, or price tag;
- Transferring merchandise from one container to another; or
- Removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

In part, retail theft is a third degree felony if the theft involves property valued at $300 or more and the person commits the theft in a specified manner (e.g., commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen).[56]

Retail theft is a second degree felony if the person has previously been convicted of third degree felony retail theft or individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of $3,000.[57] The statute also requires a fine of not less than $50 and no more than $1,000 for a second or subsequent conviction for petit theft from a merchant, farmer, or transit agency.[58]

The thresholds for third degree felony retail theft were created and set by the Legislature in 2001.[59]

***Reclassification of Theft Offenses***

Certain theft offenses are reclassified to the next higher degree offense if the person committing the offense has previous theft convictions, including:

- A petit theft offense is reclassified to a third degree felony, if the person has two previous convictions of any theft.[60]
- A third-degree felony retail theft offense is reclassified to a second-degree felony if the person has a previous retail theft in violation of s. 812.015(8), F.S.[61]

[54] Chapter 86-161, s. 1, L.O.F.
[55] Chapter 96-388, s. 49, L.O.F.
[56] Section 812.015(8), F.S.
[57] Section 812.015(9), F.S.
[58] Section 812.015(2), F.S.
[59] Chapter 01-115, s. 3, L.O.F.
[60] Section 812.014(3)(c), F.S.
[61] Section 812.015(9)(a), F.S.

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

Juvenile offenders who are adjudicated delinquent for theft offenses are considered to have been "convicted" of theft and are treated the same as adult offenders for purposes of these penalty enhancements.[62]

***Effect of the Bill***

Property Theft

The bill increases the minimum threshold amounts for a third-degree felony grand-theft from $300 to $1,000. For property taken from a dwelling or enclosed curtilage, the theft thresholds amounts are modified from $100 or more, but less than $300, to $1,000 or more, but less than $5,000. The first-degree misdemeanor petit theft threshold amount is modified from $100 or more, but less than $300, to $500 or more, but less than $1,000.

The bill also deletes certain items from the list of property that constitute a third-degree grand theft regardless of the value of the property taken, including:

- A will, codicil, or other testamentary instrument;
- Any fire extinguisher;
- Property taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d); and
- Any stop sign.[63]

The bill also adds certain items to the list of items that constitute a third-degree grand theft, regardless of the value of the property taken, including birds that are commercially farmed animals and utility theft as defined in s. 812.14, F.S.[64]

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

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

Retail Theft

The bill amends s. 812.015, F.S., to increase the property value of third-degree felony retail theft from $300 or more, to $1,000 or more. The bill enhances retail theft to a second-degree felony only if:

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

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[62] *T.S.W. v. State*, 489 So. 2d 1146 (Fla. 2d DCA 1986); *R.D.D. v. State*, 493 So. 2d 534 (Fla. 5th DCA 1986).

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

[64] These offenses will no longer be classified by the value of the property taken, but will automatically qualify as third-degree felony grand theft.

Lastly, the bill amends s. 921.0022, F.S., to conform the Criminal Punishment Code offense severity ranking chart to changes made by the bill.

**Drug Trafficking Sentencing Departure (Sections 11 and 36)**

***Florida's Controlled Substance Schedules***

Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the schedules. The most important factors in determining the schedule classification of a substance are the "potential for abuse"[65] of the substance and whether there is a currently accepted medical use for the substance in the United States.[66]

***Drug Trafficking***

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily specified quantity. The statute only applies to a limited number of such controlled substances.[67] The controlled substance involved in the trafficking must meet a specified weight or quantity threshold.

Most drug trafficking offenses are first degree felonies[68] and are subject to a mandatory minimum term of imprisonment[69] and a mandatory fine, which is determined by the weight or quantity range applicable to the weight or quantity of the substance involved in the trafficking.[70] For example, trafficking in 28 grams or more, but less than 200 grams, of cocaine, a first degree felony, is punishable by a 3-year mandatory minimum term of imprisonment and a mandatory fine of $50,000.[71] Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 15-year mandatory minimum term of imprisonment and a mandatory fine of $100,000.[72]

[65] Pursuant to s. 893.035(3)(a), F.S., "potential for abuse" means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that create a hazard to the user's health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user's own initiative rather than on the basis of professional medical advice.
[66] *See* s. 893.03(1)-(5), F.S.
[67] *See* s. 893.135, F.S., for the substances which are included in the offense if drug trafficking.
[68] A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to $10,000. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Sections 775.082 and 775.083, F.S.
[69] There are currently 56 mandatory minimum terms of imprisonment in s. 893.135, F.S., which range from three years to life imprisonment.
[70] *See* s. 893.135, F.S.
[71] Section 893.135(b)(1)a., F.S.
[72] Section 893.135(b)(1)b., F.S.

***Criminal Punishment Code***

The Criminal Punishment Code[73] (Code) is Florida's "primary sentencing policy."[74] Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).[75] Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a Level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.[76] Absent mitigation,[77] the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.[78]

Mandatory Minimum Sentences and Departures

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence."[79] As previously noted, the sentencing range under the Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

Prosecutors have "complete discretion" in the charging decision.[80] The exercise of this discretion may determine whether a defendant is subject to a mandatory minimum term or a reduced mandatory minimum term. A prosecutor could determine in a particular case that mandatory minimum sentencing is inappropriate or too severe and avoid or ameliorate such sentencing. Further, a prosecutor could move the court to reduce or suspend a sentence if the defendant renders substantial assistance.

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

[74] DOC, *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013) Executive Summary (Offenses Committed On or After October 1, 1998)*, available at http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited on February 21, 2018).

[75] 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.

[76] Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

[77] The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

[78] *See* s. 775.082, F.S.

[79] Fla. R. Crim. P. 3.704(d)(26).

[80] "Under Florida's constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute." *State v. Bloom*, 497 So.2d 2, 3 (Fla. 1986).

There are few circumstances in which a court of its own accord can depart from a mandatory minimum term. A court may depart from a mandatory minimum term if the defendant is a youthful offender.[81] A court may also depart from a mandatory minimum term for a violation of s. 316.027(2)(c), F.S. (driver involved in a fatal crash fails to stop and remain at the scene of a crash), if the court "finds that a factor, consideration or circumstance clearly demonstrates that imposing a mandatory minimum term of imprisonment would constitute or result in an injustice."[82]

### *Effect of the Bill*

The bill amends s. 893.135, F.S., to authorize a court to depart from a mandatory minimum term of imprisonment and mandatory fine applicable to that offense. The departure is authorized if the court finds on the record that the person did not:

- Engage in a continuing criminal enterprise;[83]
- Use or threaten violence or use a weapon during the commission of the crime; and
- Cause a death or serious bodily injury.

The bill applies to all drug trafficking acts (possession, sale, manufacture, delivery, and importation) and to most, if not all, drug trafficking mandatory minimum terms of imprisonment (ranging from 3 years to life imprisonment).[84]

The bill also amends s. 893.03, F.S., conforming a cross-reference to changes made by this provision.

## Probation and Community Control (Sections 31-34)

### *Forms of Supervision through the Department of Corrections*

At sentencing, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.[85] The DOC supervises more than 167,000 offenders on active community supervision. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control.[86]

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[81] Section 958.04, F.S.
[82] Section 316.027(2)(g), F.S.
[83] Section 893.20(1), F.S., provides that any person who commits three or more felonies under ch. 893, F.S., in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts is guilty of engaging in a continuing criminal enterprise.
[84] The drug-trafficking statute imposes a mandatory life sentence for trafficking in especially large amounts of certain substances. However, these mandatory life sentence are never described as a "mandatory minimum" sentences like the rest of the mandatory minimum sentences imposed by the statute. Nonetheless, the mandatory life sentence that is required for certain offenses seems to be a mandatory minimum sentence, and thus a sentence to which the bill would apply.
[85] Section 948.01, F.S.
[86] DOC, *Introduction to Community Corrections*, available at http://www.dc.state.fl.us/facilities/comcor/ (last visited February 21, 2018).

Probation

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose.[87] There are also specialized forms of supervision such as drug offender probation[88] and mental health probation.[89] Section 948.03, F.S., provides that a court must determine the terms and conditions of probation. Standard conditions of probation that are enumerated in s. 948.03, F.S., are not required to be announced on the record, but the court must orally pronounce, as well as provide in writing, any special conditions of probation imposed.

Administrative Probation

Section 948.013, F.S., provides that the DOC may establish procedures for transferring an offender to administrative probation. Administrative probation is defined in s. 948.001(1), F.S. There are specified underlying offenses that are prohibited from being transferred to administrative probation.[90]

Community Control

Section 948.001(3), F.S., defines "community control" as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.[91] The community control program is rigidly structured and designed to accommodate offenders who, in the absence of such a program, will be committed to the custody of the DOC or a county jail.[92] A person on community control (controlee) has an individualized program and is restricted to his or her home or noninstitutional residential placement, unless working, attending school, performing public service hours, participating in treatment or another special activity that has been approved in advance by his or her parole and probation officer.[93]

Conditions of community control are determined by the court when the offender is placed on such supervision. There are standard conditions of community control with which all controlees must comply.[94] A person may be placed on additional terms of supervision as part of his or her community control sentence.[95]

[87] Section 948.001(8), F.S. Terms and conditions of probation are provided in s. 948.03, F.S.
[88] Section 948.001(4), F.S., defines "drug offender probation" as a form of intensive supervision that emphasizes treatment of drug offenders in accordance with individualized treatment plans administered by probation officers with reduced caseloads.
[89] Section 948.001(5), F.S., "mental health probation" means a form of specialized supervision that emphasizes mental health treatment and working with treatment providers to focus on underlying mental health disorders and compliance with a prescribed psychotropic medication regimen in accordance with individualized treatment plans.
[90] *See* Section 948.013(2) and (3), F.S.
[91] Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.
[92] Section 948.10(1), F.S.
[93] *Id*.
[94] *See* s. 948.101(1), F.S., for the standard conditions of community control.
[95] Section 948.101(2), F.S.

Violations of Probation or Community Control

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.96 A violation of probation (VOP) or violation of community control (VOCC) can be the result of a new violation of law or a technical violation of the conditions imposed. If reasonable grounds exist to believe that an offender on probation or community control has violated his or her terms of supervision in a material respect, an offender may be arrested without a warrant by a:

- Law enforcement officer who is aware of the inmate's supervised community release status;
- Probation officer; or
- County or municipal law enforcement officer upon request by a probation officer.[97]

The offender must be returned to the court granting such probation or community control.[98] Additionally, the committing court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the offender.[99]

Upon a finding through a VOP or VOCC hearing, a court may revoke, modify, or continue the supervision. If the court chooses to revoke the supervision, it may impose any sentence originally permissible before placing the offender on supervision.[100] In addition, if an offender qualifies as a violent felony offender of special concern (VFOSC), the court must revoke supervision, unless it makes written findings that the VFSOC does not pose a danger to the community.[101] The VFOSC status also accrues sentence points under the Code, which affects the scoring of the lowest permissible sentence.[102]

Alternative Sanctioning Programs

In FY 2016-17, 18,999 of all resolved violations were technical in nature as were 20,834 of the violations resolved in FY 2015-16. Many of these violations resulted in the offender returning to some form of supervision or serving a county jail sentence.[103] Prior to 2016, the DOC developed and implemented an alternative sanctioning program (ASP) in twelve counties within six judicial circuits.[104] An ASP allows for an alternative resolution of technical violations of probation that ensures a swift and certain response without initiating the court process or arresting and booking the offender. Section 948.06, F.S., was amended during the 2016 Legislative Session to codify ASPs.[105] The use of such programs has substantially increased since enactment of the ASP option. As of February 2018, 13 circuits (including 45 of 67 counties) have established ASPs by

[96] Section 948.10(3), F.S.
[97] Section 948.06(1)(a), F.S.
[98] *Id*.
[99] Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the controlee has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as enumerated in s. 948.06(8)(c), F.S.
[100] Section 948.06(2)(b), F.S.
[101] *See* s. 948.06(8)(a), F.S., for all VFOSC qualifications and enumerated list of felonies that are considered qualifying offenses. *See also* ch. 2007-2, L.O.F.
[102] Section 921.0024, F.S.
[103] Email from the DOC Staff (February 22, 2018) (on file with Senate Criminal Justice Committee).
[104] DOC, *Agency Analysis HB 1149 (2016)*, at p. 2 (January 20, 2016) (on file with the Senate Criminal Justice Committee).
[105] Ch. 2016-100, L.O.F.

administrative order. These participating jurisdictions have resolved 2,371 violations through the ASP.[106]

Section 948.06(1)(h), F.S., authorizes the chief judge of each judicial circuit to establish an ASP, in consultation with the SA, PD, and the DOC to address technical VOPs and VOCCs. A technical violation is defined to include any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense.[107] Once an ASP administrative order is signed establishing the terms[108] of the program, the DOC may enforce specified sanctions for certain technical violations with court approval.

Common sanctions issued through the ASP include increased reporting requirements, which can be in person or via phone, community service hours, imposition or modification of a curfew, electronic monitoring, drug evaluation and treatment, employment searches and workforce training.[109] As of January 2018, two circuits and Brevard had included short jail sentences as a possible ASP sanction through administrative order.[110]

After receiving written notice of an alleged technical violation and disclosure of the evidence supporting the violation, an offender who is eligible for the ASP may elect to either participate in the program or waive participation.[111] If the offender waives participation, the violation proceeds through the court resolution process.[112] If the offender elects to participate, he or she must admit to the technical violation, agree to comply with the probation officer's recommended sanction, and agree to waive the right to:

- Be represented by counsel.
- Require the state to prove his or her guilt.
- Subpoena witnesses and present evidence to a judge in his or her defense.
- Confront and cross-examine witnesses.
- Receive a written statement from a factfinder as to the evidence relied on and the reasons for the sanction imposed.[113]

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[106] Email from the DOC Staff (February 21, 2018). The circuits that have enacted administrative orders include: Third (Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee and Taylor Counties); Fourth (Duval County); Fifth (Citrus, Hernando, Lake, Marion and Sumter Counties); Sixth (Pasco and Pinellas Counties); Seventh (Flagler, Putnam, St. Johns and Volusia Counties); Eighth (Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties); Tenth (Hardee, Highlands, and Polk Counties); Twelfth (DeSoto, Manatee, and Sarasota Counties); Thirteenth (Hillsborough County); Fourteenth (Bay, Calhoun, Gulf, Holmes, Jackson and Washington Counties); Fifteenth (Palm Beach County); Eighteenth (Brevard and Seminole Counties); and Nineteenth (Indian River, Martin, Okeechobee and St. Lucie Counties).

[107] Section 946.08(2)(h)1., F.S.

[108] Section 948.06(1)(h)2., F.S., provides that the administrative order must address which technical violations are eligible for alternative sanctioning, offender eligibility criteria, permissible sanctions, and the process for reporting technical violations.

[109] Third Judicial Circuit, *Administrative Order 2016-003, Criminal Alternative Sanctioning Program*, available at http://www.jud3.flcourts.org/Admin_Orders/All/2016-003-Criminal%20Alternative%20Sanctioning%20Program.pdf Thirteenth Judicial Circuit, *Administrative Order S-2016-019, Alternative Sanctioning Program*, available at http://www.fljud13.org/Portals/0/AO/DOCS/S-2016-019.pdf?ver=2016-06-07-104033-303 (all sites last visited February 22, 2018).

[110] Two Circuits offer short county jail time as a sanction and Brevard County offers weekends with the Brevard County Sheriff's Work Farm. Email from the DOC Staff (February 22, 2018) (on file with Senate Criminal Justice Staff).

[111] Section 948.06(1)(h)3., F.S.

[112] Section 948.06(1)(h)3.a., F.S.

[113] Section 948.06(1)(h)3.b., F.S.

Upon the offender admitting to the technical violation and agreeing with the probation officer's recommended sanction, the probation officer must submit the recommended sanction to the court for approval. The submission to the court must include documentation related to the offender's admission to the technical violation and agreement with the recommended sanction. The court may impose the recommended sanction or may direct the DOC to submit a violation report, affidavit, and warrant.[114]

Participation in an ASP is voluntary. Additionally, the offender may elect to waive or discontinue participation in an ASP at any time before the issuance of a court order imposing the recommended sanction. The offender's prior admission to the technical violation may not be used as evidence in subsequent proceedings.[115]

Conditions of Probation in the Florida Crime Information Center

The Florida Crime Information Center (FCIC) is the state's central database for tracking crime related information. Information contained in the FCIC database includes, but is not limited to, statewide information on persons and property, driver's license and registration information, wanted and missing persons, stolen guns, vehicles, and other property, and persons' status files, and computerized criminal history.[116] It is commonly used by law enforcement officers to gather relevant information when responding to a call for service or engaging in a citizen encounter.

Every criminal justice agency[117] within Florida is eligible for access to the FCIC.[118] Access is divided into limited access and full access. With limited access, the user is able to run a query in the system. With full access, the user is able to make modifications in the system.[119] Currently, an officer may run a driver license, warrant, or person query in the FCIC and the results will include information on whether the individual is currently on probation.[120] However, in general, a law enforcement officer will only see that the person is on probation. The FCIC will not include the specific terms of probation.[121]

When probation conditions are ordered, modified, or deleted by the court, that information is forwarded to the DOC via the clerk of the court (clerk).[122] Once the conditions are received by the DOC, they are manually entered into the database.[123] Delays in this process may vary due to

[114] Section 948.06(1)(h)4. and 5., F.S.
[115] Section 948.06(1)(h)6. and 7., F.S
[116] Department of Juvenile Justice, *Florida Department of Juvenile Justice Procedure*, p. 2, available at http://www.djj.state.fl.us/docs/policies/fcic-ncic-cjnet-jis-and-david-access-use-procedures-fdjj-1805p.pdf?sfvrsn=4 (last visited February 22, 2018) (hereinafter cited as "DJJ Procedure").
[117] FDLE defines "criminal justice agency" to include courts and governmental agencies that perform the administration of criminal justice pursuant to a statute or executive order.
[118] DJJ Procedure.
[119] *Id*.
[120] Id.
[121] Email from Florida Sheriffs Association Staff (February 22, 2018) (on file with Senate Criminal Justice Committee).
[122] *Id*.
[123] *Id*.

the volume of information, the manner in which information is received, and the variations in the process among the circuits.[124]

The DOC sends a probationer's data electronically to FDLE through a real time direct data pipeline. To include a probationer's conditions, the DOC will enter the information into a "Miscellaneous Field of the Status Record" field available in the FCIC.[125] However, the DOC reports that it includes a number of special conditions of probation as prioritized by the FDLE, but that the current FDLE system only allows a smaller, specified amount of data and typically does not allot enough space to include all special conditions of probation.[126]

A court has authority to modify or alter conditions of probation based on a probationer's particular circumstances.[127] As a result, a probation officer may have permission to allow certain exceptions to conditions of probation on a case-by-case basis. For example, a court may allow a probation officer to give permission to a probationer to stay out past a designated curfew if the reason is for work, school, or health care emergencies. When this occurs, probation officers may not have access to the DOC databases in order to update in real time any exceptions to the individual's probation in the FCIC.[128]

### *Effect of the Bill*

Alternative Sanctioning Programs

The bill amends s. 948.06, F.S., *requiring* each judicial circuit to establish an ASP and providing specific guidelines for the types of technical violations and sanctions that can be provided for in an ASP. The bill authorizes a court to define additional sanctions or eligibility criteria and specify the process for reporting technical violations. For each instance that a technical VOP or VOCC is alleged to have been committed, the DOC is required to determine whether such person is eligible for the ASP. If eligible, the probation officer may offer the ASP in lieu of filing an affidavit with the court. The bill maintains the same definition for technical violations as is in current law and limits ASPs to resolving technical violations.

The bill classifies technical violations eligible for an ASP as low-risk and moderate risk, specifically:

- A low-risk violation includes:
  - Positive drug or alcohol test result;

[124] *Id*.
[125] Email from the DOC Staff (February 23, 2018) (on file with the Senate Criminal Justice Committee). The DOC currently includes the specified conditions of probation for each probationer in the data it sends to FDLE, including, but not limited to: Sex offender curfew; Curfew for non-sex offenders; Remain confined to approved residence; No unsupervised contact with minors; No work or volunteer work with children; Do not live or work within 1,000 feet of school or bus stop; Submit to search; No driving or driver license revoked or suspended; Driving for employment only; No alcohol or illegal drugs; No contact with victim; No pornographic material; Restrictions to enter or leave a city; No employment that involves handling money; No post office box; and No checking account.
[126] *Id*. This amount of space typically allows for the inclusion of the condition number, a dash and then the description up to 34 bytes per condition reoccurring for a total of 398 bytes. The Special Condition description can be shorter than 34 bytes or up to 34 bytes but the total bytes of all of them combined for each offender can only add up to 398 bytes per offender file sent real time.
[127] Section 948.039, F.S.
[128] Email from the Florida Sheriff's Association Staff (February 23, 2018) (on file with Senate Criminal Justice Staff).

  - Failure to report to the probation office;
  - Failure to report a change in address or other required information;
  - Failure to attend a required class, treatment or counseling session, or meeting;
  - Failure to submit to a drug or alcohol test;
  - Violation of curfew;
  - Failure to meet a monthly quota on any required probation condition, including, but not limited to, making restitution payments, payment of court costs, and completing community service hours;
  - Leaving the county without permission;
  - Failure to report a change in employment;
  - Associating with a person engaged in criminal activity; or
  - Any other violation as determined by administrative order of the chief judge of the circuit.
- A moderate-risk violation includes:
  - A low-risk violation listed above, which is committed by an offender on community control;
  - Failure to remain at an approved residence by an offender on community control;
  - A third violation of a low-risk violation listed above by a probationer within the current term of supervision; or
  - Any other violation as determined by administrative order by the chief judge of the circuit.

The bill excludes certain probationers or offenders on community control from participating in an ASP if any of the following criteria apply:
- The offender is a VFOSC.
- The violation is absconding.
- The violation is of a stay-away order or no-contact order.
- The violation is not identified as low-risk or moderate-risk under the bill or by administrative order.
- He or she has a prior moderate-risk level violation during the current term of supervision.
- He or she has three prior low-risk level violations during the same term of supervision.
- The term of supervision is scheduled to terminate in less than 90 days.
- The terms of the sentence prohibit the use of ASP.

An eligible person who has committed a first or second low-risk technical violation within his or her current term of supervision may be offered one or more of the following as a sanction:
- Up to five days in a county detention facility;
- Up to 50 additional community service hours;
- Counseling or treatment;
- Support group attendance;
- Drug testing;
- Loss of travel or other privileges;
- Curfew for up to 30 days;
- House arrest for up to 30 days; or
- Any other sanction as determined by administrative order by the chief judge of the circuit.

An eligible person who has committed a first time moderate-risk violation within the current term of supervision may be offered, provided the probation officer receives approval from his or her supervisor, one or more of the following as a sanction:

- Up to 21 days in the county detention facility;
- Curfew for up to 90 days;
- House arrest for up to 90 days;
- Electronic monitoring for up to 90 days;
- Residential treatment for up to 90 days;
- Any other sanction available for a low-risk violation; or
- Any other sanction as determined by administrative order of the chief judge of the circuit.

The bill retains current law regarding the ability of an offender to enter or waive his or her participation in the program; process for an offender to acknowledge his or her desire to participate in the program, including the specified rights that must be waived; ability of a court to approve the sanction and the effect of a court not approving the probation officer's recommendation; effect of an offender's discontinued participation in the program; and prohibition on the court using a prior admission to a technical violation as evidence in subsequent proceedings.[129] However, the bill imposes a 90-day deadline for an offender to complete successfully all ordered sanctions from the ASP if the court or probation officer did not specify a timeframe in the imposition of the sanction.

Administrative Probation

The bill amends ss. 948.001(1) and 948.013, F.S., relating to administrative probation to restructure the placement of relevant language. These changes do not appear to have a substantive impact on the laws applicable to administrative probation.

Conditions of Probation in the FCIC

The bill requires the DOC to input into the FCIC all of a probationer's specific conditions of probation as determined by the court. If the court modifies the conditions of probation during the period of probation, the DOC must update the changes in the FCIC.

**Reentry and Transitional Services Provisions (Sections 21-27, 39, and 40)**

***Services Offered to Inmates in the Custody of the DOC***

The DOC is required to provide a wide range of transitional services, including in the areas of employment, life skills training, job placement, for the purpose of increasing the likelihood of the inmate's successful reentry into society thereby reducing recidivism.[130]

[129] *See* s. 948.06(1)(h)4.-7., F.S. (2017), for the relevant provisions retained in the bill.
[130] *See* ss. 944.701-708, F.S.

Section 944.704, F.S., requires the DOC to provide a transition assistance specialist at each of its major prison institutions to assist an inmate with specified assistance, including, in part, obtaining job placement information.[131]

Section 944.705, F.S., requires the DOC to establish a standard release orientation program available to every eligible inmate.[132] Release orientation must include instruction addressing:

- Employment skills;
- Money management skills;
- Personal development and planning;
- Special needs;
- Community reentry concerns;
- Community reentry support; and
- Any other appropriate instruction to ensure the inmate's successful reentry into the community.[133]

To provide these services, the DOC may contract with outside public or private entities, including faith-based service groups.[134]

***Determining the Appropriate Services for Inmates***

All inmates are screened at reception and assessed and placed into programs using the CINAS.[135] As described above, the CINAS is administered to inmates at reception and again at 42 months from release. Additionally, the DOC conducts updates every six months thereafter to evaluate the inmate's progress and ensure enrollment in needed programs. The DOC's use of the CINAS allows for development and implementation of programs that increase the likelihood of successful transition through the selection of services that are matched to the offender's learning characteristics and then to the offender's stage of change readiness.[136] Additionally, the CINAS allows for a flow of information between the DOC's Office of Community Corrections and Office of Institutions, which assist the DOC in better serving the offender and preparing him or her for successful transition back into the community.[137]

[131] Section 944.704, F.S., further provides that correctional officers and correctional probation officers are prohibited from serving in the role of the transition assistance specialist.
[132] Sections 944.703 and 944.7031, F.S., provide that all inmates released from the custody of the DOC are eligible to receive transition services. However, the law instructs the DOC to give priority for these services to substance abuse addicted inmates. The law provides that inmates released from private correctional facilities should be informed of and provided with the same level of transition assistance services as provided by the DOC for an inmate in a state correctional facility.
[133] Section 944.705, F.S.
[134] Section 944.705(5), F.S.
[135] The DOC SB 1222 Analysis, p. 2.
[136] The DOC SB 1222 Analysis, p. 2. The DOC reports that it matches factors that influence an inmate's responsiveness to different types of services with programs that are proven to be effective within an inmate population.
[137] *Id*.

***Education for State Prisoners***

Section 944.801, F.S., establishes a Correctional Education Program (CEP), which must be composed of the educational facilities and services of all institutions, and facilities housing inmates operated by the DOC.[138] The duties of the CEP, in part, include:

- Developing guidelines for collecting education-related information during the inmate reception process and for disseminating such information to the classification staff of the DOC.[139]
- Approving educational programs of the appropriate levels and types in the correctional institutions and developing procedures for the admission of inmate students into such programs.[140]
- Entering into agreements with public or private school districts, entities, community colleges, junior colleges, colleges, or universities as may be deemed appropriate for the purpose of carrying out the CEP duties.[141]
- Ensuring that such local agreements require minimum performance standards and standards for measurable objectives, in accordance with established Department of Education (DOE) standards.[142]
- Developing and maintaining complete and reliable statistics on the number of high school equivalency diplomas and vocational certificates issued by each institution in each skill area, the change in inmate literacy levels, and the number of inmate admissions to and withdrawals from education courses.[143]

***Workforce Training Offered by the DOC***

The DOC offers a wide range of career and technical education programs for inmates.[144] In FY 2015-16, the DOC awarded 1,829 vocational certificates and 2,027 industry certificates, and in FY 2016-17, the DOC awarded 1,799 vocational certificates and 1,349 industry certifications. The DOC has since launched new credentialing programs for Canine Obedience and Beekeeping programs, and plans to expand credentialing to construction, horticulture, farm, and culinary programs in 30 institutions.[145]

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[138] Section 944.801(1), F.S.
[139] Section 944.801(3)(a), F.S., also provides that the information collected must include the inmate's areas of educational or vocational interest, vocational skills, and level of education.
[140] Section 944.801(3)(d), F.S.
[141] Section 944.801(3)(e), F.S.
[142] *Id*.
[143] Section 944.801(3)(g), F.S.
[144] The programs include: Air Conditioning, Refrigeration and Heating Technology; Applied Welding Technologies; Automotive Collison Repair and Refinishing; Automotive Technology Career Services; Cabinetmaking; Carpentry; Commercial Class "B" Driving; Computer Systems and Information Technology; Cosmetology; Culinary Arts; Digital Design; Drafting; Electricity; Environmental Design; Environmental Services; Equine Care Technology; Industrial Machine Repair; Janitorial Services; Landscape Management; Masonry, Brick and Block; Plumbing Technology; Printing and Graphic Communications; Technology Support Services; Wastewater/Water Treatment Technologies; and Web Development. *See* DOC, *Annual Report Fiscal Year 2015-2016*, p. 18-19, available at http://www.dc.state.fl.us/pub/annual/1516/FDC_AR2015-16.pdf (last visited February 22, 2018).
[145] DOC, *Agency Analysis of SB 226-Revised*, p. 2 (October 25, 2017) (on file with the Senate Criminal Justice Committee).

***Obtaining Professional Licenses Subsequent to a Criminal Conviction***

Licensure - Overview

A person may only be denied employment by the state, any of its agencies or political subdivisions, or any municipality, based on a prior conviction for a crime if the crime was a felony or first-degree misdemeanor and directly related to the position of employment sought.[146] However, a person may be denied a license, permit, or certification to pursue, practice, or engage in an occupation, trade, vocation, profession, or business based on a prior conviction for a crime. The crime must be a felony or first-degree misdemeanor and directly relate to the standard determined by the regulatory authority to be necessary and reasonably related to the protection of the public or the welfare of the profession, or business for which the license, permit or certificate is sought.[147] There are a number of professions that require licensure, which may be impacted by a criminal conviction.[148]

Department of Business and Professional Regulation

Chapter 455, F.S., provides the general powers of the Department of Business and Professional Regulation (DBPR) and authorizes the DBPR to regulate the issuance of licensing for specified purposes.[149] However, the DBPR is prohibited from creating a regulation that has an unreasonable effect on job creation or job retention, or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.[150] When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a "permit, registration, certificate, or license" to the licensee.[151] The Division of Professions within the DBPR is responsible for licensing more than 435,500 professionals with a variety of professional licenses.[152]

The DBPR may disqualify an individual from employment if he or she has been arrested for and is awaiting final disposition of, has been found guilty of, or entered a plea of nolo contender or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for a number of specified offenses. Applicants for all professions are required to answer questions pertaining to their criminal history when submitting an application for licensure.[153]

The DBPR reports that there are no statutory provisions or departmental rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of

[146] Section 112.011(1)(a), F.S.
[147] Section 112.011(1)(b), F.S.
[148] These include, but are not limited to, professions regulated by the Department of Health, such as septic tank contractors, health care professionals and pharmacy professionals, and massage therapists. *See* ss. 489.553(4)(a), 456.0635(2)(a), 465.0022, and 480.041(7), F.S.
[149] Section 455.201(2), F.S., provides that the DBPR may engage in the regulation of professions only for the "preservation of the health, safety, and welfare of the public under the police powers of the state."
[150] Section 455.201(4)(b), F.S.
[151] Section 455.01(4) and (5), F.S.
[152] *See* DBPR, *Annual Report, Fiscal Year 2016-2017*, p. 21-22, available at http://www.myfloridalicense.com/dbpr/os/documents/DivisionAnnualReport.pdf?x40199 (last visited February 22, 2018). Of the total 434,574 licensees in the Division of Professions, 21,702 are inactive.
[153] DBPR, *Agency Analysis CS/SB 1114*, February 19, 2018, (on file with the Senate Criminal Justice Committee).

supervised release, nor are individuals charged any additional fees for applying for a license while still incarcerated or on supervised release.[154]

Agency for Health Care Administration

The Agency for Health Care Administration (AHCA), disqualifies an individual from employment in certain facilities regulated by AHCA, such as nursing homes and hospices, based on an applicant's criminal history. Any individual considered for employment in a facility licensed by chs. 400 and 408, F.S., must complete a level 2 background screening pursuant to ss. 435.04(2) and (3), F.S. In addition to the disqualifying offenses listed above for DBPR, the applicant may be disqualified by AHCA for a number of offenses.[155]

Exemption from Disqualification

Florida law provides for exemptions from disqualification for prior criminal offenses. The head of the appropriate agency may grant an employee otherwise disqualified from employment an exemption from disqualification.[156]

A person applying for exemption must pay any outstanding court fee, fine, fund, lien, civil judgment, application, cost of prosecution, trust, or restitution as part of the criminal case prior to being eligible for exemption.[157] To grant an exemption to an applicant, the applicant has the burden to demonstrate by clear and convincing evidence that he or she should not be disqualified from employment.[158]

***Prison Entrepreneurship Programs***

In 2011, the University of Virginia's Darden School of Business implemented a prison entrepreneurship program at Virginia's Dillwyn Correctional Center, a medium-security prison housing more than 1,000 inmates. The program focuses on entrepreneurship skills, ethics, and business strategy. Students must complete math testing, develop a personal business plan, and complete a final exam.[159]

Similar programs have had success in other states. Texas has a prison entrepreneurship program at the Cleveland Correctional Facility in Houston and approximately 800 inmates graduate from the program annually. Of its graduates, 106 have founded businesses and the recidivism rate of

[154] *Id*.
[155] *See* s. 408.809(4), F.S.
[156] *See* s. 435.07, F.S., for specific statutory exemptions.
[157] Section 435.07(1)(b), F.S.
[158] *See* s. 435.07(3)(a), F.S. Evidence provided may include, but is not limited to: the circumstances surrounding the criminal incident; the time period that has elapsed since the incident; the nature of the harm caused to the victim; applicant's history since the incident; and any other evidence or circumstances indicating that the applicant will not present a danger if employment or continued employment is allowed. The decision of the head of an agency regarding an exemption may be challenged pursuant to ch. 120, F.S.
[159] The Darden Report, *Second Changes: Darden's Fairchild Launches Prison Entrepreneurship Program*, January 4, 2013, available at: https://news.virginia.edu/content/second-chances-darden-s-fairchild-launches-prison-entrepreneurship-program (last visited February 22, 2018).

those inmates is less than 7 percent.[160] Though not statutorily mandated, the DOC partners with several educational institutions to offer inmates job training and readiness skills, including, but not limited to, Stetson University, Florida State University, University of Central Florida, and University of West Florida.[161] Additionally, the DOC operates an entrepreneurship education program at Hardee Correctional Institution.[162]

***Effect of the Bill***

Transition Assistance Staff

The bill amends s. 944.704, F.S., requiring that transition assistance specialists also provide inmates with information about any job assignment credentialing or industry certifications for which the inmate is eligible.

Release Orientation Program

The bill amends s. 944.705, F.S., requiring that each inmate receive a comprehensive community reentry resource directory organized by the county to which the inmate is being released with specified information related to providers and portals of entry.[163]

The DOC must allow a nonprofit faith-based, business and professional, civic, or community organization to apply to be registered under this section to provide inmate reentry services. The DOC must also adopt policies and procedures for screening, approving, and registering an organization that applies to be registered to provide inmate reentry services. The DOC may deny approval and registration of an organization or a representative from an organization if it determines that the organization or representative does not meet such policies or procedures. The bill defines reentry services as services that include, but are limited to counseling; providing information on housing and job placement; money management assistance; and programs addressing substance abuse, mental health, or co-occurring conditions.

The bill also authorizes the DOC to contract with a public or private educational institution's Veteran's Advocacy Clinic or Veteran's Legal Clinic to assist qualified veteran inmates in applying for veteran's assistance benefits upon release.

Certificates of Achievement and Employability

The bill creates ss. 944.805-8065, F.S., establishing a certificate of achievement and employability (CAE) that may remove most mandatory barriers to licensure and employment for ex-offenders.

*Definitions*

The bill defines a number of terms applicable to these provisions, including:

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[160] *Id*. *See also* The Prison Entrepreneurship Program, available at http://www.pep.org/releasing-potential/ (last visited February 22, 2018).
[161] Email from the DOC Staff (February 22, 2018) (on file with Senate Criminal Justice Committee).
[162] *Id*. The DOC reports that the course provides an introductory overview of the knowledge and skills needed for the identification, evaluation, and exploitation of opportunities in a variety of circumstances and environments.
[163] The directory must include the name, address, telephone number and a description of services offered of each provider and also include the name, address, and telephone number of existing portals of entry.

- Discretionary civil impact: any Florida statute or rule that creates a penalty, disability, or disadvantage to which all of the following apply:
  - The impact is triggered in whole or in part by a person's conviction of an offense, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence.
  - The impact is imposed on a person, licensing agency, or employer.
  - The impact permits, but does not require, that a convicted person have a license denied or revoked, permits an agency to deny or revoke a license or certification to a convicted person, or permits a business to refuse to employ a convicted person.
- Eligible inmate: a person who is serving a prison term in a state correctional institution or facility; under the supervision of the DOC on probation or community control; or under a post release control sanction; and who is eligible to apply to the DOC for a certificate of achievement and employability.
- Licensing agency: any regulatory or licensing entity with authority to issue, suspend, or revoke any professional license or certification.
- Mandatory civil impact: any Florida statute or rule that creates a penalty, disability, or disadvantage to which all of the following apply:
  - The impact is triggered automatically solely by a person's conviction of an offense, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence.
  - The impact is imposed on a person, licensing agency, or employer.
  - The impact precludes a convicted person from maintaining or obtaining licensure or employment, precludes a licensing agency from issuing a license or certification to a convicted person, or precludes a business from being certified or from employing a convicted person.[164]

*Application for Certificate of Achievement and Employability*

An eligible inmate may apply to the DOC for a CAE if the inmate:
- Has satisfactorily completed one or more in-prison vocational programs approved by the DOC.
- Has demonstrated exemplary performance as determined by completion of one or more cognitive or behavioral improvement programs approved by the DOC while incarcerated in a state correctional institution or facility or under supervision, or during both periods of time.
- Shows other evidence of achievement and rehabilitation.
- Has never been convicted of a dangerous crime as defined in s. 907.041, F.S., or a violation specified as a predicate offense for registration as a sexual predator under s. 775.21, F.S., or as a sexual offender under s. 943.0435, F.S.

An incarcerated eligible inmate may apply for a CAE from one year prior to the date of his or her release up to the date of release. An eligible inmate in the community may apply anytime while serving the term of probation or community control.

[164] The bill provides that the definitions of mandatory and discretionary civil impact do not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

The application must specify the mandatory civil impacts for which the eligible inmate is seeking relief. The DOC is required to notify the licensing agency whose mandatory civil impact may be impacted by the issuance of a CAE and provide the licensing agency with a copy of the CAE application and any documentation that the DOC has concerning the eligible inmate. The licensing agency must be given the opportunity to object in writing to the issuance of a CAE.

The DOC must consider the eligible inmate's application and all objections to issuing the CAE and the DOC must issue the CAE if it finds that the inmate is eligible, the application was filed timely, and all objections to issuing the certificate are insufficient. However, a CAE does not affect the mandatory civil impacts under article VI, section 4 of the Florida Constitution, or ss. 775.13, 775.21, 943.0435, and 944.292, F.S.

*Effect of the Certificate of Achievement and Employability*

A CAE holder that applies to an agency for licensure or certification must be given individualized consideration by the licensing agency. The CAE provides a rebuttable presumption to the CAE holder for purposes of licensure review. The bill provides that the conviction of a CAE holder alone is insufficient evidence that he or she is unfit for the license or certification. However, the licensing agency is still authorized to deny the license or certification if it determines that the CAE holder is unfit for licensure or certification after considering all relevant facts and circumstances.

The bill distinguishes between the effect of an unemployed CAE holder applying to an agency and an employer of an employed CAE applying to an agency. An employer of an employed CAE holder may apply to an agency for the licensure of his or her employee and the bill provides that the CAE reclassifies the mandatory civil impacts into discretionary civil impacts and that the CAE is a rebuttable presumption. However, for an unemployed CAE holder, the CAE only provides a rebuttable presumption and does not reclassify the mandatory civil impacts.

*Revocation of the Certificate of Achievement and Employability*

The bill requires the DOC to, at a minimum, adopt rules that result in the revocation of a CAE if a certificate holder is convicted of or pleads guilty to a felony offense subsequent to the issuance of the certificate. The DOC must determine which additional offenses require revocation, considering the nature of the offense and the employment of a certificate holder.

*Liability and Rulemaking Authority*

The bill provides that the DOC is not liable for a claim for damages arising from issuing, denying, or revoking a CAE or for failing to revoke a certificate. The bill also provides the DOC with rulemaking authority to develop any rules necessary to implement the CAE provisions and requires the CAE program be funded within existing resources.

Prison Entrepreneurship Program

The bill amends s. 944.801, F.S., authorizing the CEP to develop a Prison Entrepreneurship Program. The program must include at least 180 days of in-prison education with curriculum that includes a component on developing a business plan, procedures for graduation and certification of successful student inmates, and at least 90 days of transitional and post release continuing

education services. The bill provides transitional and post release continuing education services may be offered to graduate student inmates on a voluntary basis and are not required for completion of the program.

The program must be funded within existing resources and the DOC is required to enter into agreements with public or private community colleges, junior colleges, colleges, universities, or other non-profit entities to implement the program.

Lastly, the bill provides rulemaking authority and authority to adopt procedures for admitting student inmates.

The bill reenacts ss. 447.203 and 944.026, F.S., incorporating changes made by the act.

**Conditional Medical Release (Sections 29, 30, and 41-52)**

The pronouncement of a sentence that includes a term of imprisonment imposed by a sentencing court reflects the length of actual time to be served. With limited exceptions, such a term of imprisonment may only be lessened by the application of gain-time,[165] and may not be reduced in an amount that results in the defendant serving less than 85 percent of his or her term of imprisonment.[166] One of the exceptions provided for in law is conditional medical release.

***Conditional Medical Release***

CMR is a discretionary release of inmates who are "terminally ill" or "permanently incapacitated" and who are not a danger to others.[167] The FCOR reviews eligible inmates for release under the CMR program.

Eligible inmates include inmates that are designated by the DOC as a:

- "Permanently incapacitated inmate," which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others; or
- "Terminally ill inmate," which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.[168]

The release of an inmate on CMR is for the remainder of the inmate's sentence and requires periodic medical evaluations at intervals determined by the FCOR at the time of release.[169] Supervision can be revoked and the offender returned to prison if the FCOR determines that a

[165] Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.
[166] Section 921.002(1), F.S.
[167] Chapter 92-310, L.O.F.; FCOR, *Release Types, Post Release*, available at https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease (last visited January 8, 2018).
[168] Section 947.149(1), F.S. Inmates sentenced to death are ineligible for CMR.
[169] Section 947.149(4), F.S.

violation of any condition of the release has occurred or his or her medical or physical condition improves to the point that the offender no longer meets the CMR criteria.[170] Section 947.141, F.S., provides a hearing process for determining whether a CMR releasee must be recommitted to the DOC for a violation of release conditions or a change in medical status.

The FCOR has approved and released 55 inmates for CMR in the last three fiscal years.[171] The DOC has recommended 120 inmates for release in the past three fiscal years.[172]

***Effect of the Bill***

The bill amends s. 947.149, F.S., by creating two new CMR designations and two processes for an inmate to be granted CMR, including "Permissive Conditional Medical Release" and "Mandatory Conditional Medical Release."

Designations

The bill creates two new CMR designations, including a designation entitled:

- Inmate with a debilitating illness: an inmate who is determined to be suffering from a significant and permanent terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or others.
- Medically frail inmate: an inmate whose physical or mental health has deteriorated to a point that creates a reasonable probability that the inmate does not constitute a danger to herself or himself or others, as determined by a risk assessment completed by a qualified practitioner, and whose deterioration is the direct result of the inmate's:
    - Impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, where such impairment substantially interferes with the person's ability to meet the ordinary demands of living;
    - History of substance abuse, as defined in s. 397.311(45), F.S.; or
    - Requirement of acute long-term medical or mental health treatment or services.

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

Permissive Conditional Medical Release

The current CMR process remains substantially the same but is amended to be entitled "Permissive Conditional Medical Release." The bill expands Permissive CMR from current law by permitting any inmate determined to be eligible under any of the four CMR designations described above and referred by the DOC to the FCOR to be considered for release by the FCOR. The FCOR continues to retain sole discretion on the determination of whether to release an inmate under Permissive CMR.

[170] Section 947.149(5), F.S.
[171] This includes 14 people in FY 2016-17; 27 in FY 2015-16; and 14 in FY 2014-15. Email from FCOR Staff (December 15, 2017) (attachment on file with the Senate Committee on Criminal Justice).
[172] *Id*. This includes 34 people FY 2016-17; 51 in FY 2015-16; and 35 in FY 2014-15.

Mandatory Conditional Medical Release

The bill creates a new CMR process, entitled "Mandatory Conditional Medical Release," that imposes eligibility requirements in addition to those required in Permissive CMR. If an inmate meets all of the eligibility requirements of Mandatory CMR, the FCOR is *required* to release the inmate on CMR upon verifying the inmate's eligibility.

For Mandatory CMR, the bill requires the DOC to refer an inmate to the FCOR for release if the inmate meets one of the four CMR designations mentioned above and the inmate has:

- Served at least 50 percent of his or her sentence.
- No current or prior conviction for a capital, life, or first-degree felony; sexual offense; or an offense involving a child.
- Not received a disciplinary report within the previous six months.
- Never received a disciplinary report for a violent act.
- Renounced any gang affiliation.

The FCOR must verify that an inmate meets the above-mentioned eligibility criteria within 60 days of the referral.

Referral of an Inmate

The DOC's referral of an inmate for either Permissive or Mandatory CMR must include:

- The proposed conditional medical release plan.
- Any relevant medical history, including current medical prognosis.
- Criminal history, including:
  - The inmate's claim of innocence, if any;
  - The degree to which the inmate accepts responsibility for his or her actions leading to the conviction of the crime; and
  - How any claim of responsibility has affected the inmate's feelings of remorse.
- Any history of substance abuse and mental health issues, provided the inmate authorizes release when such information is collected in accordance with 42 C.F.R. s. 2.
- Any disciplinary action taken against the inmate while in prison.
- Any participation in prison work and other prison programs.
- Any other information the DOC deems necessary.

Placement Considerations and Release Plan

The bill provides that a determination to approve an inmate's release on CMR must consider conditions such as whether:

- A placement option has been secured for the inmate in the community. A placement option may include, but is not limited to, home confinement or a medical or mental health facility that is not a public institution.[173]
- The placement option secured under this section poses a minimal risk to society.

[173] A placement option need not involve any type of supervision of the inmate by an employee or a private contractor of the DOC or otherwise be considered a secure facility. A placement option may involve the use of an electronic monitoring device as defined in 947.005(6), F.S.

- The DOC has made a reasonable effort to determine whether expenses related to the placement option secured under this subsection are covered by Medicaid, a health care policy, a certificate of insurance, or another source for the payment of medical expenses or whether the inmate has sufficient income or assets to pay for the expenses related to the placement.
- The DOC has provided notice to the prosecutor's office in the county in which the prisoner was sentenced and to each victim entitled to notice under article I, section 16(b) of the Florida Constitution.

The bill requires the DOC to develop a release plan for an inmate released on Permissive or Mandatory CMR and the FCOR is authorized to approve the release plan. The release plan must include periodic medical evaluations and may include supervision with electronic monitoring. An inmate's release on Permissive or Mandatory CMR is for the remainder of the inmate's sentence. However, the bill also applies the above-described process for revocation and recommitment to inmates released on Permissive or Mandatory CMR.

The bill also amends s. 947.005, F.S., adding two new definitions, including:
- Electronic monitoring device: an electronic or telecommunications device that is used to track and supervise the location of a person. Such devices include, but are not limited to, voice tracking systems, position-tracking systems, position location systems, or biometric tracking systems.
- Conditional medical release: the release from a state correctional institution or facility under this chapter for medical or mental health treatment pursuant to s. 947.149, F.S.

Lastly, the bill reenacts ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141, F.S., incorporating changes made by the act.

**Criminal Justice Data Collection and Transparency (Sections 12-14, 18, 20, and 28)**

***Data Collection by Florida's Criminal Justice Agencies***

Currently, Florida does not have a publicly accessible website containing comprehensive criminal justice data. Several state departments, local agencies and local offices, including the clerks, SAs, PDs, county jails, and the DOC collect data within the criminal justice system. Each entity collects and maintains data in different ways and for different purposes.

Clerks of the Circuit Courts

The clerks use a secured single point-of-search database portal for statewide court case information, the Comprehensive Case Information System (CCIS).[174] Section 28.2405, F.S., requires all clerks to participate in the CCIS and submit data for criminal, civil, juvenile, probate, and traffic cases.[175] The CCIS provides controlled access to court records for governmental

[174] *See* s. 28.2405, F.S. CCIS access site, available at https://www.flccis.com/ocrs/login.xhtml (last visited February 23, 2018).
[175] *See also* Florida Court Clerks & Comptrollers, *Criminal Court Case Data Collection*, p. 7 (November 14, 2017) (PowerPoint presentation on file with the Senate Criminal Justice Committee).

agencies.[176] Currently, 19 governmental organizations use the CCIS and may use it to search information related to call court cases maintained by the clerks.[177]

The CCIS has more than 45,000 active users. The clerks assign each user or organization a security level that allows them to view certain data on the CCIS. Not all data elements are available to all users and CCIS is not available to the public.[178]

County Detention Facilities

Data collection and storage by county detention facilities varies greatly from county to county.[179] Larger county detention facilities have data systems allowing for direct data input and report generation, while smaller jails have databases using Microsoft Access or other commercially available templates.[180]

Section 951.23(2), F.S., requires administrators of county detention facilities to collect and report certain information to the DOC. The DOC then uses such data to analyze and evaluate county detention facilities.[181] Many jails also collect data relating to jail capacity, per diems, demographic data, criminal charges, custody levels, and medical information.[182] Jail administrators use this data to manage daily operations, verify total jail costs and budgets, and ensure proper staffing and training.[183]

State Attorneys and Public Defenders

There is no statutory requirement for a SA or PD to collect, publish, or report specific data. Many circuits, on their own initiative, collect data elements for internal purposes, but this data is not publicly available or shared among agencies.

Department of Corrections

The DOC uses is the Offender Based Information System (OBIS) to collect and organize data related to sentencing information and scoresheets from the clerks, criminal history information from the FDLE, and background information self-reported by inmates.[184] The DOC uses this information for a variety of operational functions including determining an inmate's custody level and an inmate's release date.[185] The DOC shares the OBIS information with law

[176] *Id.* at 2.
[177] *Id.* at 3 and 6.
[178] *Id.* at 11.
[179] Section 951.23(1)(a), F.S., defines a county detention facility to mean a county jail, county stockade, county work camp, county 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.
[180] Florida Sheriffs Association, *Criminal Justice Data Collection*, p. 5 (November 14, 2017) (PowerPoint presentation on file with the Senate Criminal Justice Committee) (hereinafter cited as "FSA PowerPoint").
[181] Section 951.23(3), F.S.
[182] FSA PowerPoint, at 3.
[183] *Id.* at 6.
[184] Section 20.315(10), F.S., and the DOC, *Overview of FDC Criminal Justice Data*, p. 3-4 (November 14, 2017) (on file with the Senate Criminal Justice Committee).
[185] *Id.* at 5.

enforcement and other state and federal agencies pursuant to relevant statutory authority, federal law, or other directives.[186]

The Bureau of Research and Data Analysis (Bureau) within the DOC analyzes the OBIS data to generate information for the DOC, the Governor, the Legislature, and other state agencies.[187] The Bureau publishes an annual report that includes information regarding inmate population, statistics, and other information relating to the DOC.[188] While annual reports are accessible to the public, users are not permitted to search the data that is collected in OBIS.

Criminal Punishment Code Scoresheet

Section 921.0024, F.S., requires the preparation of a Criminal Punishment Code scoresheet for each defendant who is sentenced for a felony offense. The scoresheet must be developed by the DOC, in consultation with the Office of the State Courts Administrator (OSCA), SAs, and PDs, and submitted to the Supreme Court for approval by June 15 of each year, as necessary. Further, the DOC is required to distribute sufficient copies of the scoresheets to those persons charged with the responsibility for preparing scoresheets.[189]

***Effect of the Bill***

Data Collection

The bill creates s. 900.05, F.S., specifying Legislative intent of the Legislature to create a model of uniform criminal justice data collection by requiring local and state criminal justice agencies to report complete, accurate, and timely data, and make such data available to the public.

*Definitions:*

The bill defines the following terms:

- Annual felony caseload: the yearly caseload of each full-time SA and assistant SA (ASA) or PD and assistant PD (APD) for cases assigned to the circuit criminal division, based on the number of felony cases reported to the Supreme Court under s. 25.075, F.S.
- Annual misdemeanor caseload: the yearly caseload of each full-time SA and ASA or PD and APD for cases assigned to the county criminal division, based on the number of misdemeanor cases reported to the Supreme Court under s. 25.075, F.S.[190]
- Attorney assignment date: 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.
- Attorney withdrawal date: 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: the identification number assigned by the clerk to a criminal case.

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[186] *Id.* at 6.
[187] DOC, *Bureau of Research and Data Analysis*, available at http://www.dc.state.fl.us/orginfo/research.html (last visited February 23, 2018).
[188] DOC, *Annual Report Fiscal Year 2015-2016*, available at http://www.dc.state.fl.us/pub/annual/1516/FDC_AR2015-16.pdf (last visited February 23, 2018).
[189] Section 921.0024(3)-(5), F.S.
[190] The terms "annual felony caseload" and "annual misdemeanor caseload" do not include the appellate caseload of a PD or APD. Cases reported pursuant to these terms 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

- Case status: whether a case is open, inactive, closed, or reopened due to a VOP or VOCC.
- Charge description: 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: 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: 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: 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.
- Deferred prosecution or pretrial diversion agreement date: 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: 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: 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: 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: an indication that a charge involves domestic violence as defined in s. 741.28, F.S.
- Gang affiliation flag: an indication that a defendant is involved in or associated with a criminal gang as defined in s. 874.03, F.S.
- Gain-time credit earned: a credit of time awarded to an inmate in a county detention facility in accordance with s. 951.22, F.S., or a state correctional institution or facility in accordance with s. 944.275, F.S.
- Habitual offender flag: an indication that a defendant is a habitual felony offender as defined in s. 775.084, F.S., or a habitual misdemeanor offender as defined in s. 775.0837, F.S.
- Judicial transfer date: 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: the number of attorneys hired on a temporary basis, by contract, to represent indigent clients who were appointed a PD.
- Pretrial release violation flag: an indication that the defendant has violated the terms of his or her pretrial release.
- Prior incarceration within the state: any prior history of a defendant being incarcerated in a county detention facility or state correctional institution or facility.
- Tentative release date: 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: an indication that a defendant is required to register as a sexual predator as defined in s. 775.21, F.S., or as a sexual offender as defined in s. 943.0435, F.S.

*Collection*

Beginning January 1, 2019, specified entities are required to collect certain data on a monthly basis. Each entity must report the data collected to the FDLE on a quarterly basis.

Each clerk must collect the following data for each criminal case:
- Case number.
- Date that the alleged offense occurred.
- County in which the offense is alleged to have occurred.
- Date of arrest, if such date is different from the date the offense is alleged to have occurred.
- Date that the criminal prosecution of a defendant is formally initiated through the filing, with the clerk of the court, of an information by the SA or an indictment issued by a grand jury.
- Arraignment date.
- Attorney assignment date.
- Attorney withdrawal date.
- Case status.
- Disposition date.
- Information related to each defendant, including:
  - Identifying information, including name, date of birth, age, race or ethnicity, and gender.
  - Zip code of primary residence.
  - Primary language.
  - Citizenship.
  - Immigration status, if applicable.
  - Whether the defendant has been found by a court to be indigent pursuant to s. 27.52, F.S.
- Information related to the formal charges filed against the defendant, including:
  - Charge description.
  - Charge modifier, if applicable.
  - Drug type for each drug charge, if known.
  - Qualification for a flag designation, including a domestic violence flag, gang affiliation flag, sexual offender flag, habitual offender flag, or pretrial release violation flag.
- Information related to bail or bond and pretrial release determinations, including the dates of any such determinations:
  - Pretrial release determination made at a first appearance hearing that occurs within 24 hours of arrest, including all monetary and nonmonetary conditions of release.
  - Modification of bail or bond conditions made by a court, including modifications to any monetary and nonmonetary conditions of release.
  - Cash bail or bond payment, including whether the defendant utilized a bond agent to post a surety bond.
  - Date defendant is released on bail, bond, or pretrial release.
  - Bail or bond revocation due to a new offense, a failure to appear, or a violation of the terms of bail or bond, if applicable.
- Information related to court dates and dates of motions and appearances, including:
  - Date of any court appearance and the type of proceeding scheduled for each date reported.

  - Date of any failure to appear in court, if applicable.
  - Judicial transfer date, if applicable.
  - Trial date.
  - Date that a defendant files a notice to participate in discovery.
  - Speedy trial motion and hearing dates, if applicable.
  - Dismissal motion and hearing dates, if applicable.
- Whether the attorney representing the defendant is court-appointed to, or privately retained by, a defendant or whether the defendant is represented pro se.
- Information related to sentencing, including:
  - Date that a court enters a sentence against a defendant.
  - Sentence type and length imposed by the court.[191]
  - Amount of time served in custody credited to the defendant at the time of disposition.
  - Total amount of court fees imposed by the court at the disposition of the case.
  - Outstanding balance of the defendant's court fees imposed by the court at disposition of the case.
  - Total amount of fines imposed by the court at the disposition of the case.
  - Outstanding balance of the defendant's fines imposed by the court at disposition of the case.
  - Restitution amount ordered, including the amount collected by the court and the amount paid to the victim, if applicable.
  - Digitized sentencing scoresheet prepared in accordance with s. 921.0024, F.S.
- The number of judges or magistrates, or their equivalents, hearing cases in circuit or county criminal divisions of the circuit court.[192]

Each SA must collect the following data:
- Information related to a victims of a criminal offense, including identifying information of the victim, including race or ethnicity, gender, age, and relationship to the offender, if any.
- Number of full-time and part-time prosecutors.
- Annual felony and misdemeanor caseloads.
- Any charge referred to the SA by a law enforcement agency related to an episode of criminal activity.
- Number of cases in which a no-information was filed.
- Information related to each defendant, including:
  - Each charge referred to the SA by a law enforcement agency related to an episode of criminal activity.
  - Drug type for each drug charge, if applicable.
  - Deferred prosecution or pretrial diversion agreement date and hearing dates, if applicable.

Each PD must collect the following data for each criminal case:
- Number of full-time and part-time PDs and APDs.
- Number of contract attorneys representing indigent defendants for the office of the PD.
- Annual felony and misdemeanor caseloads.

[191] This terms includes, but is not limited to, the total duration of imprisonment in a county detention facility or state correctional institution or facility, and conditions probation or community control supervision.
[192] Judges or magistrates, or their equivalents, who solely hear appellate cases from the county criminal division are not to be reported.

The administrator of each county detention facility must collect the following data:

- Maximum capacity for the county detention facility.
- Weekly admissions to the county detention facility for a revocation of probation or community control.
- Daily population of the county detention facility, including the specific number of inmates in the custody of the county that:
  - Are awaiting case disposition.
  - Have been sentenced by a court to a term of imprisonment in the county detention facility.
  - Have been sentenced by a court to a term of imprisonment with the DOC and who are awaiting transportation to the DOC.
  - Have a federal detainer or are awaiting disposition of a case in federal court.
- Information related to each inmate, including:
  - Date a defendant is processed into the county detention facility for an arrest for a new violation of law or for a VOP or VOCC.
  - Qualification for a flag designation, including domestic violence flag, gang affiliation flag, habitual offender flag, pretrial release violation flag, or sexual offender flag.
- Total population of the county detention facility at year-end.[193]
- Per diem rate for a county detention facility bed.
- Daily number of correctional officers for the county detention facility.
- Annual county detention facility budget.[194]
- Revenue generated for the county from the temporary incarceration of federal defendants or inmates.

The DOC is required to collect the following data:

- Information related to each inmate, including:
  - Identifying information, including name, date of birth, race or ethnicity, and identification number assigned by the DOC.
  - Number of children.
  - Education level, including any vocational training.
  - Date the inmate was admitted to the custody of the DOC.
  - Current institution placement and the security level assigned to the institution.
  - Custody level assignment.
  - Qualification for a flag designation, including sexual offender flag, habitual offender flag, gang affiliation flag, or concurrent or consecutive sentence flag.
  - County that committed the prisoner to the custody of the DOC.
  - Whether the reason for admission to the DOC is for a new conviction or a violation of probation, community control, or parole. For an admission for a VOP, VOCC, or parole violation, the DOC must report whether the violation was technical or based on a new violation of law.
  - Specific statutory citation for which the inmate was committed to the DOC, including, for an inmate convicted of drug trafficking under s. 893.135, F.S., and the statutory citation for each specific drug trafficked.

[193] This data must include the same specified classifications required for daily population.
[194] This information only has to be reported once annually at the beginning of the county's fiscal year.

  - Length of sentence or concurrent or consecutive sentences served.
  - Tentative release date.
  - Gain time earned in accordance with s. 944.275, F.S.
  - Prior incarceration within the state.
  - Disciplinary violation and action.
  - Participation in rehabilitative or educational programs while in the custody of the DOC.
- Information about each state correctional institution or facility, including:
  - Budget for each state correctional institution or facility.
  - Daily prison population of all inmates incarcerated in a state correctional institution or facility.
  - Daily number of correctional officers for each state correctional institution or facility.
- Information related to persons supervised by the DOC on probation or community control, including:
  - Identifying information for each person supervised by the DOC on probation or community control, including his or her name, date of birth, race or ethnicity, sex, and DOC-assigned case number.
  - Length of probation or community control sentence imposed and amount of time that has been served on such sentence.
  - Projected termination date for probation or community control.
  - Revocation of probation or community control due to a VOP or VOCC that is technical in nature or the result of a new law violation.
- Per diem rates for prison beds, probation, and community control.[195]

*Publishing of Data*

The bill requires the FDLE, beginning January 1, 2019, to publish datasets in its possession in a modern, open, electronic format that is machine-readable and readily accessible by the public on the FDLE's website. The bill requires the FDLE, beginning March 1, 2019, to publish the data received pursuant to the bill in the same modern, open, electronic format that is machine-readable and readily accessible to the public on the FDLE's website. The data must be published by the FDLE no later than July 1, 2019.

Data Transparency

The bill creates s. 943.687, F.S., requiring the FDLE to:
- Collect, compile, maintain, and manage the data submitted by local and state entities pursuant to the bill, and coordinate related activities to collect and submit data;
- Create a unique identifier for each criminal case received from the clerks, which identifies the person who is the subject of the criminal case. The unique identifier must be:
  - The same for that person in any court case and used across local and state entities for all information related to that person at any time; and
  - Randomly created without portions of the person's social security number or birth date.
- Promote criminal justice data sharing by making data received under the bill comparable, transferable, and readily usable;

[195] This information only needs to be reported once annually at the time the most recent per diem rate is published.

- Create and maintain an online database of criminal justice data received under the bill in a modern, open, electronic format that is machine-readable and readily accessible through an application program interface;[196]
- Develop written agreements with local, state, and federal agencies to facilitate criminal justice data sharing;
- Establish by rule:
  - Requirements for the entities subject to the data submission requirements under the bill to submit data through an application program interface;
  - A data catalog defining data objects, describing data fields, and detailing the meaning of and options for each data element reported pursuant to the bill;
  - How data collected pursuant to the bill is compiled, processed, structured, used, or shared;[197]
  - Requirements for implementing and monitoring the online database established by the bill; and
  - How information contained in the online database established by the bill is accessed by the public.
- Consult with local, state, and federal criminal justice agencies and other public and private users of the online database on the data elements collected under the bill, the use of such data, and adding data elements to be collected;
- Monitor data collection procedures and test data quality to facilitate the dissemination of accurate, valid, reliable, and complete criminal justice data; and
- Develop methods for archiving data, retrieving archived data, and data editing and verification.

The bill also creates s. 945.041, F.S., requiring the DOC to publish on its website and make available to the public specified information, updated on a quarterly basis:
- Inmate admissions by offense type, specifically reporting separately burglary of a dwelling[198] offenses from all other property crimes; and
- The recidivism rate.[199]

Criminal Punishment Code Scoresheet

The bill amends s. 921.0024, F.S., requiring the Criminal Punishment Code scoresheet to be digitized. The bill also requires such digitized scoresheets to have individual, structured data cells for each data field on the scoresheet.

Pilot Program

The bill creates a pilot program in the Sixth Judicial Circuit for the purpose of ensuring that data submitted under s. 900.05, F.S., is accurate, valid, reliable, and structured. The bill authorizes the entities specified in the data collection and transparency provisions to enter into a memorandum

[196] The database must permit the public to search, at a minimum, by each data element, county, judicial circuit, or unique identifier and the FDLE may not require a license or charge a fee to access or receive information from the database.
[197] The rule must provide for the tagging of all information associated with each case number and unique identifier.
[198] The bill defines "burglary of a dwelling" as offenses enumerated in s. 810.02(2), (3)(a), and (3)(b), F.S.
[199] The bill defines "recidivism" as rearrest, reconviction, reincarceration, and probation revocation in the state within a 3-year time period following release from incarceration

of understanding (MOU) with a national, nonpartisan, not-for-profit entity, which provides data and measurement for county-level criminal justice systems.

The MOU must establish the duties and responsibilities of a data fellow, which must be completely funded by the entity. The data fellow must assist with data extraction, validation, and quality, and publish such data consistent with the terms of the MOU. The data fellow must assist the office or agency in compiling and reporting data pursuant to the data collection and transparency provisions and in compliance with rules promulgated by the FDLE. The pilot project expires in accordance with the terms of the MOU.

Appropriation

For purposes of implementing ss. 900.05(3) and 943.687, F.S., transitioning to incident-based crime reporting, and collecting and submitting crime statistics that meet the requirements of the Federal Bureau of Investigation under the National Incident-Based Reporting System, the bill provides a specific appropriation to the FDLE for FY 2018-19, including nine FTEs with associated salary rate of 476,163, and the recurring sum of $665,884 and the nonrecurring sum of $1,084,116 from the General Revenue Fund.

**Driver License Reinstatement Days Program (Section 6)**

Florida requires any person operating a motor vehicle on the state's roadways to hold a driver license[200] or be exempt from licensure.[201] Exemptions to the licensure requirement include nonresidents who possess a valid driver license issued by their home states, federal government employees operating a government vehicle for official business, and people operating a road machine, tractor, or golf cart.[202] Both licensed drivers and exempted individuals have a driving privilege in Florida.[203]

The Department of Highway Safety and Motor Vehicles (DHSMV) can revoke or suspend a driver license or driving privilege for several driving-related and non-driving-related reasons. Revocation means the driving privilege is terminated, while suspension means the driving privilege is temporary withdrawn.[204] Both revocations and suspensions can be indefinite or for a defined period of time, but only revocations in certain circumstances can be permanent. The base fee for driver license reinstatement after revocation is $75, and the fee for reinstatement after suspension is $45.[205]

[200] Section 322.03(17), F.S., defines a "driver license" to mean a certificate that, subject to all other requirements of law, authorizes an individual to drive a motor vehicle.
[201] Section 322.03(1), F.S.
[202] Section 322.04, F.S.
[203] *State v. Miller*, 227 So.3d 562, 564 (Fla. 2017) ("the Legislature's use of 'driving privilege' refers to all individuals who may lawfully operate vehicles on Florida's roads, even if they do not possess a Florida driver license").
[204] Section 322.01(36) and (40), F.S., respectively.
[205] DHSMV, *Fees*, available at https://www.flhsmv.gov/fees/ (last visited February 22, 2018).

Failure to Meet Court-Imposed Obligations

The clerks can notify the DHSMV to suspend a license for several reasons, including failure to comply with civil penalties, failure to appear, and failure to pay criminal financial obligations.[206] These suspensions last until the individual is compliant with the court's requirements for reinstatement or, in the case of criminal financial obligations, the court grants relief from the suspension.[207]

Payment Plans, Community Service Options, and Collections

The clerk is required to accept partial payment of court-related fees, service charges, costs, or fines in accordance with the terms of an established payment plan. The court may review the reasonableness of the payment plan. A monthly payment amount is presumed to correspond to the person's ability to pay if the amount does not exceed two percent of the person's annual net income, divided by twelve.[208]

The court may convert a statutory financial obligation in a criminal case or a noncriminal traffic infraction into a requirement to perform community service. The clerk must pursue the collection of any unpaid financial obligations that remain unpaid after 90 days by referring the account to a private attorney or collection agent. The clerk must have attempted to collect the unpaid obligation through a collection court, collections docket, or any other collections process prior to referring the account to a private attorney or collections agent, find the referral to be cost-effective, and follow any applicable procurement processes. A collection fee of up to forty percent of the amount owed at the time the account is referred to the attorney or agent for collection may be added to the outstanding balance.[209]

Reinstatement Clinics

Several counties have held events to assist individuals whose licenses are suspended for financial reasons related to civil penalties or criminal financial obligations. In April 2015, 60 out of 67 counties participated in Operation Green Light: a short-term event in which the clerk waived the forty percent collections surcharge in exchange for full payment of the financial obligation behind a person's driver license suspension.[210] Upon satisfaction of the obligation, the participants' licenses were reinstated. The total statewide cost for the event was less than $133,000, and the clerks collected almost $5.5 million in fees and reinstated almost 1,900 licenses.[211] Several counties have since conducted similar events.[212]

[206] Sections 318.15 and 322.245, F.S.
[207] *Id*.
[208] Section 28.246(4), F.S.
[209] Section 28.264(6), F.S.
[210] Harrison Barrus, *"Operation Green Light" gives ticket payers a break*, NEWS 4 JAX, available at https://www.news4jax.com/news/local/operation-green-light-gives-ticket-payers-a-break (last visited February 22, 2018).
[211] Florida Clerks of Court Operations Corporation, *Statewide Collection Initiative Update*, p. 11-17, available at http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/Statewide_Collection_Initiat.pdf (last visited February 22, 2018).
[212] Wayne K. Roustan, *Operation Green Light to offer amnesty on unpaid fines, fees in Broward*, SUN SENTINEL (April 21, 2017), available at http://www.sun-sentinel.com/news/transportation/fl-sb-broward-ticket-amnesty-20170421-story.html; Karl Etters, *Clinic hopes to restore driver's licenses*, Tallahassee Democrat (May 30, 2017), available at http://www.tallahassee.com/story/news/2017/05/30/clinic-hopes-restore-drivers-licenses/102055664/; 11th Judicial Circuit,

***Effect of the Bill***

The bill creates s. 322.75, F.S., requiring each judicial circuit to establish a Driver License Reinstatement Days program that must include participation from the DHSMV, the SAs office, the PDs office, the circuit and county courts, the clerks, and any interested community organization. The clerk, in consultation with above-listed participants, must select one or more days for an event where an event attendee may have his or her driver license reinstated. A person must pay the full license reinstatement fee, but the clerk is authorized to reduce or waive other fees and costs to facilitate reinstatement.

The bill provides that a person is eligible for reinstatement under the program if his or her license was suspended due to:

- Driving without a valid driver license;
- Driving with a suspended driver license;
- Failing to make a payment on penalties in collection;
- Failing to appear in court for a traffic violation; or
- Failing to comply with provisions of chs. 318 or 322, F.S.

A person is eligible for reinstatement under the program if the period of suspension or revocation has elapsed, the person has completed any course or program required of him or her,[213] and the person is otherwise eligible for reinstatement.

However, a person is ineligible for reinstatement under the program if his or her driver license is suspended or revoked:

- Because the person failed to fulfill a court-ordered child support obligation;
- For a violation of s. 316.193, F.S., or a traffic related felony;
- Because the person has not completed a required course or program; or
- Because the person is a habitual traffic offender under s. 322.264, F.S.

Lastly, the bill requires the clerk and the DHSMV to verify any information necessary for reinstatement of a driver license under the program at the event.

**Community Court Programs (Section 35)**

Problem-solving courts are specialized, non-traditional courts addressing the underlying causes of crime to reduce recidivism and promote rehabilitation. Problem-solving courts build relationships in the community, address each defendant individually, and typically include:

- A problem-solving team including judges, case managers, prosecutors, defense attorneys, treatment professionals, law enforcement officers, corrections personnel, and other community stakeholders.

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Driver License Reinstatement Event Flyer, available at https://www.jud11.flcourts.org/DesktopModules/EasyDNNNews/DocumentDownload.ashx?portalid=0&moduleid=599&articleid=2744&documentid=11 (all articles last visited February 22, 2018).

[213] The bill provides that these courses may include a driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program as required under ss. 316.192, 316.193, 322.2616, 322.271, or 322.264, F.S.

- A non-adversarial approach.
- Individualized treatment services.
- Judicial leadership and interaction.
- Responses to defendant compliance.[214]

Today, Florida has over 170 problem-solving courts, including, but not limited to adult and juvenile drug courts, veterans' courts, mental health courts, DUI courts, and permanency courts.

***Effect of the Bill***

The bill creates s. 948.081, F.S., authorizing each judicial circuit to establish a community court program for defendants charged with certain misdemeanor offenses, which at a minimum:

- Adopts a nonadversarial approach.
- Establishes an advisory committee to recommend solutions and sanctions in each case.
- Considers the needs of the victim.
- Considers individualized treatment services for the defendant.
- Provides for judicial leadership and interaction.
- Monitors the defendant's compliance.

The chief judge in each county that elects to establish a community court program must issue an administrative order specifying the misdemeanors that are eligible for the program. In making such determination, the chief judge must consider the particular needs and concerns of the communities within the judicial circuit. The DOC, Department of Juvenile Justice (DJJ), Department of Health, FDLE, DOE, law enforcement agencies, and other government entities involved in the criminal justice system are required to support any community court programs established.

Participation in the community court program must be voluntary and each program shall have a resource coordinator who:

- Coordinates the responsibilities of the participating agencies and service providers;
- Provides case management services;
- Monitors compliance by defendants with court requirements; and
- Manages the collection of data for program evaluation and accountability.

Additionally, the chief judge of the judicial circuit must appoint an advisory committee for each community court. Membership must include, at a minimum the chief judge or a community court judge designated by the chief judge, who shall serve as chair, the SA, the PD, and the community court resource coordinator.[215]

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[214] The Florida Courts, *Problem-Solving Courts*, available at http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/index.stml (last visited February 22, 2018). Florida created the first drug court in the United States in Miami-Dade County in 1989.

[215] The committee may also include community stakeholders, treatment representatives, and other persons the chair deems appropriate.

The advisory committee's duties, in part, are to review each defendant's case and each committee member is permitted to make a recommendation to the judge, including appropriate sanctions and treatment solutions for the defendant. The judge must consider recommendations made by the advisory committee in determining sanctions and treatment with respect to each defendant.

The bill requires each judicial circuit that establishes a community court program to report client-level and programmatic data to the OSCA annually for program evaluation.[216]

Community court program funding must be secured from sources other than the state for costs not assumed by the state under s. 29.004, F.S. However, a program is not precluded from using funds provided for treatment and other services through state executive branch agencies.

**Oversight Council (Sections 1 and 2)**

***The Florida Corrections Commission***

The Florida Corrections Commission (Commission) was established by the Legislature in 1994[217] and abolished in 2006.[218] The Commission was housed within the DOC, but acted as an independent body[219] that reviewed the DOC and looked at policies of the entire criminal justice system affecting corrections.[220] The Commission consisted of nine members appointed by the Governor and subject to confirmation by the Senate.[221] The membership of the Commission was required to represent equally all geographic areas of the state, and each member had to be a citizen and registered to vote. The term for each Commission member was four-years.[222]

The primary functions of the Commission included, but were not limited to:
- Recommending major correctional policies and assuring proper execution of approved policies and revisions;
- Periodically reviewing the status of the state correctional system and recommending improvements to the Legislature and the Governor;
- Monitoring the overall financial status of the DOC, including management of revenue and bond proceeds;
- Reviewing annual budget requests, the comprehensive correctional master plan, and the tentative construction program for compliance with laws and policies of the DOC; and
- Regularly evaluating the efficiency, productivity, and management of the DOC.[223]

[216] The bill provides that client-level data includes primary offenses resulting in the community court referral or sentence, treatment compliance, completion status, reasons for failing to complete the program, offenses committed during treatment and sanctions imposed, frequency of court appearances, and units of service; and programmatic data includes referral and screening procedures, eligibility criteria, type and duration of treatment offered, and residential treatment resources.
[217] Chapter 94-117, L.O.F.
[218] Chapter 06-32, L.O.F.
[219] Section 20.315(6)(a)3., F.S. (2005).
[220] Section 20.315(6)(a)1., F.S. (2005).
[221] Section 20.315(6)(a)2., F.S. (2005).
[222] *Id*.
[223] Section 20.315(6)(b), F.S. (2005).

The Commission was specifically prohibited from interfering with the day-to-day operations of the DOC.[224]

The Commission held regular meetings, which were required to be noticed in accordance with Florida's public meetings laws.[225] The Commission was also required to appoint an executive staff that served under the direction of the Commission.[226]

***Office of the Inspector General***

In 1994, the Florida Legislature created the Office of the Chief Inspector General and an Office of Inspector General in each state agency.[227] Every state agency has an inspector general who achieves their mission through conducting professional and independent investigations, audits, and reviews with the goal of enhancing the public trust in government.[228]

The Office of the Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the Executive Office of the Governor (EOG) and in agencies under the jurisdiction of the Governor.[229] The Chief Inspector General serves as the Inspector General for the EOG and reports directly to the Governor.[230] The duties of the Office of the Chief Inspector General include, in part, conducting audits, investigations, and other activities.[231]

***Councils***

Section 20.03(7), F.S., defines a "council" as an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

Florida has established a number of councils that address a wide variety of public policy topics, such as the Suicide Prevention Coordinating Council, Statewide Council on Human Trafficking, Regional Planning Councils, and Council on Arts and Culture.[232] Statutes that create councils at a minimum typically include provisions designating the specified number of members, procedures for appointing such members, and the purpose for and duties of the council.[233]

***Effect of the Bill***

The bill establishes the Florida Correctional Operations Oversight Council (Oversight Council) within the Office of the Chief Inspector General. The Office of the Chief Inspector General must provide administrative support to the Oversight Council; however, the Oversight Council is not

[224] Section 20.315(6)(c), F.S. (2005).
[225] Article I, s. 24(b) of the Florida Constitution and s. 286.011, F.S., require all state, county, or municipal meetings to be open and noticed to the public.
[226] Section 20.315(6)(e), F.S. (2005).
[227] Chapter 94-235, L.O.F.
[228] Florida Inspectors General, available at http://www.floridaoig.com/default.htm (last visited February 24, 2018).
[229] Executive Office of the Governor (Chief Inspector General), *2016-2017 Annual Report*, available at http://www.floridaoig.com/library/Annual_rpts/2016-17-CIG-Annual-Report.pdf (last visited February 24, 2018).
[230] Sections 14.32(4), F.S.
[231] Section 14.32(2), F.S.
[232] *See* ss. 14.20195, 16.617, 265.285, F.S.
[233] *See Id*. for examples of common purposes, duties, and membership structure of councils.

under the control, supervision, or direction of the Office of the Chief Inspector General in the performance of its duties. Further, the Oversight Council is prohibited from interfering with the day-to-day operations of the DOC or the DJJ.

The Oversight Council will operate as a council as such term is defined in s. 20.03, F.S., with the specific purpose of overseeing matters relating to the corrections and juvenile justice continuum with an emphasis on the safe and effective operations of major institutions and facilities under the purview of the DOC and the DJJ. The bill also requires the council to make recommendations and findings on the policies of other components of the criminal justice system if such policies affect corrections or the juvenile justice continuum.

The Oversight Council is comprised of nine members of whom the Governor, President of the Senate, and the Speaker of the House of Representatives are each authorized to appoint three members. All members must be initially appointed by October 1, 2018. The term length will be four-years; however, one appointee of each appointing entity must be appointed to an initial two-year term to achieve staggered terms. Members will serve without compensation, but may receive reimbursement for per diem and travel expenses as provided in s. 112.061, F.S.[234]

The bill requires that members are Florida residents and emphasizes, but does not require, that members have a background in prison operations, jail management, or the juvenile justice continuum of services. Appointments must be made in a manner that provides equitable representation to all geographic regions of the state. Members must provide representation to the state in its entirety and not conduct themselves in a manner that benefits a particular region.

A person is prohibited from being appointed as a member of the Oversight Council if he or she has an immediate family member that is employed by the DOC, the DJJ, a private institution, facility, or provider under contract with the DOC or the DJJ; or a direct or indirect interest in a contract, subcontract, franchise, privilege, or other benefit that can be awarded by either the DOC or the DJJ during the term of service.

The Oversight Council's primary duties include:

- Evaluating, investigating, and overseeing the daily operations of correctional and juvenile facilities and conducting announced and unannounced inspections of correctional and juvenile facilities,[235] including entering any facility housing prisoners, residents, or juveniles. Members must be provided immediate access to places requested and given the ability to communicate with any prisoner, resident, or juvenile privately with adequate security in place.
- Identifying and monitoring high-risk and problematic correctional or juvenile facilities and reporting findings and recommendations relating to these facilities.
- Providing technical assistance when appropriate.

[234] Section 112.061, F.S., establishes standardized travel reimbursement rates, procedures, and limitations, with specified exceptions, that apply to all public officers, employees, and authorized persons whose travel is authorized and paid for by a public agency. Per diem and travel expenses cover costs such as lodging, meals, vehicle rental, gas, plane fare, tolls, or parking fees. Rates are dependent upon factors such as whether the business travel requires an overnight stay or day trip and the length of time away from official headquarters.

[235] This provision applies to facilities operated by the state or a private contractor.

- Submitting an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, that includes statutory, budgetary, and operational recommendations to the Legislature that address problems identified by the council.[236]
- Conducting confidential interviews with staff, officers, inmates, juveniles, volunteers, and public officials relating to the operations and conditions of correctional and juvenile facilities.
- Developing and implementing a monitoring tool that will be used to assess the performance of each correctional and juvenile facility.
- Conducting regular on-site visits to correctional and juvenile facilities.

Additionally, the Oversight Council must appoint an executive director to serve under the direction of the members. The bill provides that the executive director position will be governed by the classification plan and salary and benefits plan approved by the EOG.

The bill provides a specific appropriation of $168,074 recurring General Revenue funds and $37,855 nonrecurring General Revenue funds, and creates one FTE for the purpose of administering the Oversight Council at an authorized salary rate of $70,000.

**Mutual Aid Agreements (Section 3)**

The Florida Mutual Aid Act was established to ensure adequate coordination and preparations amongst law enforcement and other specified entities in the event of natural or manmade disasters or emergencies and other major law enforcement problems.[237] Section 23.1225, F.S., provides that mutual aid agreements are agreements between two or more law enforcement agencies to permit voluntary cooperation in routine matters or to render assistance in the event of a law enforcement emergency. A mutual aid agreement must generally be in writing and specify:

- The nature of the assistance to be rendered;
- The agency or entity that will bear liability in certain situations;
- Procedures for requesting and authorizing assistance;
- The agency or entity in charge of supervision;
- The time limit for the agreement;
- The terms of compensation; and
- Any other terms necessary to give effect to the agreement.[238]

***Effect of the Bill***

The bill amends s. 23.1225, F.S., specifying that in the event the Governor declares a state of emergency pursuant to ch. 252, F.S., a mutual aid agreement may be used to increase the presence of law enforcement to aid in traffic and crowd control, emergency response, and evacuation support.

[236] If the bill becomes law, the first report is due by November 1, 2019.
[237] Section 23.121, F.S.
[238] Section 23.1225(1), F.S. If the Governor declares a state of emergency pursuant to ch. 252, F.S., the requirement that an agreement to render emergency assistance be in writing may be waived by the participating agencies for up to 90 days after the Governor's declaration.

**Courthouse Security Provided by Sheriffs (Section 4)**

***Sheriffs***

The Florida Constitution establishes five specific county officers, including the county sheriff. Each sheriff is elected by county voters for a four-year term. Abolishing the office of sheriff or revising the manner in which the sheriff is chosen may be provided by county charter or special law approved by a vote of the electors of the county under certain circumstances.[239]

Section 30.15, F.S., provides for the powers and duties of sheriffs. Some of the duties a sheriff, or his or her deputies, must perform within their respective counties include:

- Execute all process of the courts and board of county commissioners;
- Execute other writs, processes, warrants, and papers;
- Act as conservators of the peace and apprehend any person disturbing the peace; and
- Attend sessions of the circuit court and county court.

If a sheriff fails to attend a session of the court, either in person or by deputy, the judge may appoint an interim sheriff to assume the sheriff's responsibilities and duties.[240] The sheriff is the executive officer of the county court and circuit court of the county.[241]

***Judicial Administration***

The Florida Constitution provides that the chief judge of each judicial circuit is responsible for the administrative supervision of the circuit courts and county courts in the circuit.[242] Some duties over which the chief judge has authority include:

- Regulate the use of courtrooms;
- Supervise dockets and calendars;
- Delegate to the trial court administrator the authority to bind the circuit in contract;
- Promote the prompt and efficient administration of justice; and
- Manage, operate, and oversee the jury system.[243]

Failure of any judge, clerk, SA, PD, or other officer of the court to comply with an order or directive of the chief judge under s. 43.26, F.S., constitutes neglect of duty.[244] Additionally, the Rules of Judicial Administration provides that the chief judge regulates the use of court facilities and directs the formation and implementation of policies and priorities for the operation of all courts and officers within the circuit.[245]

[239] FLA. CONST. art. III, s. 1.
[240] Section 30.12, F.S.
[241] Sections 26.49 and 34.07, F.S.
[242] FLA. CONST. art. V, s. 2(d).
[243] Section 43.26, F.S.; *See also* s. 40.001, F.S.
[244] Section 43.26(4), F.S.
[245] Fla. R. Jud. Admin. 2.215(b).

***Effect of the Bill***

The bill amends s. 30.15, F.S., requiring the sheriff and the governing board of the county to provide security for trial court facilities located within each county of a judicial circuit. The sheriff and the county must coordinate with the chief judge of the applicable judicial circuit on security matters for such facilities, but the sheriff and county retain operational control over the manner in which security is provided, as applicable, in such facilities. The bill provides that these provisions do not affect or erode the authority of counties under Article V, s. 14 of the Florida Constitution or s. 29.008, F.S., to provide and fund the security of facilities as defined s. 29.008(1)(e), F.S.[246] Additionally, the bill provides that sheriffs and their deputies, employees, and contractors are officers of the court when providing security for trial court facilities.

The chief judge of the judicial circuit retains decision-making authority to ensure the protection of due process rights, including, but not limited to, the scheduling and conduct of trials and other judicial proceedings, as part of his or her responsibility for the administrative supervision of the trial courts pursuant to s. 43.26, F.S.

**Attorney's Fees in Specific Injunction Cases (Sections 5, 7 and 8)**

***Protective Injunctions***

Protective injunctions are available under Florida law for victims of domestic violence, repeat violence, sexual violence, dating violence, and stalking.[247]

A protective injunction may prohibit a person from:
- Going to or being within 500 feet of the petitioner's residence, school, place of employment, or other specified place;
- Committing an act of violence against the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner; and
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle.[248]

Violation of a protective injunction is a first-degree misdemeanor, punishable by up to one year in jail and a $1,000 fine.[249]

***Procedure for Obtaining an Injunction***

The process for obtaining an injunction in any of the above-mentioned circumstances is very similar and requires that the victim file a sworn petition for injunction that alleges:
- He or she is a victim of domestic violence; repeat, sexual, or dating violence; or stalking; or
- In the case of a petition for a domestic violence injunction, he or she has reasonable cause to believe he or she is in imminent danger of such violence.[250]

[246] These provisions address judicial funding.
[247] Sections 741.30, 784.046, and 784.0485, F.S.
[248] Sections 741.31, 784.047, and 784.0487, F.S.
[249] *Id*.
[250] Sections 741.30, 784.046, and 784.0485, F.S.

As soon as possible following the filing of the petition, a court must set a hearing to determine whether an immediate and present danger of the violence alleged exists. Upon finding an immediate and present danger, the court may grant an ex parte temporary injunction for 15 days. A court must then set a hearing with notice to the respondent, and upon such hearing with notice, may grant protective injunctive relief as it deems proper.[251]

***Attorney's Fees***

A court must award a reasonable attorney's fee to be paid by the losing party and the losing party's attorney on any claim or defense during a civil proceeding or action if the court finds that the losing party or losing party's attorney knew or should have known that a claim:

- Was not supported by the material facts necessary to establish the claim or defense; or
- Would not be supported by the application of then-existing law to those material facts.[252]

Florida law prohibits attorney fee awards stemming from domestic violence injunction proceedings; however, there is no such explicit prohibition for repeat violence, sexual violence, dating violence, or stalking injunction proceedings. In *Lopez v. Hall*, the Florida Supreme Court held that an award of attorney's fees was permissible in dating, repeat, and sexual violence injunction proceedings, as they were not explicitly prohibited by statute.[253]

***Effect of the Bill***

The bill amends ss. 57.105, 784.046, and 784.0485, F.S., prohibiting the award of attorney's fees in injunction proceedings for repeat violence, sexual violence, sexual violence, and stalking.

**Reporting Provisions (Sections 17, 19, and 38)**

***Reports Concerning Seized or Forfeited Property***

The Florida Contraband Forfeiture Act (act)[254] provides for the seizure and civil forfeiture of property related to criminal and non-criminal violations of law.[255] Contraband and other property may be seized when utilized during a violation of, or for the purpose of violating, the act. Property constituting a "contraband article" includes, but is not limited to, a controlled substance as defined in ch. 893, F.S., any gambling paraphernalia being used or attempted to be used in violation of the state's gambling laws, and any motor fuel upon which the motor fuel tax has not been paid as required by law.[256]

Currently, any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and forfeited subject to the act.[257]

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[251] *Id*.
[252] Section 57.105, F.S.
[253] No. SC16-1921 (Slip. Op.) (January 11, 2018).
[254] *See* ss. 932.701-932.7062, F.S.,
[255] Section 932.701(1), F.S.
[256] *See* s. 932.701(2)(a)1.-12., F.S.
[257] Section 932.703(1)(a), F.S.

If the court finds that the seizure occurred lawfully[258] and that probable cause exists for the seizure, the forfeiture may proceed as set forth in the act.[259]

When a seizing agency obtains a final judgment granting forfeiture of real or personal property, it may elect to:

- Retain the property for the agency's use;
- Sell the property at public auction or by sealed bid to the highest bidder;[260] or
- Salvage, trade, or transfer the property to any public or nonprofit organization.[261]

Section 932.7061, F.S., requires every law enforcement agency to submit an annual report by October 10 indicating whether the agency has seized or forfeited property under the act.[262] In the event that a law enforcement agency received or expended forfeited property or proceeds from the sale of forfeited property in accordance with the act, the annual report must document such receipts and expenditures.

An agency that is in noncompliance with the reporting requirements in s. 932.7061, F.S., must be notified by the FDLE. Such agency has 60 days within receipt of the notification of noncompliance to comply with the reporting requirements. An agency that fails to comply within 60 days is subject to a civil fine of $5,000. The fine is determined by the Chief Financial Officer (CFO) and payable to the General Revenue Fund.[263] The FDLE must submit any substantial noncompliance to the CFO, which will then be responsible for the enforcement of the fine.[264]

The fiscal year for sheriff departments runs from October 1-September 30, making it difficult to gather all required information and submit it by October 10 to comply with the statutory mandate.

***Effect of the Bill***

The bill changes the deadline for the submission of such report to December 1. The bill also reenacts s. 932.7062, F.S., incorporating changes made by the act.

***Pretrial Release Annual Report***

Current law requires each pretrial release program[265] to submit an annual report no later than March 31 for the previous calendar year that contains information about each program, including, but not limited to, the amount of fees paid by defendants to the pretrial release program and the number of persons employed by the program.[266]

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[258] Section 932.703(1)(a), F.S., sets forth the circumstances that permit for a lawful seizure of property.
[259] Section 932.703(2)(c), F.S.
[260] Real property should be listed on the market and sold in a commercially reasonable manner after appraisal. Section 932.7055(1)(b), F.S.
[261] Section 932.7055(1)(a)-(c), F.S.
[262] Section 932.7061(1), F.S.
[263] Section 932.7062, F.S.
[264] *Id.*
[265] "Pretrial release program" means an entity, public or private, that conducts investigations of pretrial detainees, makes pretrial release recommendations to a court, and electronically monitors and supervises pretrial defendants. Section 907.043(2)(b), F.S.
[266] Section 907.043(4), F.S.

***Effect of the Bill***

The bill requires the following additional information to be contained in the annual report:

- The number of defendants accepted into a pretrial release program who paid a surety or cash bail or bond;
- The number of defendants for whom a risk assessment tool was used in determining whether the defendant should be released pending the disposition of the case and the number of defendants for whom a risk assessment tool was not used;
- The type of each criminal charge of a defendant accepted into a pretrial release program including, at a minimum, the number of defendants charged with dangerous crimes as defined in s. 907.041, F.S., nonviolent felonies, and misdemeanors only.
- The number of defendants accepted into a pretrial release program with no prior criminal conviction.

The bill defines "nonviolent felony" to exclude the commission of, an attempt to commit, or a conspiracy to commit any of the following:

- An offense enumerated in s. 775.084(1)(c), F.S.;
- An offense that requires a person to register as a sexual predator in accordance with s. 775.21, F.S., or as a sexual offender in accordance with s. 943.0435, F.S.;
- Failure to register as a sexual predator in violation of s. 775.21, F.S., or as a sexual offender in violation of s. 943.0435, F.S.;
- Facilitating or furthering terrorism in violation of s. 775.31, F.S.;
- A forcible felony as described in s. 776.08, F.S.;
- False imprisonment in violation of s. 787.02, F.S.;
- Burglary of a dwelling or residence in violation of s 810.02(3), F.S.;
- Abuse, aggravated abuse, and neglect of an elderly person or disabled adult in violation of s. 825.102, F.S.;
- Abuse, aggravated abuse, and neglect of a child in violation of s. 827.03, F.S.;
- Poisoning of food or water in violation of s. 859.01, F.S.;
- Abuse of a dead human body in violation of s. 872.06, F.S.;
- A capital offense in violation of ch. 893, F.S.;
- An offense that results in serious bodily injury or death to another human; or
- A felony offense in which the defendant used a weapon or firearm in the commission of the offense.

The bill is effective October 1, 2018.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

The county or municipality mandates provision of article VII, section 18 of the Florida Constitution may apply because of several provisions in the bill, including the requirement that all county-operated detention facilities collect and transmit data elements to the FDLE, each county develop an ASP, and each county establish a Driver License Reinstatement Days, require counties to expend funds.

Article VII, s. 18(a) of the Florida Constitution provides, in pertinent part, that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature."

The bill does not contain a legislative finding that the act fulfills an important state interest.

These requirements do not apply[267] to laws that have an insignificant fiscal impact, [268] which for fiscal year 2017-2018 is $2.05 million or less.[269]

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:

**Certificate of Achievement and Employability**

The bill may result in a greater number of state inmates being able to find employment upon release from incarceration which could have an indeterminate positive impact on the private sector.

**Attorney's Fees**

The bill prohibits the court from awarding attorney fees in proceedings for protective injunctions for repeat, sexual, or dating violence or stalking. This change may have an indeterminate, but likely insignificant, impact on attorneys.

[267] FLA. CONST. art. VII, s. 18(d).
[268] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at: http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf.
[269] Based on the Demographic Estimating Conference's population adopted on Dec. 5, 2017. The conference packet is available at http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf.

**Pretrial Release Programs**

To the extent that pretrial release programs use vendors to monitor released defendants, there may be a fiscal impact to collect additional data that is not currently collected by these vendors.

C. Government Sector Impact:

**Supervised Bond Program**

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

**Drug Trafficking Sentencing Departure**

The Criminal Justice Impact Conference (CJIC) estimates that the provisions of the bill relating to departure from drug trafficking mandatory minimum sentences will have a "negative significant" prison bed impact (i.e., a decrease of more than 25 prison beds).[270]

**Theft**

The CJIC estimates that the provisions of the bill relating to theft offenses will have a "negative significant" prison bed impact (i.e., a decrease of more than 25 prison beds).[271]

**Risk Assessment Pilot Program**

The bill creates a Risk Assessment Pilot Program that utilizes a RAI to ensure better programming for defendants after arrest. To the extent that this program reduces recidivism, the bill may reduce the need for jail beds and prison beds.

The DOC estimates it will cost $321,584 and 4 FTE to implement the requirements of this bill. Staff will be needed at each of the county pilot sites for implementation, training, monitoring the data and assessment environments to identify and resolve issues onsite. Staff will also be required to be project managers and will be used to ensure communication, monitor overall logistics, conduct analysis and prepare and submit necessary reports.[272] In addition, the DOC also estimates it will cost $763,575 for technology-related costs associated with a modified version of the spectrum assessment system.[273]

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[270] 2018 Conference Results (through February 12, 2018), CJIC, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC18.xls (last visited on March 5, 2018).
[271] *Id*.
[272] DOC, *Agency Analysis for SB 1218*, p. 5, January 26, 2018 (on file with Senate Criminal Justice Committee).
[273] *Id*. at 7.

**Data Collection**

***Local Detention Facilities***

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 the FDLE on a weekly basis. According to the Florida Sheriffs Association, the fiscal impact will be significant as each jail operates an independent jail management system. Additionally, not all systems currently collect the data elements required by the bill and interfacing the jail management systems with the FDLE may be problematic and may require additional technology upgrades to resolve.[274] 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.

Counties that operate a pretrial release program may also have an indeterminate fiscal impact due to the additional data elements that must be collected and reported to the FDLE.

***Clerks of the Court***

The clerks report that the bill will have a significant fiscal impact on the clerks. The clerks in the Sixth Judicial Circuit (Pinellas and Pasco Counties) indicate they will need to modify their individual case management systems (CMS) for missing data elements. Additionally, CCIS will need to be modified to transmit information to the FDLE. The clerks estimate the cost to implement the bill for the Sixth Judicial Circuit is approximately $2 million for the first year of implementation and approximately $600,000 of recurring funds will be needed for subsequent years.[275] Other circuits will likely have similar fiscal impacts.

***Department of Corrections***

The bill will have a fiscal impact on the DOC. The requirements of reporting additional budget information will require one additional full time employee (Senior Management Analyst II) to implement at a cost of approximately $93,000 per year.

In order to create the digitized scoresheet and provide the additional data information requested there will be significant technology impact, which will include developing new applications to create the digitized scoresheet, and completing programming changes and development to the OBIS related to offender tracking and information screens. According to the DOC, these changes will cost approximate $340,000. However, it is anticipated that this could be updated at minimal cost given that there is already an electronic version of the scoresheet in existence.[276]

[274] Email from Florida Sheriffs Association Staff (February 23, 2018) (on file with Senate Criminal Justice Committee).
[275] The Clerks of the Court, *HB 7071 Criminal Justice Data Transparency Pilot Initiation Analysis – Sixth Judicial Circuit*, p. 1, provided by the Florida Clerks of Court Operations Corporation (Feb. 8, 2018).
[276] DOC, *Agency Analysis of 2018 House Bill 7071*, p. 8, February 8, 2018 (on file with Senate Criminal Justice Staff).

***Florida Department of Law Enforcement***

The bill will have a significant fiscal impact on the FDLE for receiving, publishing, maintaining, and storing the data. The bill requires upkeep and maintenance of the data. The 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.

The bill authorizes nine FTE positions with associated salary rate of 476,163 and appropriates the recurring sum of $665,884 and the nonrecurring sum of $1,084,116 from the General Revenue Fund to the FDLE to accomplish the goals of the bill and to begin the transition to incident-based reporting to the FBI. In addition to the FY 2018-19 appropriation, the FDLE reports it will need three FTE with a cost of $276,069 in year one for salary, benefits, expense, and human resources services and $264,804 in recurring years. Additionally, the FDLE recommends developing a new information system that will make data specified in the bill accessible to the public through the FDLE website. The FDLE estimates the cost to be $6.4 million over the next 24 months to cover the technology impact of the bill with a recurring cost to manage the database of approximately $319,000.[277]

The FDLE does not yet have a specific fiscal impact estimate, but expects the impact to be significant. If the bill passes, the FDLE anticipates holding a series of workshops with the clerks, SAs, PDs, sheriffs and county detention facility administrators, and the DOC. The FDLE anticipates submitting a legislative budget request to address the significant fiscal impact created by this bill.[278]

Additionally, the FDLE reports that there will likely be a loss in revenue that is normally collected under s. 943.053(3)(e), F.S., which authorizes the FDLE, for a fee of $24 per record to the public or reduced for certain state agencies, to provide criminal history information. The provisions of the bill creating s. 900.05, F.S., are in direct conflict with s. 943.053, F.S., due to the lack of fee charged for information that is similar in nature to that which is obtained through a criminal background check for a fee. This could negatively affect the amount of record checks requested and reduce revenue to the FDLE.[279]

***State Attorneys and Public Defenders***

The bill will have an indeterminate, but potentially significant, fiscal impact on the SAs and PDs. It is unknown how much of the information required by the bill is currently collected by these entities. The additional data and weekly transmission requirements may require more staff for the twenty SA and PD offices, as well as updated or new technology.

[277] *See* FDLE, *Agency Analysis of HB 7071 (Draft)*, p. 2-4, February 13, 2018 (on file with Senate Criminal Justice Committee) (hereinafter cited as "The FDLE HB 7071 Analysis").
[278] *Id*., p. 4.
[279] *Id*. at 6.

**Reinstatement Days Program**

The bill requires counties to establish a Reinstatement Days Program to assist persons in obtaining a reinstatement of a driver license. To the extent that this provision increases workload to the specified entities that are required to participate, the local governments may incur additional but indeterminate costs.

**Court Security**

Currently, a sheriff must provide security at any court facility, which includes office space relating to court administration. The bill limits this duty to securing "trial court facilities." Therefore, the bill may reduce the fiscal impact to local governments.

**Probation Provisions**

The CJIC considered HB 7089, which has these identical provisions, on February 19, 2018, and determined that creating statewide ASPs will have a negative significant impact on the prison population (i.e. decrease of more than 25 prison beds). The CJIC reports that in FY 2016-17, 5,443 technical violators were sentenced to prison.[280] The ASP would apply to certain technical violators and result in greater non-prison sanctions for these violators.

However, one of the ASP sanctions included in the bill is up to 5 days incarceration in a county detention facility for a low-risk violation and up to 21 days for a moderate-risk violation. This section will likely result in increased but indeterminate costs on local government.

The bill requires the DOC to submit additional information to the FCIC if the court modifies conditions of probation. This requirement will cost the DOC a nonrecurring amount of $6,800 to modify their existing data feed to the FDLE and a nonrecurring amount of $13,600 to modify the OBIS. [281] It is anticipated that these fiscal impacts can be absorbed within existing resources.

**Reentry Provisions**

***Transition Assistance***

The bill has a fiscal impact to the DOC for the provisions relating to transition assistance. The DOC indicates that Transition Assistant Specialists have not been funded since 2003. To implement the provisions in the bill, the DOC indicates a need for 13 Correctional Services Assistant Consultant positions at a total cost of $834,119 ($774,982 recurring; $59,137 nonrecurring). [282]

[280] Economic and Demographic Research (EDR), Criminal Justice Impact Conference, February 19, 2018, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/PCBJDC1803.pdf (last visited February 22, 2018).
[281] The DOC HB 7089 Analysis, p. 8.
[282] DOC, *Agency Analysis of HB 7089*, p. 3 (February 20, 2018) (on file with Senate Criminal Justice Committee) (hereinafter cited as "The DOC HB 7089 Analysis").

Currently, the DOC does not have the programming capability to provide for nonprofit faith-based, business and professional, civic or community organizations to apply to be registered to provide inmate reentry services. In order to accomplish this, a new system/web portal would need to be created or purchased. The DOC indicates that the cost to create a new system/web portal is indeterminate and may require a procurement to identify possible solutions.[283]

***Entrepreneurship Program***

The bill allows the DOC to develop an entrepreneurship program. If the DOC elects to do so, the bill requires the program to be implemented within existing resources. In its analysis, the DOC identifies the need to have one Correctional Services Consultant to coordinate program services at a total cost of $68,989 ($64,440 recurring; $4,549 nonrecurring) and a recurring cost of $200,000 to implement and provide services at one location.[284]

***Certificates of Achievement and Employability***

The bill requires the DOC to fund the CAE program within existing resources. The DOC indicates it will cost $207,825 to develop a system to transmit the necessary information to the various licensing agencies in the state including the DBPR and the ACHA.

**Conditional Medical Release**

The bill expands CMR by creating new CMR designations and modifying current designations, which will likely cause an increased number of inmates to be referred to the FCOR for CMR. Additionally, the bill requires the FCOR to release inmates that qualify for release under the Mandatory CMR process. However, it is unknown how many additional inmates will be eligible for release under the new provisions of the bill. To the extent that the bill increases the number of inmates released on CMR, the bill will likely result in a negative indeterminate prison bed impact (i.e., an unquantifiable decrease in prison beds).

**Oversight Council**

The bill provides a specific appropriation of $168,074 recurring General Revenue funds and $37,855 nonrecurring General Revenue funds, and creates one FTE for the purpose of administering the Oversight Council at an authorized salary rate of $70,000.

Additionally, to the extent that creating the Oversight Council improves the corrections and juvenile justice continuum systems, the bill may result in cost savings.

## VI. Technical Deficiencies:

None.

[283] *Id*. at 8.
[284] *Id*. at 4.

## VII. Related Issues:

Lines 477-517: The bill creates a Reinstatement Days Program and provides that the events may be held on one or more days. However, the bill language does not indicate if these events are to be recurring events or just one time. The bill may need clarification if the intent is to require counties to hold these events on an annual basis.

Lines 775-777: The definition of "prior incarceration with the state" includes reporting any prior history of a defendant being incarcerated in a county detention facility. This may need to be clarified to indicate whether this reporting requirement applies to only post-disposition sentencing to a county jail or also incarceration in a county jail while awaiting trial.

Lines 677-919: There is no data collection requirement that will capture cases that are assigned to regional conflict counsels or private attorneys that are appointed by the court to handle indigent clients.

Lines 1022-1033: The FDLE reports that it is unable to meet the July 1, 2019, date to publish all data received under the bill and recommends the effective date be moved to July 1, 2020.[285]

Lines 1610-1615: The definition of "eligible inmate" is not clear as to what makes a person eligible. Additionally, the title of this definition may be confusing as it applies to eligible persons who are out of custody on supervision and eligible persons who are incarcerated with the DOC, whereas the term inmate tends to be associated solely with persons who are incarcerated.

Lines 1697-1723: The bill attempts to create a process whereby specified eligible inmates can provide a CAE to a state agency and receive an individualized review for purposes of obtaining licensure or certification. However, the language related to the effect of a CAE for an unemployed certificate holder does not appear to have an impact. The bill provides that the CAE provides a rebuttable presumption, but does not impact the status of the mandatory civil impacts. Without reclassifying the mandatory civil impact to a discretionary civil impact, an agency will be bound by the requirement to deny licensure to a person that has a criminal conviction.

Lines 1724-1734: The DOC does not monitor inmates after release from prison, unless there is a specific judicial order of post-release supervision. The bill requires the DOC to revoke a certificate of achievement and employability, if the certificate holder is convicted or pleads guilty to a felony. Unless a court sentences the certificate holder to prison or state probation, the DOC may not know of a new felony conviction.

Lines 1953-1973: The language of the bill seems to not have a substantive impact. Courts are provided specific authority for sentencing which includes placing an offender on probation. However, probation and administrative probation are defined independently and it does not appear that anything would change for sentencing options without a specific reference. If the language is intended to permit courts to sentence an offender to administrative probation, the bill needs to provide a specific reference to administrative probation.

[285] *Id.*

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 14.32, 23.1225, 30.15, 57.105, 784.046, 784.0485, 893.135, 907.043, 921.0024, 932.7061, 944.704, 944.705, 944.801, 947.005, 947.149, 948.001, 948.013, 948.03, and 948.06.

This bill creates the following sections of the Florida Statutes: 322.75, 900.05, 907.042, 907.0421, 943.687, 944.805, 944.8055, 944.806, 944.8065, 945.041, and 948.081.

The bill reenacts the following sections of the Florida Statutes: 447.203, 944.206, 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141.

## IX. Additional Information:

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

**CS/CS by Appropriations on March 2, 2018:**
The committee substitute:

- Creates the "Florida Correctional Operations Oversight Council" to oversee the criminal and juvenile justice systems, including an appropriation with one FTE position in the Executive Office of the Governor to operate the oversight council;
- Clarifies that law enforcement mutual aid agreements may be used to increase law enforcement presence in the event of an emergency response or evacuation;
- Requires sheriffs to provide security to the trial court and coordinate with the chief judge on security matters;
- Requires each circuit to establish a Reinstatement Days Program involving specified entities and hold events through the program on one or more days where a person can pay specified fees and obtain license reinstatement;
- Prohibits issuance of an attorney's fee in protective injunctions for repeat, sexual, or dating violence or stalking;
- Increases the threshold amounts of various theft offenses;
- Expands the third-degree felony offense of grand theft of commercially farmed animals by including birds that are commercially farmed;
- Makes it a third-degree felony for a person to commit any utility theft by removing the application of theft threshold amounts to this offense;
- Limits the reclassification of specified theft offenses to adult convictions that have occurred a certain number of times within specified time frames;
- Authorizes a court to depart from the imposition of a mandatory minimum sentence in drug trafficking cases if certain circumstances are met;
- Establishes a centralized system of uniform data collection for the entire criminal justice system to ensure data transparency;
- Requires specified criminal justice entities to collect certain data on a monthly basis and report such data to the FDLE quarterly;
- Requires that, for data reported pursuant to data transparency provisions, the FDLE:

  - Establish a unique identifier for every person who is the subject of a criminal case, which will be used for all local and state entities' reported data related to that person in order to track that individual's entire experience in Florida's criminal justice system;
  - Create a publicly accessible and searchable database for the data reported;
- Modifies the sentencing scoresheet to a digital format and requiring information contained in the scoresheet to be reported to the FDLE and included in the publicly available database;
- Creates a pilot program in the 6th Judicial Circuit to ensure program data collected is valid and providing an appropriation, including nine FTEs, within the FDLE to support the implementation of data collection and transparency;
- Authorizes counties to establish a Bond Program, which allows eligible defendants to be released on active electronic monitoring, continuous alcohol monitoring, or both subsequent to the administration of a RAI by the county's sheriff and acceptance into the Bond program;
- Creates a Risk Assessment Pilot Program in Hillsborough, Pasco, and Pinellas Counties that requires the counties to administer a RAI to all persons arrested for a felony offense in the county for use in programming and sentencing;
- Requires transition assistance staff within the DOC to identify industry certifications or job assignment credentialing for which an inmate is eligible;
- Requires the DOC to provide inmates with a comprehensive community reentry resource directory that includes specified information related to services and portals available in the county to which the inmate is to be released;
- Permits specified entities to apply with the DOC to be registered to provide inmate reentry services and requiring the DOC to create a process for screening, approving, and registering such entities;
- Authorizes the DOC to contract with specified Veteran's Advocacy Clinics to assist qualified veterans with obtaining services in the community upon release;
- Authorizes the DOC to develop a Prison Entrepreneurship Program that includes education with specified curriculum;
- Creates a "certificate of achievement and employability" application process where the DOC may issue certificates to specified eligible inmates that require licensing agencies to individually consider licensing decisions of certificate holders;
- Prohibits a licensing agency from denying a professional license to a certificate holder solely on the basis of a criminal conviction;
- Creates two new designations for CMR ("inmate with a debilitating illness" and "medically frail inmate") and modifying the current designation of "terminally ill inmate";
- Creates a new "Mandatory Conditional Medical Release" process that requires, rather than permits, the FCOR to release an inmate that meets one of four designations if specified factors are met;
- Requires each circuit to create an alternative sanctions program to handle specified types and occurrences of technical violations of probation or community control outside of a hearing with the judge's concurrence;
- Authorizes a circuit to create a community court program for certain defendants charged with misdemeanors;

- Adds specified data to the information that must be reported in the OPPAGA's annual pretrial programs report (s. 907.043, F.S.);
- Requires the counties to report use and success of the supervised bond program and community court programs created by the act; and
- Modifies the submission date from October 10th to December 1st for the annual contraband seizure report (s. 932.7061, F.S.).

**CS by Criminal Justice on January 29, 2018:**
The committee substitute removes all provisions related to the charitable bail program and clarifies that the office of the county chief correctional officer will administer the RAI to persons arrested for a felony in the participating county.

B. Amendments:

None.