

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** CS/SB 642

**INTRODUCER:** Criminal Justice Committee and Senators Brandes, Gruters, Rouson, and others

**SUBJECT:** Criminal Justice

**DATE:** April 17, 2019      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	<b>Fav/CS</b>
2.	Forbes	Jameson	ACJ	<b>Recommend: Fav/CS</b>
3.	Forbes	Kynoch	AP	<b>Pre-meeting</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 642, which is cited as the “Florida First Step Act,” makes changes to a number of provisions related to the criminal justice system, including:

- Authorizing a court to depart from the imposition of a mandatory minimum sentence in drug trafficking cases if certain circumstances are met;
- Providing legislative intent language that the Department of Corrections (DOC) should attempt to place an inmate as close as practicable to within 300 miles driving distance of his or her primary residence;
- 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 department to contract with specified entities to assist veteran inmates in applying for veteran’s benefits upon release;
- Requiring the DOC to notify each inmate or offender of all terms of his or her sentence that are outstanding at the time of release or termination of probation or community control, respectively;
- Requiring county detention facilities to notify each inmate of all terms of his or her sentence that are outstanding at the time of release;

- Authorizing the DOC to develop, within its existing resources, a Prison Entrepreneurship Program (PEP) that includes education with specified curriculum;
- Authorizing an inmate to obtain educational gain-time for participating in the PEP and allowing such gain time to pierce 85 percent in certain instances;
- Authorizing the court to order or the DOC to transfer offenders to administrative probation if the offender presents a low risk of harm to the community and has completed at least half of their term of probation;
- Requiring each circuit to create an alternative sanctions program to handle specified types and occurrences of technical violations of probation or community control with the judge's concurrence; and
- Requiring the DOC to include in the Florida Crime Information Center system all conditions of probation as determined by the court.

The bill has a “negative significant” prison bed impact (i.e., a decrease of more than 25) as a result of the provisions related to departure from drug trafficking mandatory minimums and the requirement of each circuit to create an Alternative Sanctioning Program (ASP). Additionally, the bill has an indeterminate fiscal impact to the DOC and local governments associated with additional workload and the need for information technology updates. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

## II. Present Situation:

### Federal First Step Act

In December, 2018, the United States Congress passed, and President Trump signed into law, the “Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act” or the “FIRST STEP Act” (First Step Act).<sup>1</sup> The law makes a number of changes to the federal criminal justice system, including changes to the manner in which offenders are sentenced for federal criminal offenses and the services that are available to such offenders once sentenced to federal prison. In part, the First Step Act:

- Directs the Department of Justice to establish, and the Bureau of Prisons (BOP) to implement, a risk and needs assessment system to assess and classify the recidivism risk of prisoners and to use such classification to:
  - Guide housing, grouping, and program assignments; and
  - Incentivize and reward participation in and completion of recidivism reduction programs and productive activities.
- Modifies the computation of good time credit.<sup>2</sup>

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<sup>1</sup> First Step Act of 2018, Pub. L. No. 115-391 (2018).

<sup>2</sup> The bill provides that inmates who avoid a disciplinary record can currently get credits of up to 47 days per year incarcerated. The law increases the cap to 54, allowing well-behaved inmates to cut their prison sentences by an additional week for each year they're incarcerated. The change applies retroactively, which will allow some prisoners — as many as 4,000, according to supporters — to qualify for an earlier release fairly soon. *Supra*, n. 1; *See also* Vox, German Lopez, *The First Step Act, explained*, February 5, 2019, available at <https://www.vox.com/future-perfect/2018/12/18/18140973/state-of-the-union-trump-first-step-act-criminal-justice-reform> (last visited April 2, 2019).

- Requires the BOP to place low-risk prisoners on home confinement for the maximum amount of time permitted.
- Requires prisoners to be placed within 500 miles of their primary residence, subject to bed availability and the prisoner's security designation.
- Reduces mandatory minimum prison terms for certain nonviolent repeat drug offenses.<sup>3</sup>
- Broadens the existing safety valve to permit a sentence below the mandatory minimum for certain nonviolent, cooperative drug offenders with a limited criminal history.
- Expands in-prison and post-release employment programming.<sup>4</sup>

The White House stated that “The First Step Act will help prepare inmates to successfully rejoin society and enact commonsense sentencing reforms to make our justice system fairer for all Americans.”<sup>5</sup>

### **Report on Diverting Low-Risk Offenders from Florida Prisons**

The Office of Program Policy Analysis and Government Accountability (OPPAGA) was directed to conduct a review of Florida's sentencing laws and identify policy options to reduce or divert low-risk offenders from entering Florida's prisons.<sup>6</sup> The OPPAGA released its report in January 2019. The report analyzed prison trends in Florida and discussed tools available to divert low-risk offenders and thereby reduce the prison population.<sup>7</sup>

The OPPAGA, in part, analyzed the trends for the types of offenders being admitted into Florida's prisons currently and reported that drug and property offenders comprise the majority of prison admissions.<sup>8</sup> Further, offenders admitted for these types of offenses tend to cycle through prison relatively quickly and comprise a smaller portion of the total inmate population, including only 14 percent for drug offenses. The OPPAGA identified lower-level inmates and found that such lower-risk offenders comprised 13 percent of the inmate population,<sup>9</sup> of which

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<sup>3</sup> These reductions were achieved through easing a “three strikes” rule so people with three or more convictions, including for drug offenses, automatically get sentenced to 25 years instead of life, among other changes. It also restricts the current practice of stacking gun charges against drug offenders to add additional years to a term of imprisonment. All of these changes will likely lead to shorter prison sentences in the future.

<sup>4</sup> *Supra*, n. 1.

<sup>5</sup> The Jurist, Erin McCarthy Holliday, *President Trump signs criminal justice reform First Step Act into law*, December 21, 2018, available at <https://www.jurist.org/news/2018/12/president-trump-signs-criminal-justice-reform-first-step-act-into-law/>; The Washington Post, John Wagner, *Trump signs bipartisan criminal justice bill amid partisan rancor over stopgap spending measure*, December 21, 2018, available at [https://www.washingtonpost.com/politics/trump-to-sign-bipartisan-criminal-justice-bill-amid-partisan-rancor-over-stopgap-spending-measure/2018/12/21/234f9ffc-0510-11e9-b5df-5d3874f1ac36\\_story.html?utm\\_term=.fe211312ebb2](https://www.washingtonpost.com/politics/trump-to-sign-bipartisan-criminal-justice-bill-amid-partisan-rancor-over-stopgap-spending-measure/2018/12/21/234f9ffc-0510-11e9-b5df-5d3874f1ac36_story.html?utm_term=.fe211312ebb2) (all sites last visited on April 2, 2019).

<sup>6</sup> Chapter 2018-9, L.O.F., p. 356.

<sup>7</sup> The OPPAGA, *Diverting Low-Risk Offenders from Florida Prisons*, Report No. 19-01, at p. 8, January 2019, available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1901rpt.pdf> (last visited on April 2, 2019)(hereinafter cited as “OPPAGA Report”). The report stated that the incarceration rate in Florida is at approximately 500 inmates per 100,000 Floridians.

<sup>8</sup> *Id.*

<sup>9</sup> OPPAGA Report p. 8.

4,809 inmates were drug offenders.<sup>10</sup> Of the more than 96,000 inmates in state prisons, 5 percent or 4,696 inmates, were serving mandatory minimum sentences for drug offenses.<sup>11</sup>

The OPPAGA cited projections by the Criminal Justice Estimating Conference, published by the Office of Economic and Demographic Research, that a reduction of 1,500 inmate beds is equivalent to closing an entire prison, and a cost savings of approximately \$30 million annually.<sup>12</sup>

The OPPAGA further found that “there are lower-level offenders who could be diverted from prison without increasing recidivism.”<sup>13</sup> The OPPAGA, in part, recommended that the Legislature create a safety valve or modify mandatory minimum terms of imprisonment for drug offenses.<sup>14</sup>

## **Drug Trafficking Sentencing Departure**

### ***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”<sup>15</sup> of the substance and whether there is a currently accepted medical use for the substance in the United States.<sup>16</sup>

### ***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.<sup>17</sup> The controlled substance involved in the trafficking must meet a specified weight or quantity threshold.

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<sup>10</sup> The OPPAGA report considered low-risk offenders to be inmates who have never been convicted of any violent or sexual felony and who have never served any sentence of imprisonment prior to their current sentence.

<sup>11</sup> OPPAGA Report, p. 18. Almost half of this group of inmates had been admitted to prison for the first time.

<sup>12</sup> OPPAGA Report, p. 17-18. It should be noted that Florida’s prisons are primarily funded through General Revenue.

<sup>13</sup> OPPAGA Report, p. 19-21

<sup>14</sup> OPPAGA Report, p. 23.

<sup>15</sup> 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.

<sup>16</sup> See s. 893.03(1)-(5), F.S.

<sup>17</sup> See s. 893.135, F.S., for the substances which are included in the offense if drug trafficking.

Most drug trafficking offenses are first degree felonies<sup>18</sup> and are subject to a mandatory minimum term of imprisonment<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

### ***Criminal Punishment Code***

The Criminal Punishment Code (Code) is Florida's primary sentencing policy.<sup>23</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>24</sup> 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.<sup>25</sup> Absent mitigation,<sup>26</sup> 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.<sup>27</sup>

### **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."<sup>28</sup> 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

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<sup>18</sup> 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.

<sup>19</sup> There are currently 56 mandatory minimum terms of imprisonment in s. 893.135, F.S., which range from 3 years to life imprisonment.

<sup>20</sup> See s. 893.135, F.S.

<sup>21</sup> Section 893.135(1)(b)1.a., F.S.

<sup>22</sup> Section 893.135(1)(b)1.b., F.S.

<sup>23</sup> 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.

<sup>24</sup> 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.

<sup>25</sup> Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

<sup>26</sup> 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.

<sup>27</sup> See s. 775.082, F.S.

<sup>28</sup> Fla. R. Crim. P. 3.704(d)(26).

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

Prosecutors have “complete discretion” in the charging decision.<sup>29</sup> 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.

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.<sup>30</sup> 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.”<sup>31</sup>

## **Probation and Community Control**

### ***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.<sup>32</sup> The DOC supervises more than 166,000 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.<sup>33</sup>

### **Probation**

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose.<sup>34</sup> There are also specialized forms of supervision such as drug offender probation<sup>35</sup> and mental health probation.<sup>36</sup> 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.

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<sup>29</sup> “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).

<sup>30</sup> Section 958.04, F.S.

<sup>31</sup> Section 316.027(2)(g), F.S.

<sup>32</sup> Section 948.01, F.S.

<sup>33</sup> The DOC, *Probation Services*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited February 25, 2019).

<sup>34</sup> Section 948.001(8), F.S. Terms and conditions of probation are provided in s. 948.03, F.S.

<sup>35</sup> 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.

<sup>36</sup> 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.

### 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., to mean a form of no contact, nonreporting supervision to which an offender may be transferred upon the satisfactory completion of certain conditions. Administrative probation is only for offenders that are a low-risk of harm to the community and there are specified underlying offenses that are prohibited from being transferred to administrative probation.<sup>37</sup>

### 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.<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup>

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.<sup>41</sup> A person may be placed on additional terms of supervision as part of his or her community control sentence.<sup>42</sup>

### ***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.<sup>43</sup> 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.<sup>44</sup>

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<sup>37</sup> See s. 948.013(2) and (3), F.S.

<sup>38</sup> Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

<sup>39</sup> Section 948.10(1), F.S.

<sup>40</sup> *Id.*

<sup>41</sup> See s. 948.101(1), F.S., for the standard conditions of community control.

<sup>42</sup> Section 948.101(2), F.S.

<sup>43</sup> Section 948.10(3), F.S.

<sup>44</sup> Section 948.06(1)(a), F.S.

The offender must be returned to the court granting such probation or community control.<sup>45</sup> 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.<sup>46</sup>

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.<sup>47</sup> In addition, if an offender qualifies as a violent felony offender of special concern (VFOSC), the court must revoke supervision, unless it makes written findings that the VFOSC does not pose a danger to the community.<sup>48</sup> The VFOSC status also accrues sentence points under the Code, which affects the scoring of the lowest permissible sentence.<sup>49</sup>

### ***Alternative Sanctioning Programs***

In FY 2017-18 a total of 64,672 technical violations were reported.<sup>50</sup> Many of these violations resulted in the offender returning to some form of supervision or serving a county jail sentence.<sup>51</sup> Prior to 2016, the DOC developed and implemented an alternative sanctioning program (ASP) in twelve counties within six judicial circuits.<sup>52</sup> 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 the ASPs.<sup>53</sup> The use of such programs has substantially increased since enactment of the ASP option. As of February 2019, 16 circuits (including 49 of 67 counties) have established ASPs by administrative order. These participating jurisdictions have resolved 3,740 violations through ASPs.<sup>54</sup>

Section 948.06(1)(h), F.S., authorizes the chief judge of each judicial circuit to establish an ASP, in consultation with the State Attorney, Public Defender, and the DOC to address technical VOPs and VOCCs. A technical violation is defined to include any alleged violation of

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<sup>45</sup> *Id.*

<sup>46</sup> Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the probationer or controlee has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as enumerated in s. 948.06(8)(c), F.S.

<sup>47</sup> Section 948.06(2)(b), F.S.

<sup>48</sup> 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.

<sup>49</sup> Section 921.0024, F.S.

<sup>50</sup> Email from the DOC Staff (February 28, 2019).

<sup>51</sup> The DOC, *Copy of Tech Violations and Disposition 02-16-18* (on file with the Senate Criminal Justice Committee),

<sup>52</sup> The DOC, *Agency Analysis for SB 642*, p. 6, February 27, 2019 (hereinafter cited as “The DOC SB 642 Analysis”); See also the DOC, *Agency Analysis HB 1149 (2016)*, p. 2 (January 20, 2016)(all documents on file with the Senate Criminal Justice Committee).

<sup>53</sup> Ch. 2016-100, L.O.F.

<sup>54</sup> Email from the DOC Staff (February 26, 2019)(on file with the Senate Criminal Justice Committee). The circuits that have enacted administrative orders include the: 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).

supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense.<sup>55</sup> Once an ASP administrative order is signed establishing the terms<sup>56</sup> 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.<sup>57</sup> As of January 2018, two circuits and Brevard County had included short jail sentences as a possible ASP sanction through administrative order.<sup>58</sup>

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.<sup>59</sup> If the offender waives participation, the violation proceeds through the court resolution process.<sup>60</sup> 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; and
- Receive a written statement from a factfinder as to the evidence relied on and the reasons for the sanction imposed.<sup>61</sup>

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.<sup>62</sup>

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

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<sup>55</sup> Section 946.08(2)(h)1., F.S.

<sup>56</sup> 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.

<sup>57</sup> The 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](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 April 2, 2019).

<sup>58</sup> The Eighth and Tenth circuits offer short county jail time as a sanction and Brevard County offers weekends with the Brevard County Sheriff's Work Farm. Email and pdf attachment from the DOC Staff (February 22, 2018)(on file with Senate Criminal Justice Staff).

<sup>59</sup> Section 948.06(1)(h)3., F.S.

<sup>60</sup> Section 948.06(1)(h)3.a., F.S.

<sup>61</sup> Section 948.06(1)(h)3.b., F.S.

<sup>62</sup> Section 948.06(1)(h)4. and 5., F.S.

recommended sanction. The offender's prior admission to the technical violation may not be used as evidence in subsequent proceedings.<sup>63</sup>

### *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.<sup>64</sup> 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 within Florida is eligible for access to the FCIC.<sup>65</sup> 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.<sup>66</sup> 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.<sup>67</sup> 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.<sup>68</sup>

The DOC sends a probationer's data electronically to the Florida Department of Law Enforcement (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.<sup>69</sup> 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.<sup>70</sup>

A court has authority to modify or alter conditions of probation based on a probationer's particular circumstances.<sup>71</sup> 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

<sup>63</sup> Section 948.06(1)(h)6. and 7., F.S.

<sup>64</sup> The Florida Department of Law Enforcement (FDLE), *Criminal Justice Information System, Limited Access Certification Course*, p. 7, available at <http://www.fdle.state.fl.us/Limited-Access/Documents/Limited-Access-v5-2018-1.aspx> (last visited April 2, 2019).

<sup>65</sup> The FDLE, *FDLE Frequently Asked Questions, What is criminal history information and how do I obtain it?*, available at <http://www.fdle.state.fl.us/FAQ-s/Frequently-Asked-Questions.aspx> (last visited on April 2, 2019).

<sup>66</sup> *Id.*

<sup>67</sup> The FDLE, *FDLE Frequently Asked Questions, What is criminal history information and how do I obtain it?*, available at <http://www.fdle.state.fl.us/FAQ-s/Frequently-Asked-Questions.aspx> (last visited on April 2, 2019).

<sup>68</sup> Email from Florida Sheriffs Association (FSA) Staff (February 22, 2018)(on file with Senate Criminal Justice Committee).

<sup>69</sup> The DOC SB 642 Agency Analysis, p. 6. *See also* 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 the 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.

<sup>70</sup> *Id.*

<sup>71</sup> Section 948.039, F.S.

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.<sup>72</sup>

## **State Inmates Admission Process, Facility Placement, and Available Programming**

### ***Legislative Findings***

Section 944.611, F.S., provides various legislative findings applicable to the care of inmates in Florida's prisons. These findings are one part of the framework utilized by the DOC when developing the below-mentioned procedures for determining an inmate's most appropriate placement. These finding include, in part, that:

- It is desirable that each inmate be confined in and released from an institution or facility as close to the inmate's permanent residence or county of commitment as possible, in order to lessen the transportation expense to the public.
- To the extent possible, an inmate be returned, upon release, to the same area from which the inmate was committed.

### ***General Admission Process***

Once sentenced to the DOC, an inmate will first go to a reception center for diagnostic tests and evaluations. During reception, an inmate's custody level is determined, health care, programming needs are assessed, and the rules and regulations of prison life are taught.<sup>73</sup> All inmates are screened at reception and assessed and placed into programs using the Correctional Integrated Needs Assessment System (CINAS).<sup>74</sup> 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.<sup>75</sup>

The inmate is then sent to a major institution (prison)<sup>76</sup> that can accommodate his or her custody level and needs. The custody evaluation is based upon factors such as the sentence structure, outstanding detainers or warrants, age, education, and recent employment history. Background

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<sup>72</sup> The DOC SB 642 Agency Analysis, p. 6.

<sup>73</sup> See The DOC, *Inmate Orientation Handbook, Reception Center Processing, NII-091*, p. 2-3, December 2, 2016, available at <http://www.dc.state.fl.us/pub/files/InmateOrientationHandbook.pdf> (last visited April 2, 2019)(hereinafter cited as "Inmate Handbook").

<sup>74</sup> The DOC, *Agency Analysis for SB 1222 (2018)*, p. 2, January 18, 2018 (on file with the Senate Criminal Justice Committee)(hereinafter cited as "The DOC SB 1222 Analysis").

<sup>75</sup> 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.

<sup>76</sup> All major institutions, or prisons, are similar to small towns in that they have their own academic and vocational schools, places of worship, medical services, maintenance facilities, parks (for visiting family), and often their own water supplies. The DOC, *Annual Report Fiscal Year 2017-18*, p. 13, available at [http://www.dc.state.fl.us/pub/annual/1718/FDC\\_AR2017-18.pdf](http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf) (last visited April 2, 2019)(hereinafter cited a "Annual Report").

factors such as previous terms of incarceration, previous escapes, and past disciplinary problems also affect the decision. The result of the evaluation is called a custody assignment.<sup>77</sup>

An inmate's custody assignment is important because it determines the type of institution in which an inmate must be housed. After completing the orientation process at a reception center, inmates are transferred to a "permanent facility." Placement is based on institutional and individual need such as programs, education, health, and availability of bed space.<sup>78</sup>

As the inmate serves his sentence, he or she will be reevaluated whenever something happens that could change the inmate's custody, including positive or negative events. An example of a positive change is earning gain-time that reduces the time remaining to serve. Alternatively, an example of a negative event is an inmate receiving a disciplinary report for a rule violation. When the custody assignment changes, so can the inmate's location and it's possible for an inmate to be moved to a different prison. When possible, the DOC will assign an inmate to an institution in the vicinity of his/her home to encourage family support.<sup>79</sup>

The DOC reports that 65 percent of its beds are located in Region 1 or Region 2, located in Northwest Florida and Northeast Florida, respectively. In FY 2017-18, the DOC received approximately 27,916 new admissions of which 64 percent were from the Region 3 or Region 4 area, which are the Central and South Florida areas, respectively.<sup>80</sup>

### ***Determining an Inmate's Classification Level***

Section 944.1905, F.S., requires each inmate placed in the custody of the DOC to be classified or reclassified based upon the inmate's risk level. An inmate's initial classification is determined by a number of factors including, but not limited to, length of sentence, criminal history, any history of violence, and escape history.<sup>81</sup> Classification levels impact the facility placement and programming that an inmate is eligible to participate in while incarcerated.<sup>82</sup>

### ***Programming Offered to Inmates in the Custody of the DOC***

Chapter 944, F.S., requires the DOC to provide a variety of services and programming to inmates committed to the custody of the DOC, including:

- Substance abuse treatment programs;<sup>83</sup>

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<sup>77</sup> *Id.*

<sup>78</sup> All major institutions, or prisons, are similar to small towns in that they have their own academic and vocational schools, places of worship, medical services, maintenance facilities, parks (for visiting family), and often their own water supplies. The DOC, *Annual Report Fiscal Year 2017-18*, p. 13, available at [http://www.dc.state.fl.us/pub/annual/1718/FDC\\_AR2017-18.pdf](http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf) (last visited April 2, 2019)(hereinafter cited a "Annual Report").

<sup>79</sup> The DOC, *Victim Services, What Happens After Sentencing?*, available at <http://www.dc.state.fl.us/vict/index.html> (last visited February 22, 2019).

<sup>80</sup> The DOC SB 642 Analysis, p. 2. A map of the DOC's regions may be found at <http://www.dc.state.fl.us/ci/index.html> (last visited March 1, 2019).

<sup>81</sup> Inmate Handbook, at 8; *See also* Section 944.1905(1)-(3), F.S.

<sup>82</sup> Inmate Handbook, at 7.

<sup>83</sup> Section 944.473(2), F.S., requires each inmate to be assessed to determine if he or she qualifies to receive mandated substance-abuse treatment while incarcerated. The DOC provides four levels of inmate substance abuse programming, including intensive outpatient, residential therapeutic community, program centers, and work release centers. In FY 2017-18, a total of 10,844 inmates participated in some form of substance abuse treatment. *See* Annual Report, p. 45.

- Transitional services;<sup>84</sup>
- Educational and vocational programs;<sup>85</sup> and
- Faith- and character-based programs.<sup>86</sup>

These services and programs provide inmates with skills and tools to assist with an inmate's successful transition into the community upon release. These services are not offered at all prisons, therefore, services that an inmate needs to best provide rehabilitative programming are paramount to placement decisions.<sup>87</sup>

### ***Education for State Prisoners***

Section 944.801(1), 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. 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.<sup>88</sup>
- 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.<sup>89</sup>
- 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.<sup>90</sup>
- Ensuring that such local agreements require minimum performance standards and standards for measurable objectives, in accordance with established Department of Education (DOE) standards.<sup>91</sup>
- 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.<sup>92</sup>

### ***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

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<sup>84</sup> Sections 944.701-944.708, F.S.

<sup>85</sup> Section 944.801, F.S. In FY 2017-18, the DOC had 16,630 inmates participating in educational programs, 18,734 in academic programs, and 6,328 in vocational programs. Annual Report, at 33.

<sup>86</sup> Section 944.803, F.S., encourages the DOC to operate faith- and character-based facilities, which emphasize the importance of personal responsibility, meaningful work, education, substance abuse treatment, and peer support.

<sup>87</sup> Annual Report, at 33.

<sup>88</sup> 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.

<sup>89</sup> Section 944.801(3)(d), F.S.

<sup>90</sup> Section 944.801(3)(e), F.S.

<sup>91</sup> *Id.*

<sup>92</sup> Section 944.801(3)(g), F.S.

business strategy. Students must complete math testing, develop a personal business plan, and complete a final exam.<sup>93</sup>

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 those inmates is less than 7 percent.<sup>94</sup> 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.<sup>95</sup> Additionally, the DOC operates an entrepreneurship education program at Hardee Correctional Institution.<sup>96</sup>

### ***Reentry and Transitional Services***

The DOC is required to provide a wide range of transitional services, including the areas of employment, life skills training, and job placement, for the purpose of increasing the likelihood of the inmate's successful reentry into society, thereby reducing recidivism.<sup>97</sup>

Section 944.705, F.S., requires the DOC to establish a standard release orientation program available to every eligible inmate.<sup>98</sup> 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.<sup>99</sup>

To provide these services, the DOC may contract with outside public or private entities, including faith-based service groups.<sup>100</sup>

Additionally, s. 944.705(6), F.S., requires the DOC to notify every inmate, in no less than 18-point type in the inmate's release documents, that the inmate may be sentenced pursuant to

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<sup>93</sup> University of Virginia, UVA Today, Carlos Santos, *Second Chances: 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 April 2, 2019).

<sup>94</sup> *Id.* See also The Prison Entrepreneurship Program, *Releasing Potential*, available at <http://www.pep.org/releasing-potential/> (last visited April 2, 2019).

<sup>95</sup> Email and attachments from the DOC Staff (February 22, 2018)(on file with Senate Criminal Justice Committee).

<sup>96</sup> *Id.*

<sup>97</sup> See ss. 944.701-708, F.S.

<sup>98</sup> 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.

<sup>99</sup> Section 944.705(2), F.S.

<sup>100</sup> Section 944.705(5), F.S.

s. 775.082(9), F.S., if the inmate commits any enumerated felony offense within 3 years after the inmate's release. Additionally, the notice must be prefaced by the word "WARNING" in boldfaced type.<sup>101</sup>

### *Gain-Time*

Gain-time awards, which result in deductions to the court-ordered sentences of specified eligible inmates, are used to encourage satisfactory prisoner behavior or to provide incentives for prisoners to participate in productive activities while incarcerated.<sup>102</sup> An inmate is not eligible to earn or receive gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.<sup>103</sup>

Basic gain-time, which automatically reduced an inmate's sentence by a designated amount each month, was eliminated for offenses committed on or after January 1, 1994.<sup>104</sup> The only forms of gain-time that can currently be earned are:

- Incentive gain-time, which is a total of up to ten days per month that may be awarded to inmates for institutional adjustment, performing work in a diligent manner, and actively participating in training and programs;<sup>105</sup>
- Meritorious gain-time, which is awarded to an inmate who commits an outstanding deed or whose performance warrants additional credit, such as saving a life or assisting in recapturing an escaped inmate;<sup>106</sup> and
- Educational achievement gain-time, which is a one-time award of 60 days that is granted to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program.<sup>107</sup>

The procedure for applying gain-time awards to an inmate's sentence is dependent upon the calculation of a "maximum sentence expiration date" and a "tentative release date." The tentative release date may not be later than the maximum sentence expiration date.<sup>108</sup> The maximum sentence expiration date represents the date when the sentence or combined sentences imposed on a prisoner will expire. To calculate the maximum sentence expiration date, the DOC reduces the total time to be served by any time lawfully credited.<sup>109</sup>

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<sup>101</sup> Section 944.705(6), F.S., further provides that evidence that the DOC failed to provide this notice to an inmate will not prohibit a person from being sentenced pursuant to s. 775.082(9), F.S. The state is not be required to demonstrate that a person received any notice from the DOC in order for the court to impose a sentence pursuant to s. 775.082(9), F.S.

<sup>102</sup> Section 944.275(1), F.S. Further, s. 944.275(4)(f), F.S., provides that an inmate serving a life sentence is not able to earn gain-time. Additionally, an inmate serving the portion of his or her sentence that is included in an imposed mandatory minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

<sup>103</sup> Section 944.275(4)(f), F.S.

<sup>104</sup> Chapter 93-406, L.O.F.

<sup>105</sup> Section 944.275(4)(b), F.S. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.

<sup>106</sup> Section 944.275(4)(c), F.S. The award may range from one day to 60 days and the statute does not prohibit an inmate from earning meritorious gain-time on multiple occasions if warranted.

<sup>107</sup> Section 944.275(4)(d), F.S.

<sup>108</sup> Section 944.275(3)(c), F.S.

<sup>109</sup> Section 944.275(2)(a), F.S.

The tentative release is the date projected for the prisoner's release from custody after gain-time is granted or forfeited in accordance with s. 944.275, F.S.<sup>110</sup> Gain-time is applied when granted or restored to make the tentative release date proportionately earlier; and forfeitures of gain-time, when ordered, are applied to make the tentative release date proportionately later.<sup>111</sup>

### III. Effect of Proposed Changes:

The bill provides that it may be cited as the "Florida First Step Act."

The bill amends s. 893.135, F.S., authorizing 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, after the state attorney has had the opportunity to make a recommendation, that the person:

- Has not previously been convicted of a:
  - Dangerous crime as defined in s. 907.041, F.S.;<sup>112</sup> or
  - Violation specified as a predicate offense for registration as a sexual predator or offender under s. 775.21, F.S.,<sup>113</sup> or s. 943.0435, F.S.,<sup>114</sup> respectively;
- Did not use or threaten violence or possess a firearm or other dangerous weapon or induce another to do so, during the commission of the crime;
- Did not cause a death or serious bodily injury; and
- Was not engaged in a continuing criminal enterprise.<sup>115</sup>

Additionally, the bill requires the defendant to have truthfully provided to the state all information and evidence he or she has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.

The bill applies to all drug trafficking acts (possession, sale, manufacture, delivery, and importation) and trafficking mandatory minimum terms of imprisonment (ranging from 3 years to life imprisonment).<sup>116</sup>

#### Administrative Probation (Sections 7 and 8)

The bill amends ss. 948.001(1) and 948.013, F.S., relating to administrative probation to authorize the department to transfer an offender to administrative probation if the offender presents a low risk of harm to the community and to restructure the placement of relevant

<sup>110</sup> Section 944.275(3)(a), F.S.

<sup>111</sup> See also s. 944.275(4)(b), F.S.

<sup>112</sup> See s. 907.041, F.S., for a complete list of offenses that are defined as "dangerous crimes."

<sup>113</sup> See s. 775.21, F.S., for a complete list of offenses that are predicates to registration as a sexual predator.

<sup>114</sup> See s. 943.0435, F.S., for a complete list of offenses that are predicates to registration as a sexual offender.

<sup>115</sup> 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.

<sup>116</sup> The drug-trafficking statute imposes a mandatory life sentence for trafficking in especially large amounts of certain substances. However, this threshold, which triggers a mandatory life sentence, is never described as a "mandatory minimum" sentence like the other mandatory minimum sentences imposed by various threshold amounts covered 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.

language. These changes do not appear to have a substantive impact on the laws applicable to administrative probation.

#### Conditions of Probation in the FCIC (Section 9)

The bill requires the DOC to input into the FCIC all of a probationer's specific conditions of probation as determined by the court.

#### Alternative Sanctioning Programs (ASP) (Section 11)

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, by administrative order, to define additional sanctions or eligibility criteria and specify the process for reporting technical violations. For each instance that a technical violation of probation or violation of community control 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 submit recommended sanctions to the court, with documentation of the probationer's admission to the violation and agreement with the recommended sanction for its approval in lieu of filing an affidavit of violation 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;
  - 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, or completing community service hours;
  - Leaving the county without permission;
  - Failure to report a change in employment;
  - Associating with a person engaged in criminal activity; or
  - Any other violation as determined by administrative order of the chief judge of the circuit.
- 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 low-risk violation 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 violent felony offender of special concern.
- 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 an 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 jail;
- 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 jail;
- 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; the process for an offender to acknowledge his or her desire to participate in the program, including the specified rights that must be waived; the ability of a court to approve the sanction and the effect of a court not approving the probation officer's recommendation; the effect of an offender's discontinued participation in the program; and the prohibition on the court using a prior admission to a technical violation as evidence in subsequent proceedings.<sup>117</sup> However, if an offender waives, discontinues participation, or fails to successfully complete the alternative sanction within the 90-day timeframe, the probation officer may submit a violation report, affidavit, and warrant to the court.

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<sup>117</sup> See s. 948.06(1)(h)4.-7., F.S. (2017), for the relevant provisions retained in the bill.

#### Limitation on the Distance of Placement (Section 4)

The bill amends the legislative findings in s. 944.611, F.S., requiring the DOC secretary to designate the place of each inmate's confinement and place, or transfer, each inmate in an institution or facility as close as practicable to within 300 driving miles of the inmate's primary residence, unless the safety of department employees or inmates requires other placement. The findings also provide that such a limitation on the distance of a placement are subject to:

- Bed availability; and
- The inmate's security designation, programmatic needs, and mental and medical health needs.

#### Release Orientation Program (Section 5)

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.<sup>118</sup>

The DOC must allow a nonprofit faith-based or professional business, or a 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.

#### Prison Entrepreneurship Program (Section 6)

The bill amends s. 944.801, F.S., authorizing the Correctional Education Program to develop a Prison Entrepreneurship Program (PEP). The PEP 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 PEP.

The PEP 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. The bill provides rulemaking authority and authority to adopt procedures for admitting student inmates.

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<sup>118</sup> The directory must include the name, address, telephone number and a description of services offered by each provider and also include the name, address, and telephone number of existing portals of entry.

### Gain-Time (Section 3)

Lastly, the bill expands the educational gain-time award category by including the PEP as a program that, when completed, may result in the award of educational achievement gain-time. The bill still limits educational gain-time to one 60-day award, regardless of whether the inmate completes more than one type of educational activity included in the program. The bill authorizes an award of educational achievement gain-time to reduce the inmate's sentence to less than 85 percent of the sentence imposed. The bill prohibits the sentence of an inmate who is serving a sentence for a dangerous crime or for a predicate offense to registration as a sexual predator or sexual offender from being reduced below the 85 percent.

### Written Notification of Outstanding Terms of the Sentence (Sections 5, 10, and 12)

The bill requires the DOC and county detention facilities to notify specified persons of all outstanding terms of the sentence. The bill amends s. 944.705, F.S., and creates s. 948.041, F.S., requiring the DOC to notify an inmate or offender in writing of all outstanding terms of sentence at the time of release or termination of probation or community control. The bill includes a list of potential terms of sentence that must be included in the written notification, including, but not limited to:

- A term of supervision and any conditions required upon release from imprisonment;
- Uncompleted conditions; or
- Unpaid:
  - Restitution;
  - Court costs;
  - Fees; or
  - Fines.

The bill creates s. 951.30, F.S., requiring all county detention facilities to notify a prisoner in writing upon the discharge of all outstanding terms of the prisoner's sentence similar to the notification mentioned above.

For inmates being released from imprisonment with the DOC or county detention facilities, the bill provides that written notification does not have to be given if the inmate or prisoner is being released to a term of supervision by the DOC.

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

The bill is effective July 1, 2019.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

The bill requires all county detention facilities to notify a prisoner in writing upon the discharge of all outstanding terms of the prisoner's sentence at the time of release, unless the prisoner is being discharged to the custody or control of the DOC. It is possible that the requirements of the bill related to notification of outstanding terms of sentence will

result in an increased workload or expenditures by the local governments. However, because any such local funding resulting from the requirements of the bill will directly relate to the detention and imprisonment of persons who have been arrested or convicted of criminal offenses, under article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

**Drug Trafficking Sentencing Departure (Section 2)**

The Criminal Justice Impact Conference (CJIC) heard CS/CS/SB 1218 (2018), which had a provision substantially similar to the sentencing departure included in this bill, and estimated that the provisions relating to departure from drug trafficking mandatory minimum sentences would have a “negative significant” prison bed impact (i.e., a decrease of more than 25 prison beds).<sup>119</sup>

**Probation Provisions (Sections 9 and 11)**

The CJIC considered HB 7089 (2018), which included the identical provisions relating to probation, on February 19, 2018, and determined that creating statewide ASPs will have a

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<sup>119</sup> 2018 Conference Results (through February 12, 2018), CJIC, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC18.xls> (last visited on February 26, 2019).

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.<sup>120</sup> 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 costs on local government, but any such increase is indeterminate.

HB 7089 (2018) required, as does this bill, the DOC to submit additional information to the FCIC if the court modifies conditions of probation. The DOC reported in its analysis for HB 7089 (2018) that this requirement would cost 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. The DOC reported that it anticipated that these fiscal impacts could be absorbed within existing resources.<sup>121</sup>

### **Reentry Provisions (Sections 3, 5, 6, 10, and 12)**

#### ***Release Orientation Program***

The DOC reports that it does not have the existing programming capability to provide an application method for specified businesses or organizations to be registered to provide inmate reentry services. In order to accomplish this, the DOC provides that 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. Additionally, the DOC provides that it will likely need two FTE Government Operations Consultant I positions and six Data Entry Operators at a total cost of approximately \$391,364.<sup>122</sup>

#### ***Prison Entrepreneurship Program***

The DOC is authorized in the bill to develop an entrepreneurship program. If the DOC elects to do so, the bill requires the program to be implemented within existing resources. The DOC states that it will likely not be able to develop the program without adequate funding resources, which may include the need to have one Correctional Services Consultant to coordinate program services. The DOC estimates that the entire fiscal impact for this provision, including contracted staff, materials, and supplies is \$200,000 per location.<sup>123</sup>

#### ***Educational Gain-Time***

The DOC estimates that this provision will likely result in an average daily population reduction of 66 inmates during the first year of implementation and a 40 inmate reduction

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<sup>120</sup> Economic and Demographic Research (EDR), CJIC, February 19, 2018, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/PCBJDC1803.pdf> (last visited February 26, 2019).

<sup>121</sup> The DOC, *Agency Analysis of HB 7089 (2018)*, p. 8 (February 20, 2018)(on file with Senate Criminal Justice Committee).

<sup>122</sup> The Florida Department of Corrections Analysis of Senate Bill 642, page 5 and 8.

<sup>123</sup> *Id.*

in the average daily population for subsequent years, which equates to a cost savings of \$482,764 and \$292,584, respectively.<sup>124</sup> In addition, the department anticipates there will need to be changes to the gain time screens and the calculator for both Institution and Community Corrections; an estimated non-recurring cost is approximately \$26,100.<sup>125</sup> The FDLE must also modify FCIC to accept conditions of probation. These modifications can be made using existing staff resources, however, the FDLE will need to work with the DOC to determine how many conditions of probation exist, which are most relevant, how to code, and how to display to FCIC users.<sup>126</sup>

***Notification of Outstanding Terms of Sentence***

The DOC reports that it does not track various costs associated with an inmate's resolved case, with the exception of certain inmates in various forms of paid employment, such as work release, prison industries, etc. To comply with the requirements, the DOC will have to research clerk of court records prior to release for updated information on what an inmate, who is not being released to supervision, presently owes in regard to each case for which sentence was imposed. Additionally, the DOC states that this will be a significant workload increase as it could generate a significant volume of contacts to the clerks to determine the current status of various assessed costs. The DOC estimates it will need additional full-time equivalent positions (FTE) to achieve this requirement of the bill.<sup>127</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 893.135, 944.275, 944.611, 944.705, 944.801, 948.001, 948.013, 948.03, 948.06, and 893.03.

The bill creates the following sections of the Florida Statutes: 948.041 and 951.30.

**IX. Additional Information:**

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

**CS by Criminal Justice on March 4, 2019:**  
The Committee Substitute:

<sup>124</sup> The DOC SB 642 Analysis, p. 4 and 7.

<sup>125</sup> The Florida Department of Corrections Analysis of Senate Bill 642, page 8.

<sup>126</sup> The Florida Department of Law Enforcement Analysis of Senate Bill 642, 4.

<sup>127</sup> The Florida Department of Corrections Analysis of Senate Bill 642, page 5.

- Modifies the intent language providing that the DOC must attempt to place an inmate 300 miles, rather than 150 miles, from their primary residence.
- Clarifies the types of businesses offering reentry services that may register with the DOC to provide such services.
- Requires the DOC and county detention facilities to provide written notification of all outstanding terms of an offender's sentence upon release from imprisonment, probation, or community control.

B. Amendments:

None.