Tab 1  | CS/SB 556 by CJ, Brandes (CO-INTRODUCERS) Perry, Bracy; (Compare to H 00837) Inmate Conditional Medical Release  
|---|---|---|---|---|
| 544822 | A | S | RCS | ACJ, Brandes | Delete L.76 - 311: | 01/29 10:45 AM  

Tab 2  | CS/SB 574 by CJ, Brandes (CO-INTRODUCERS) Perry; (Compare to H 00837) Conditional Aging Inmate Release  
|---|---|---|---|---|
| 937440 | A | S | RCS | ACJ, Brandes | Delete L.49 - 341: | 01/29 10:45 AM
## The Florida Senate

**COMMITTEE MEETING EXPANDED AGENDA**

**APPROPRIATIONS SUBCOMMITTEE ON CRIMINAL AND CIVIL JUSTICE**

Senator Brandes, Chair  
Senator Bracy, Vice Chair

### Meeting Details

**MEETING DATE:** Wednesday, January 29, 2020  
**TIME:** 9:00—10:30 a.m.  
**PLACE:** Mallory Horne Committee Room, 37 Senate Building

**MEMBERS:** Senator Brandes, Chair; Senator Bracy, Vice Chair; Senators Gainer, Gruters, Harrell, Perry, Rouson, and Taddeo

### Bill Description and Senate Committee Actions

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<th>TAB</th>
<th>BILL NO. and INTRODUCER</th>
<th>BILL DESCRIPTION and SENATE COMMITTEE ACTIONS</th>
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<tr>
<td>1</td>
<td>CS/SB 556</td>
<td>Inmate Conditional Medical Release; Establishing the conditional medical release program within the Department of Corrections; requiring any inmate who meets certain criteria to be considered for conditional medical release; providing for victim notification in certain circumstances; providing that an inmate who is approved for conditional medical release must be released from the department in a reasonable amount of time; providing that a medical releasee remains in the care, custody, supervision, and control of the department and is eligible to earn or lose gain-time, etc.</td>
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<td>Criminal Justice / Brandes (Compare H 837, Linked S 1728)</td>
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<td>1/12/2019 Fav/CS</td>
<td>ACJ 01/22/2020 Temporarily Postponed</td>
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<td>2</td>
<td>CS/SB 574</td>
<td>Conditional Aging Inmate Release; Establishing the conditional aging inmate release program within the Department of Corrections; requiring that an inmate who meets certain criteria be considered for conditional aging inmate release; providing victim notification requirements under certain circumstances; providing that an inmate who is approved for conditional aging inmate release must be released from the department's custody within a reasonable amount of time; prohibiting an aging releasee or his or her community-based housing from being counted in the prison system population and the prison capacity figures, respectively, etc.</td>
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<td>Criminal Justice / Brandes (Compare H 837, Linked S 1718)</td>
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<td>3</td>
<td>Review and Discussion of Fiscal Year 2020-2021 Budget Issues Relating to: Department of Corrections Department of Juvenile Justice Department of Law Enforcement Department of Legal Affairs/Attorney General Florida Commission on Offender Review State Courts Public Defenders State Attorneys Regional Conflict Counsels Statewide Guardian ad Litem Capital Collateral Regional Counsels Justice Administrative Commissions</td>
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Other Related Meeting Documents
I. Summary:

PCS/CS/SB 556 repeals section 947.149, Florida Statutes, which establishes the conditional medical release (CMR) program within the Florida Commission on Offender Review (FCOR) and creates section 945.0911, Florida Statutes, to establish a CMR program within the Department of Corrections (DOC) with the purpose of determining whether release is appropriate for eligible inmates, supervising the released inmates, and conducting revocation hearings.

The bill provides that an inmate is eligible for consideration for release under the CMR program when the inmate, because of an existing medical or physical condition, is determined by the DOC to be an:

- “Inmate with a debilitating illness,” which is defined to mean an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or to others.
- “Permanently incapacitated inmate,” which is defined to mean 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 to others.
- “Terminally ill inmate,” which is defined to mean an inmate who has a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery, death is expected within 12 months, and the inmate does not constitute a danger to herself or himself or to others.

As with current law, the bill requires the DOC to identify inmates who may be eligible for CMR based upon available medical information. However, rather than referring the case to the FCOR upon identification, the bill requires the DOC to conduct the entire determination process by referring the inmate to a three-member panel established in the new program for review and determination of release.

As is required in current law, the bill requires notice to be provided to certain victims immediately upon identification of the inmate as potentially eligible for release on CMR and the inmate’s referral to the panel.

The bill requires the director of inmate health services to review specified evidence and provide a recommendation to the three-member panel, who must conduct a hearing within 45 days of the referral to determine whether CMR is appropriate for the inmate. A majority of the panel members must agree that release on CMR is appropriate for the inmate. An inmate who is approved for release on CMR must be released by the DOC to the community within a reasonable amount of time and is considered to be a medical releasee upon release to the community.

The bill creates a process for an inmate who is denied CMR by the three-member panel to have the decision reviewed. The secretary has the final decision about the appropriateness of the release on CMR. Additionally, an inmate who is denied CMR may be subsequently reconsidered for such release in a manner prescribed by rule.

The bill requires that a medical releasee released on CMR be released for a period equal to the length of time remaining on his or her term of imprisonment on the date the release is granted and the medical releasee is required to comply with all reasonable conditions of release the DOC imposes. The bill also provides a specific exception to the requirement to serve 85 percent of a term of imprisonment prior to release.

The bill provides that a medical releasee is considered to be in the custody, supervision, and control of the DOC and provides that this does not create a duty for the DOC to provide medical care to the medical releasee upon release to the community. The bill provides that the medical releasee remains eligible to earn or lose gain-time in accordance with section 944.275, Florida Statutes, and department rule. However, the bill clarifies that the medical releasee may not be counted in the prison system population and the medical releasee’s approved community-based housing location may not be counted in the capacity figures for the prison system.
The bill establishes a specific process for the revocation of CMR which closely parallels the current process provided for in section 947.141, Florida Statutes, and provides that revocation may be based on certain circumstances. The bill provides that a medical releasee may admit to the allegations or elect to have a revocation hearing. The bill specifies a hearing process if the medical releasee elects to proceed with a revocation hearing, provides for the recommittal of a medical releasee whose CMR has been revoked, and permits forfeiture of gain-time in certain instances.

As is provided for with the initial determination, the bill authorizes a medical releasee whose CMR is revoked to have the revocation decision reviewed.

The bill also requires the DOC to notify the family of an inmate who is diagnosed with a terminal condition within 72 hours and allow the family to visit the inmate within 7 days of such diagnosis.

The bill includes language providing that unless otherwise provided by law and in accordance with Article X, section 13 of the Florida Constitution, members of the panel who are involved with decisions that grant or revoke CMR are provided immunity from liability for actions that directly relate to such decisions.

The bill provides legislative findings for the establishment of the program and authorizes the DOC to adopt rules as necessary to implement the act.

The Criminal Justice Impact Conference (CJIC) reviewed the bill prior to the adoption of the PCS for CS/SB 556 on January 27, 2020. The CJIC determined that the bill will likely result in a negative significant prison bed impact (i.e. a decrease of more than 25 prison beds). Additionally, to the extent that the bill increases the number of inmates released on CMR, the bill will likely result in a reduction in the associated inmate healthcare costs.

The bill removes certain functions related to CMR from the FCOR and reestablishes the comparable duties within the DOC. As a result, the bill will result in a workload and cost shift from the FCOR to the DOC. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2020.

II. Present Situation:

Conditional Medical Release

Conditional Medical Release (CMR), outlined in s. 947.149, F.S., was created by the Florida Legislature in 1992, as a discretionary release of inmates who are “terminally ill” or “permanently incapacitated” and who are not a danger to themselves or others. The Florida Commission on Offender Review (FCOR), which consists of three members, reviews eligible

1 Chapter 92-310, L.O.F.
inmates for release under the CMR program pursuant to the powers established in s. 947.13, F.S. In part, s. 947.149, F.S., authorizes the FCOR to determine what persons will be released on CMR, establish the conditions of CMR, and determine whether a person has violated the conditions of CMR and take actions with respect to such a violation.

**Eligibility Criteria**

Eligible inmates include inmates 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.

Inmates sentenced to death are ineligible for CMR.

**Referral Process for Eligible Inmates**

The DOC is required to identify inmates who may be eligible for CMR in accordance with the above-mentioned designations. The DOC uses available medical information as a basis for identifying eligible inmates and refers such inmates to the FCOR for consideration. In considering an inmate, the FCOR may require that additional medical evidence be produced or that additional medical examinations be conducted and may require other investigations to be made as it deems necessary.

An inmate does not have a right to CMR or to a medical evaluation to determine eligibility for such release. Additionally, the authority and whether or not to grant CMR and establish additional conditions of release rests solely within the discretion of the FCOR, together with the authority to approve the release plan to include necessary medical care and attention.

Certain information must be provided to the FCOR from the DOC to be considered a referral, including:

- Clinical Report, including complete medical information justifying classification of the inmate as “permanently incapacitated” or “terminally ill;” and
- Verifiable release plan, to include necessary medical care and attention.

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3 Section 947.149(3), F.S. Section 947.01, F.S., provides that the membership of the FCOR is three-members.

4 Section 947.149(1), F.S.

5 Section 947.149(2), F.S.

6 Section 947.149(3), F.S.

7 Section 947.149(2), F.S.

8 Section 947.149(3), F.S.

9 Rule 23-24.020(1), F.A.C.
The referral must be directed to the Office of the Commission Clerk who may docket the case before the FCOR. A decision will be made by a majority of the quorum present and voting.\(^{10}\) The FCOR is required to approve or disapprove CMR based upon information submitted in support of the recommendation and review of the DOC file. If additional information is needed, the FCOR must continue the case for verification of the release plan, additional medical examinations, and other investigations as directed. The FCOR is required to instruct staff to conduct the appropriate investigation, which must include a written statement setting forth the specific information being requested.\(^{11}\)

**Victim Input**

If a victim or his or her personal representative requests to be notified, the FCOR must provide victim notification of any hearing where the release of the inmate on CMR is considered prior to the inmate’s release.\(^{12}\) Article I, s. 16 of the Florida Constitution, which was adopted in 2018 by the Florida voters, provides certain rights to victims in the Florida Constitution. In part, Article I, s. 16, of the Florida Constitution, provides that a victim must have the following rights upon request:

- Reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary.
- To be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.
- To be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.
- To be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender.\(^{13}\)

The requirement to notify victims was in place prior to the constitutional amendment passage through administrative rule. Rule 23-24.025, F.A.C., provides that a victim, relative of a minor who is a victim, relative of a homicide victim, or victim representative or victim advocate must receive advance notification any time a CMR case is placed on the docket for determination by the FCOR. Notification must be made to the address found in the police report or other criminal report or at a more current address if such has been provided to the FCOR.\(^{14}\)

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\(^{10}\) Rule 23-24.020(2), F.A.C.

\(^{11}\) Rule 23-24.020(3), F.A.C.

\(^{12}\) Rule 23-24.020(4), F.A.C., further qualifies that this notification occurs when the name and address of such victim or representative of the victim is known by the FCOR.

\(^{13}\) Art. 1, s. 16(b)(6)a., b., f., and g., FLA. CONST.

\(^{14}\) Rule 23-24.025(1), F.A.C.
A victim of the crime committed by the inmate, or a victim’s representative, must be permitted a reasonable time to make an oral statement or submit a written statement regarding whether the victim supports the granting, denying, or revoking of CMR.\(^{15}\) Additionally, other interested parties may also speak on behalf of victims since the FCOR meetings are public meetings.\(^{16}\) A victim can also request that the FCOR provide notification of the action taken if he or she does not choose to appear at meetings or make a written statement.\(^{17}\)

**Release Conditions**

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.\(^{18}\) An inmate who has been approved for release on CMR is considered a medical releasee when released.

Each medical releasee must be placed on CMR supervision and is subject to the standard conditions of CMR, which include:

- Promptly proceeding to the residence upon being released and immediately reporting by mail, telephone, or personal visit as instructed by the CMR officer or within 72 hours of release if no specific report date and time are given.
- Securing the permission of the CMR officer before:
  - Changing residences;
  - Leaving the county or the state; and
  - Posting bail or accepting pretrial release if arrested for a felony.
- Submitting a full and truthful report to the CMR officer each month in writing and as directed by the CMR supervisor.
- Refraining from:
  - Owning, carrying, possessing, or having in his or her constructive possession a firearm or ammunition;
  - Using or possessing alcohol or intoxicants of any kind;
  - Using or possessing narcotics, drugs, or marijuana unless prescribed by a physician;
  - Entering any business establishment whose primary purpose is the sale or consumption of alcoholic beverages; and
  - Knowingly associating with any person engaging in criminal activity, a criminal gang member, or person associated with criminal gang members.
- Securing the permission of the CMR officer before owning, carrying, or having in his or her constructive possession a knife or any other weapon.
- Obeying all laws, ordinances, and statutory conditions of CMR.
- Submitting to a reasonable search of the medical releasee’s person, residence, or automobile by a CMR officer.
- Waiving extradition back to Florida if the medical releasee is alleged to have violated CMR.

\(^{15}\) Rule 23-24.025(2) and (3), F.A.C. See Rule 23-24.025(4), F.A.C., regarding specifics about what is allowed to be submitted or utilized during oral testimony. Rule 23-24.025(7), F.A.C., provides that victims who appear and speak must be advised that any information submitted at FCOR meetings becomes public record.

\(^{16}\) Rule 23-24.025(3), F.A.C.

\(^{17}\) Rule 23-24.025(5), F.A.C.

\(^{18}\) Section 947.149(4), F.S.
• Permitting the CMR officer to visit the medical releasee’s residence, employment, or elsewhere.
• Promptly and truthfully answering all questions and following all instructions asked or given by the CMR officer or the FCOR.
• Remaining on CMR for the remainder of the sentence without diminution of such sentence for good behavior.
• Agreeing to submit to random drug or alcohol testing, to be paid for and submitted by the medical releasee, as directed by the CMR officer or the professional staff of any treatment center where treatment is being received.
• Executing and providing authorizations to release records to the CMR supervisor and the FCOR for the purpose of monitoring and documenting the medical releasee’s progress.
• Agreeing that, in the event there is an improvement in the medical releasee’s medical condition to the extent that he or she is no longer “permanently incapacitated,” or “terminally ill,” that he or she will, if directed to do so, report for a CMR revocation hearing.\(^{19}\)

Additionally, the FCOR can impose special conditions of CMR.\(^{20}\)

**Revocation and Recommitment**

In part, s. 947.141, F.S., provides for the revocation and recommitment of a medical releasee who appears to be subject to CMR revocation proceedings, including establishing a hearing process and determining whether a medical releasee must be recommitted to the DOC. CMR supervision can be revoked and the offender returned to prison if the FCOR determines:

- That a 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.\(^{21}\)

**Revocation Due to Improved Medical or Physical Condition**

If it is discovered during the CMR release that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for such release, the FCOR may order that the medical releasee be returned to the custody of the DOC for a revocation hearing, in accordance with s. 947.141, F.S. A medical releasee who has his or her CMR revoked due to improvement in medical or physical condition must serve the balance of the sentence with credit for the time served on CMR, but does not forfeit any gain-time accrued prior to release on CMR.\(^{22}\)

**Revocation Due to Violation of CMR Conditions**

When there are reasonable grounds to believe that a medical releasee who is on CMR has violated the conditions of the release in a material respect the FCOR is authorized to have a

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\(^{19}\) Rule 23-24.030(1), F.A.C.

\(^{20}\) Rule 23-24.030(2), F.A.C.

\(^{21}\) Section 947.149(5), F.S.

\(^{22}\) Section 947.149(5)(a), F.S. Additionally, if the person whose CMR is revoked due to an improvement in medical or physical condition would otherwise be eligible for parole or any other release program, the person may be considered for such release program pursuant to law.
warrant issued for the arrest of the medical releasee. A warrant must be issued if the medical releasee was found to be a sexual predator.\textsuperscript{23} Further, if a law enforcement officer has probable cause to believe that a medical release who is on CMR supervision has violated the terms and conditions of his or her release by committing a felony offense then the officer must arrest the medical releasee without a warrant and a warrant need not be issued in the case.\textsuperscript{24}

A medical releasee who is arrested for a felony must be detained without bond until the initial appearance of the medical releasee at which a judicial determination of probable cause is made. The medical releasee may be released if the trial court judge does not find probable cause existed for the arrest. However, if the court makes a finding of probable cause, such determination also constitutes reasonable grounds to believe that the medical releasee violated the conditions of the CMR release and the chief county correctional officer must notify the FCOR and the DOC of the finding within 24 hours.\textsuperscript{25} The medical releasee must continue to be detained without bond for a period not more than 72 hours excluding weekends and holidays after the date of the probable cause determination, pending a decision by the FCOR whether to issue a warrant charging the medical releasee with violation of the conditions of CMR. If the FCOR issues such warrant, the medical releasee must continue to be held in custody pending a revocation hearing.\textsuperscript{26}

Revocation Hearing

The medical releasee must be afforded a hearing which is conducted by a commissioner or a duly authorized representative within 45 days after notice to the FCOR of the arrest of a medical releasee charged with a violation of the terms and conditions of CMR. If the medical releasee elects to proceed with a hearing, the medical releasee must be informed orally and in writing of certain rights, including the medical releasee’s:

- Alleged violation; and
- Right to:
  - Be represented by counsel.
  - Be heard in person.
  - Secure, present, and compel the attendance of witnesses relevant to the proceeding.
  - Produce documents on his or her own behalf.
  - Access all evidence used against the releasee and confront and cross-examine adverse witnesses.
  - Waive the hearing.\textsuperscript{27}

The commissioner, who conducts the hearing, is required to make findings of fact in regard to the alleged violation within a reasonable time following the hearing and at least two commissioners must enter an order determining whether the charge of violation of CMR has been sustained based upon the findings of fact presented by the hearing commissioner or

\textsuperscript{23} Section 947.141(1), F.S.
\textsuperscript{24} Section 947.141(7), F.S.
\textsuperscript{25} Section 947.141(2), F.S., further states that the chief county detention officer must transmit to the FCOR a facsimile copy of the probable cause affidavit or the sworn offense report upon which the trial court judge’s probable cause determination is based.
\textsuperscript{26} Id.
\textsuperscript{27} Section 947.141(3), F.S.
authorized representative. The panel may revoke CMR, thereby returning the medical releasee to prison to serve the sentence imposed; reinstate the original order granting the release; or enter such other order as it considers proper.\textsuperscript{28}

If CMR is revoked and the medical releasee is ordered to be returned to prison, the medical releasee is deemed to have forfeited all gain-time or commutation of time for good conduct earned up to the date of release. However, if CMR is revoked due to the improved medical or physical condition of the medical releasee, the medical releasee does not forfeit gain-time accrued before the date of CMR.\textsuperscript{29} Gain-time or commutation of time for good conduct may be earned from the date of return to prison.

\textit{Statistics}

The FCOR has approved and released 73 inmates for CMR in the last three fiscal years, including:
- 38 in FY 2018-19;
- 21 in FY 2017-2018; and
- 14 in FY 2016-2017.\textsuperscript{30}

The DOC has recommended 149 inmates for release in the past three fiscal years, including:
- 76 in FY 2018-19;
- 39 in FY 2017-2018; and
- 34 in FY 2016-2017.\textsuperscript{31}

Currently, the DOC’s only role in the CMR process is to make the initial designation of medical eligibility and to refer the inmate’s case to the FCOR for an investigation and final decision.

\textit{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.\textsuperscript{32} 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.\textsuperscript{33}

\textsuperscript{28} Section 947.141(4), F.S.
\textsuperscript{29} Section 947.141(6), F.S.
\textsuperscript{30} Emails from Alexander Yarger, Legislative Affairs Director, Florida Commission on Offender Review, RE: Conditional Medical Release Data and RE: Updated Conditional Medical Release Numbers (attachments on file with the Senate Criminal Justice Committee) (December 15, 2017 and November 1, 2019, respectively). \textit{See also} FCOR Annual Report FY 2017-18, p. 8, available at \url{https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf} (last visited November 6, 2019).
\textsuperscript{31} \textit{Id}.
\textsuperscript{32} Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further 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.
\textsuperscript{33} Section 944.275(4)(f), F.S.
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. The only forms of gain-time that can currently be earned are:
- Incentive gain-time;
- Meritorious gain-time; and
- Educational achievement gain-time.

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. 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.

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. 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.

The DOC is authorized in certain circumstances, including when a medical releasee has his or her CMR revoked, to declare all gain-time earned by an inmate forfeited.

**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.” The law makes a number of changes to the federal criminal justice system and procedures applicable to inmates in the Federal Bureau of Prisons (BOP), including, in part, modifying provisions related to compassionate release to:
- Require inmates be informed of reduction in sentence availability and process;

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34 Chapter 93-406, L.O.F.
35 Section 944.275(4)(b), F.S. provides that incentive gain-time 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. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.
36 Section 944.275(4)(c), F.S., provides that meritorious gain-time 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. 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.
37 Section 944.275(4)(d), F.S., provides that educational gain-time 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.
38 Section 944.275(3)(c), F.S.
39 Section 944.275(2)(a), F.S.
40 Section 944.275(3)(a), F.S.
41 Id. See also s. 944.275(4)(b), F.S.
42 Section 944.28(1), F.S.
• Modify the definition of “terminally ill;”
• Require notice and assistance for terminally ill offenders;
• Require requests from terminally ill offenders to be processed within 14 days.44

Specifically, in the case of a diagnosis of a terminal illness, the BOP is required to, subject to confidentiality requirements:
• Notify the defendant’s attorney, partner, and family members, not later than 72 hours after the diagnosis, of the defendant’s diagnosis of a terminal condition and inform the defendant’s attorney, partner, and family members that they may prepare and submit on the defendant’s behalf a request for a sentence reduction;
• Provide the defendant’s partner and family members, including extended family, with an opportunity to visit the defendant in person not later than 7 days after the date of the diagnosis;
• Upon request from the defendant or his attorney, partner, or a family member, ensure that BOP employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction; and
• Process a request for sentence reduction submitted on the defendant’s behalf by the defendant or the defendant’s attorney, partner, or family member not later than 14 days from receipt of a request.45

The statutory time frames mentioned above begin once the Clinical Director of an institution makes a terminal diagnosis. Once the diagnosis is made, the Clinical Director will inform the Warden and the appropriate Unit Manager as soon as possible so as to ensure requirements are met.46

Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.47 Article X, s. 13 of the Florida Constitution allows the Legislature to waive this immunity. Further, s. 768.28(1), F.S., allows for suits in tort against the State and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct. Section 768.28, F.S., applies only to “injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee’s office or employment ....”48

45 Id.
46 Id.
48 City of Pembroke Pines v. Corrections Corp. of America, Inc., 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.).
Section 768.28(5), F.S., limits tort recovery from a governmental entity at $200,000 per person and $300,000 per accident. This limitation does not prevent a judgement in excess of such amounts from being entered, but a claimant is unable to collect above the statutory limit unless a claim bill is passed by the Legislature.

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment, unless the damages result from the employee’s acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property. Thus, the immunity may be pierced only if state employees or agents either act outside the scope of their employment, or act “in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.”

Courts that have construed the bad faith prong of s. 768.28, F.S., to mean the actual malice standard, which means the conduct must be committed with “ill will, hatred, spite, [or] an evil intent.” Conduct meeting the wanton and willful standard is defined as “worse than gross negligence,” and “more reprehensible and unacceptable than mere intentional conduct.”

III. Effect of Proposed Changes:

The bill repeals s. 947.149, F.S., which establishes the CMR program within the FCOR and creates s. 945.0911, F.S., to establish a CMR program within the DOC with the purpose of:

- Determining whether release is appropriate for eligible inmates;
- Supervising the released inmates; and
- Conducting revocation hearings.

The CMR program established within the DOC retains similarities to the program currently in existence within the FCOR, including that the CMR program must include a panel of at least three people. The members of the panel are appointed by the secretary or his or her designee for the purpose of determining the appropriateness of CMR and conducting revocation hearings on the inmate releases.

The bill provides legislative findings for the CMR program.

Eligibility Criteria

The bill provides that an inmate is eligible for consideration for release under the CMR program when the inmate, because of an existing medical or physical condition, is determined by the

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49 Section 768.28(5), F.S.
50 Breaux v. City of Miami Beach, 899 So. 2d 1059 (Fla. 2005).
51 See Peterson v. Pollack, 2019 WL 6884887 (Fla. 4th DCA December 18, 2019).
52 Section 768.28(9)(a), F.S.
54 See Parker v. State Bd. of Regents ex rel. Fla. State Univ., 724 So.2d 163, 167 (Fla. 1st DCA 1998); Reed v. State, 837 So.2d 366, 368–69 (Fla. 2002); and Eiras v. Fla., 239 F. Supp. 3d 1331, 1343 (M.D. Fla. 2017).
55 Eiras v. Fla., 239 , supra at 50; Sierra v. Associated Marine Insts., Inc., 850 So.2d 582, 593 (Fla. 2d DCA 2003).
56 Eiras v. Fla., , supra at 50; Richardson v. City of Pompano Beach, 511 So.2d 1121, 1123 (Fla. 4th DCA 1987).
57 See also Kastritis v. City of Daytona Beach Shores, 835 F.Supp.2d 1200, 1225 (M.D. Fla. 2011) (defining these standards).
DOC to be an inmate with a debilitating illness, a permanently incapacitated inmate, or a terminally ill inmate. The bill provides definitions for such terms, including:

- “Inmate with a debilitating illness,” which means an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or to others.

- “Permanently incapacitated inmate,” which means 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 to others.

- “Terminally ill inmate,” which means an inmate who has a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery, death is expected within 12 months, and the inmate does not constitute a danger to herself or himself or to others.

The bill provides a specific exception to the 85 percent rule that allows an inmate who meets the above criteria to be released from the custody of the DOC pursuant to the CMR program prior to satisfying 85 percent of his or her term of imprisonment.

**Referral Process**

The bill requires that any inmate in the custody of the DOC who meets one or more of the eligibility requirements must be considered for CMR. However, the authority to grant CMR rests solely with the DOC, as it currently does with the FCOR. Additionally, the bill provides that an inmate does not have a right to release or to a medical evaluation to determine eligibility for release on CMR pursuant to s. 945.0911, F.S.

The bill requires the DOC to identify inmates who may be eligible for CMR based upon available medical information and authorizes the DOC to require additional medical evidence, including examinations of the inmate, or any other additional investigations it deems necessary for determining the appropriateness of the eligible inmate’s release.

Upon an inmate’s identification as potentially eligible for release on CMR, the DOC must refer such inmate to the three-member panel described above for review and determination of release.

The bill requires the DOC to provide notice to a victim of the inmate’s referral to the panel immediately upon identification of the inmate as potentially eligible for release on CMR if the case that resulted in the inmate’s commitment to the DOC involved a victim and such victim specifically requested notification pursuant to Article I, s. 16 of the Florida Constitution. Additionally, the victim must be afforded the right to be heard regarding the release of the inmate.

**Determination of Release**

The bill requires the three-member panel established in s. 945.0911(1), F.S., to conduct a hearing within 45 days after receiving the referral to determine whether CMR is appropriate for the
inmate. Before the hearing, the director of inmate health services or his or her designee must review any relevant information, including, but not limited to, medical evidence, and provide the panel with a recommendation regarding the appropriateness of releasing the inmate on CMR. A majority of the panel members must agree that release on CMR is appropriate for the inmate. If CMR is approved, the inmate must be released by the DOC to the community within a reasonable amount of time with necessary release conditions imposed.

The bill provides that an inmate who is granted CMR is considered a medical releasee upon release to the community.

An inmate who is denied CMR by the three-member panel is able to have the decision reviewed. The bill provides that the DOC’s general counsel and chief medical officer must review the decision of the three-member panel and make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of the release on CMR. The bill provides that the appeal decision of the secretary is a final administrative decision not subject to appeal.

Additionally, an inmate who is denied CMR who requests to have the decision reviewed must do so in a manner prescribed in rule and may be subsequently reconsidered for such release in a manner prescribed by department rule.

**Release Conditions**

The bill requires that an inmate granted release on CMR be released for a period equal to the length of time remaining on his or her term of imprisonment on the date the release is granted. The medical releasee is required to comply with all reasonable conditions of release the DOC imposes, which must include, at a minimum:

- Periodic medical evaluations at intervals determined by the DOC at the time of release.
- Supervision by an officer trained to handle special offender caseloads.
- Active electronic monitoring, if such monitoring is determined to be necessary to ensure the safety of the public and the releasee’s compliance with release conditions.
- Any conditions of community control provided for in s. 948.101, F.S.\(^{58}\)
- Any other conditions the DOC deems appropriate to ensure the safety of the community and compliance by the medical releasee.

The bill provides that a medical releasee is considered to be in the custody, supervision, and control of the DOC. The bill further states that this does not create a duty for the DOC to provide the medical releasee with medical care upon release into the community. The bill provides that the medical releasee remains eligible to earn or lose gain-time in accordance with s. 944.275, F.S., and department rule. However, the bill clarifies that the medical releasee may not be counted in the prison system population, and the medical releasee’s approved community-based housing location may not be counted in the capacity figures for the prison system.

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\(^{58}\) Some examples on community control conditions required under s. 948.101, F.S., include to maintain specified contact with the parole and probation officer; confinement to an agreed-upon residence during hours away from employment and public service activities; mandatory public service; and supervision by the DOC by means of an electronic monitoring device or system.
Revocation of CMR Release and Recommitment to the DOC

The bill establishes a process for the revocation of CMR that very closely parallels current law and for which may be based on two circumstances, including the:

- Discovery that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for release on CMR; or
- Violation of any release conditions the DOC establishes, including, but not limited to, a new violation of law.

Revocation Based on Medical or Physical Improvement

When the basis of the revocation proceedings are based on an improved medical or physical condition of the medical releasee, the bill authorizes the DOC to:

- Order that the medical releasee be returned to the custody of the DOC for a CMR revocation hearing, as prescribed by rule; or
- Allow the medical releasee to remain in the community pending the revocation hearing.

If the DOC elects to order the medical releasee to be returned to custody pending the revocation hearing, the officer or duly authorized representative may cause a warrant to be issued for the arrest of the medical release.

The revocation hearing must be conducted by the three-member panel discussed above and a majority of the panel members must agree that revocation is appropriate for the medical releasee’s conditional medical release to be revoked. The bill requires the director of inmate health services or his or her designee to review any medical evidence pertaining to the medical releasee and provide the panel with a recommendation regarding the medical releasee’s improvement and current medical or physical condition.

A medical releasee whose CMR was revoked due to improvement in his or her medical or physical condition must be recommitted to the DOC to serve the balance of his or her sentence with credit for the time served on CMR and without forfeiture of any gain-time accrued before recommittal. If the medical releasee whose CMR is revoked due to an improvement in his medical or physical condition would otherwise be eligible for parole or any other release program, the medical releasee may be considered for such release program pursuant to law.

Revocation Based on Violation of Conditions

The bill provides that CMR may also be revoked for violation of any release conditions the DOC establishes, including, but not limited to, a new violation of law. The bill provides that if a duly authorized representative of the DOC has reasonable grounds to believe that a medical releasee has violated the conditions of his or her release in a material respect, such representative may cause a warrant to be issued for the arrest of the medical release.

Further, a law enforcement officer or a probation officer may arrest the medical releasee without a warrant in accordance with s. 948.06, F.S., if there are reasonable grounds to believe he or she has violated the terms and conditions of his or her CMR. The law enforcement officer must
report the medical releasee's alleged violations to the supervising probation office or the DOC’s emergency action center for initiation of revocation proceedings.

In contrast to when a revocation is based on improved medical or physical condition, if the basis of the violation of release conditions is related to a new violation of law, the medical releasee must be detained without bond until his or her initial appearance at which a judicial determination of probable cause is made. If the judge determines that there was no probable cause for the arrest, the medical releasee may be released. If the judge determines that there was probable cause for the arrest, the judge’s probable cause determination also constitutes reasonable grounds to believe that the medical releasee violated the conditions of the CMR.

The bill requires the DOC to order that the medical releasee subject to revocation for a violation of conditions be returned to the custody of the DOC for a CMR revocation hearing as prescribed by rule. A majority of the panel members must agree that revocation is appropriate for the medical releasee’s CMR to be revoked.

The bill provides that a medical releasee who has his or her CMR revoked due to a violation of conditions must serve the balance of his or her sentence in an institution designated by the DOC with credit for the actual time served on CMR. Additionally, the medical releasee’s gain-time accrued before recommittal may be forfeited pursuant to s. 944.28(1), F.S. If the medical releasee whose CMR is revoked would otherwise be eligible for parole or any other release program, he or she may be considered for such release program pursuant to law.

The bill provides that a medical releasee whose CMR is revoked and is recommitted to the DOC must comply with the 85 percent requirement discussed above upon recommittal.

**Revocation Hearing Process**

The bill provides that a medical releasee who is subject to revocation for either of the above-mentioned bases may either admit to the alleged violation of the conditions of CMR or may elect to proceed to a revocation hearing. If the medical releasee subject to revocation for either basis elects to proceed with a hearing, the medical releasee must be informed orally and in writing of certain rights, including the releasee’s:

- Alleged basis for the pending revocation proceeding against the releasee.
- Right to:
  - Be represented by counsel.  
  - Be heard in person.
  - Secure, present, and compel the attendance of witnesses relevant to the proceeding.
  - Produce documents on his or her own behalf.
  - Access all evidence used to support the revocation proceeding against the releasee and confront and cross-examine adverse witnesses.
  - Waive the hearing.

If the panel approves the revocation of the medical releasee’s CMR, the panel must provide a written statement as to evidence relied on and reasons for revocation.

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59 However, this bill explicitly provides that this does not create a right to publicly funded legal counsel.
**Review Process of Revocation Determination**

The bill authorizes a medical releasee whose release is revoked based on either basis to have the revocation decision reviewed. The bill requires the DOC’s general counsel to review the revocation decision and make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of the revocation of CMR. In addition to the review by the general counsel, the chief medical officer must also review the revocation decision and make a recommendation to the secretary when the basis is due to an improved medical or physical condition.

The bill provides that any decision of the secretary related to a revocation decision is a final administrative decision not subject to appeal.

**Special Requirements of the DOC Related to Terminal Inmate’s**

The bill also implements provisions similar to those provided for in federal law related to compassionate release of inmate’s that have been diagnosed with a terminal illness. The bill requires the DOC to, subject to confidentiality requirements, follow the following procedures related to an inmate who is diagnosed with a terminal medical condition that makes him or her eligible for consideration for release under the “terminally ill” definition discussed above while in the custody of the DOC:

- Notify the inmate’s family or next of kin, and attorney, if applicable, of such diagnosis within 72 hours of the diagnosis.
- Provide the inmate’s family, including extended family, with an opportunity to visit the inmate in person within seven days upon such diagnosis.
- Initiate a review for CMR immediately upon such diagnosis.

Additionally, the bill provides that an inmate who has mental and physical capacity must consent to release of confidential information for the DOC to comply with these notification requirements.

**Sovereign Immunity**

The bill includes language providing that unless otherwise provided by law and in accordance with Article X, s. 13 of the Florida Constitution, members of the panel who are involved with decisions that grant or revoke CMR are provided immunity from liability for actions that directly relate to such decisions.

The bill authorizes the DOC to adopt rules as necessary to implement the act.

The bill is effective October 1, 2020.

**IV. Constitutional Issues:**

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

   None.
B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) reviewed the bill on January 27, 2020. The CJIC determined that the bill will likely result in a negative significant prison bed impact (i.e. a decrease of more than 25 prison beds). Additionally, the bill will likely result in a reduction in the associated inmate healthcare costs.

The bill removes any role of determining the appropriateness of an inmate’s release on CMR from the FCOR and places such comparable duties within the DOC. In Fiscal Year 2018-2019, FCOR conducted 84 CMR determinations. They report that they spent 804 hours on the investigation/determination, 64 hours on victim assistance, and 433 hours on revocations for CMR. The FCOR reports that this equates to less than 1 FTE.

The DOC reports that when the inmate population is impacted in small increments statewide, the inmate variable per diem of $20.04 is the most appropriate to use to determine the fiscal impact. The variable per diem includes costs more directly aligned

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60 The CJIC meeting at which this bill estimate was made occurred during a meeting of the Criminal Justice Estimating Conference on January 27, 2020. The meeting is available on video on the Florida Channel at https://thefloridachannel.org/videos/1-27-20-criminal-justice-estimating-conference/ (last visited January 29, 2020).

61 The FCOR, CS/SB 556 Agency Bill Analysis, p. 5 (October 24, 2019).
with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The DOC’s FY 17-18 average per diem for community supervision was $5.47.\textsuperscript{62}

The DOC revised its’ previous analysis regarding staffing needs and raised the projected need from 2 additional staff for the Bureau of Classification Management to oversee, provide guidance, and coordinate the implementation and administration of the CMR program,\textsuperscript{63} to 9 additional staff and costs, as follows.\textsuperscript{64}

1 Correctional Program Administrator $90,279 (salary and benefits)
1 Correctional Services Consultant $68,931 (salary and benefits)
1 Correctional Services Asst. Cons. $58,732 (salary and benefits)
1 Government Oper. Consult. I $52,324 (salary and benefits)
1 Senior Attorney $79,073 (salary and benefits)
4 Correctional Probation Senior Ofcr. $246,848 (salary and benefits)

Professional travel $ 13,512 (recurring) $17,716 (non-recurring)
Expense $ 42,275 (recurring) $29,795 (non-recurring)
Human Resources $ 2,961 (recurring)
Salary Incentive (if applicable) $ 4,512 (recurring)
Information Technology $ 17,400 (non-recurring)

Total All Funds\textsuperscript{65} $659,447 (recurring) $64,911 (non-recurring)

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates section 945.0911 of the Florida Statutes.

The bill repeals section 947.149 of the Florida Statutes.

The bill amends the following sections of the Florida Statutes: 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.

\textsuperscript{62} The DOC SB 574 Analysis, p. 5.
\textsuperscript{63} The DOC spreadsheet (January 17, 2020) (on file with the Committee on Criminal and Civil Justice Appropriations).
\textsuperscript{64} The DOC spreadsheet (January 30, 2020) (on file with the Committee on Criminal and Civil Justice Appropriations).
\textsuperscript{65} DOC Spreadsheet (January 30, 2019), (on file with the committee on Criminal and Civil Justice Appropriations).
IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on January 29, 2020:
The committee substitute:
- Provides legislative findings;
- Provides an exception to the 85 percent rule for inmates released to the CMR program;
- Provides that an inmate who is denied release in the CMR program may request the decision to be reviewed as prescribed by rule;
- Clarifies that the DOC does have a duty to provide medical care for medical releasee’s released to the community;
- Clarifies that the DOC may terminate the medical releasee’s CMR when he or she has violated the conditions of such release and return the former releasee to the same or another institution designated by the DOC;
- Authorizes a duly authorized representative of the DOC to cause a warrant to be issued if there is a reasonable grounds to believe that the medical releasee has violated the conditions of his or her release in a material way;
- Clarifies that the medical releasee may admit the allegations of the violation of CMR conditions or elect to proceed to a revocation hearing;
- If applicable, requires the panel to provide a written statement as to the evidence relied on and reasons for revocation of CMR; and
- Clarifies that the members of the panel have sovereign immunity as it relates to the decision to release an inmate on CMR or to revoke a medical releasee’s CMR.

CS by Criminal Justice on November 12, 2019:
The committee substitute:
- Requires the DOC to:
  - Notify the family of an inmate who has been diagnosed with a terminal condition of such diagnosis within 72 hours;
  - Allow the family of an inmate who has been diagnosed with a terminal condition to have a visit with the inmate within 7 days of such diagnosis; and
  - Immediately begin the referral process for the conditional medical release review upon an inmate’s diagnosis of a terminal condition.
- Ensures that the rights provided to medical releasee’s during revocation hearing proceedings are afforded to a medical releasee regardless of the basis for the revocation hearing.
- Makes technical changes, including, in part, ensuring consistency with the terms used to describe an inmate who has been approved for conditional medical release and released into the community.

B. Amendments:

None.
This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
A bill to be entitled
An act relating to inmate conditional medical release;
creating s. 945.0911, F.S.; establishing the
conditional medical release program within the
Department of Corrections; establishing a panel to
consider specified matters; defining terms; providing
for program eligibility; requiring any inmate who
meets certain criteria to be considered for
conditional medical release; providing that the inmate
does not have a right to release or to a certain
medical evaluation; requiring the department to
identify eligible inmates; requiring the department to
refer an inmate to the panel for consideration;
providing for victim notification in certain
circumstances; requiring the panel to conduct a
hearing within a specified timeframe; specifying
requirements for the hearing; providing a review
process for an inmate who is denied release; providing
conditions for release; providing that an inmate who
is approved for conditional medical release must be
released from the department in a reasonable amount of
time; providing that an inmate is considered a medical
releasee upon release from the department into the
community; providing that a medical releasee remains
in the care, custody, supervision, and control of the
department and is eligible to earn or lose gain-time;
prohibiting a medical releasee or his or her
community-based housing from being counted in the
prison system population and the prison capacity
figures, respectively; providing for the revocation of a medical releasee’s conditional medical release; authorizing the medical releasee to be returned to the department’s custody if his or her medical or physical condition improves; requiring a majority of the panel members to agree on the appropriateness of revocation; providing that gain-time is not forfeited for revocation based on improvement in the medical releasee’s condition; providing a review process for a medical releasee who has his or her release revoked; authorizing the medical releasee to be recommitted if he or she violates any conditions of the release; requiring that the medical releasee be detained if a violation is based on certain circumstances; requiring that a majority of the panel members agree on the appropriateness of revocation; requiring specified medical releasees to be recommitted to the department upon the revocation of the conditional medical release; authorizing the forfeiture of gain-time if the revocation is based on certain violations; providing a review process for a medical releasee who has his or her release revoked; requiring that the medical releasee be given specified information in certain instances; requiring the department to notify certain persons within a specified time frame of an inmate’s diagnosis of a terminal medical condition; requiring the department to allow a visit between an inmate and certain persons within 7 days of a diagnosis of a terminal medical condition; requiring
the department to initiate the conditional medical release review process immediately upon an inmate’s diagnosis of a terminal medical condition; requiring the inmate to consent to release of information in certain circumstances; providing rulemaking authority; repealing s. 947.149, F.S., relating to conditional medical release; amending ss. 316.1935, 775.084, 775.087, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141, F.S.; conforming cross-references to changes made by the act; providing an effective date.

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

Section 1. Section 945.0911, Florida Statutes, is created to read:

945.0911 Conditional medical release.—
(1) CREATION.—There is established a conditional medical release program within the department for the purpose of determining whether release is appropriate for eligible inmates, supervising the released inmates, and conducting revocation hearings as provided for in this section. The establishment of the conditional medical release program must include a panel of at least three people appointed by the secretary or his or her designee for the purpose of determining the appropriateness of conditional medical release and conducting revocation hearings on the inmate releases.

(2) DEFINITIONS.—As used in this section, the term:
(a) “Inmate with a debilitating illness” means an inmate...
who is determined to be suffering from a significant terminal or 
nonterminal condition, disease, or syndrome that has rendered 
the inmate so physically or cognitively impaired, debilitated, 
or incapacitated as to create a reasonable probability that the 
inmate does not constitute a danger to himself or herself to 
others.

(b) “Permanently incapacitated inmate” means 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 himself 
or herself or to others.

(c) “Terminally ill inmate” means an inmate who has a 
condition caused by injury, disease, or illness that, to a 
reasonable degree of medical certainty, renders the inmate 
terminally ill to the extent that there can be no recovery, 
death is expected within 12 months, and the inmate does not 
constitute a danger to himself or herself or to others.

(3) ELIGIBILITY.—An inmate is eligible for consideration 
for release under the conditional medical release program when 
the inmate, because of an existing medical or physical 
condition, is determined by the department to be an inmate with 
a debilitating illness, a permanently incapacitated inmate, or a 
terminally ill inmate.

(4) REFERRAL FOR CONSIDERATION.—

(a) 1. Notwithstanding any provision to the contrary, any 
inmate in the custody of the department who meets one or more of 
the eligibility requirements under subsection (3) must be 
considered for conditional medical release.
2. The authority to grant conditional medical release rests solely with the department. An inmate does not have a right to release or to a medical evaluation to determine eligibility for release pursuant to this section.

(b) The department must identify inmates who may be eligible for conditional medical release based upon available medical information. In considering an inmate for conditional medical release, the department may require additional medical evidence, including examinations of the inmate, or any other additional investigations the department deems necessary for determining the appropriateness of the eligible inmate’s release.

(c) The department must refer an inmate to the panel established under subsection (1) for review and determination of conditional medical release upon his or her identification as potentially eligible for release pursuant to this section.

(d) If the case that resulted in the inmate’s commitment to the department involved a victim, and the victim specifically requested notification pursuant to s. 16, Art. I of the State Constitution, the department must notify the victim of the inmate’s referral to the panel immediately upon identification of the inmate as potentially eligible for release under this section. Additionally, the victim must be afforded the right to be heard regarding the release of the inmate.

(5) DETERMINATION OF RELEASE.—

(a) Within 45 days after receiving the referral, the panel established in subsection (1) must conduct a hearing to determine whether conditional medical release is appropriate for the inmate. Before the hearing, the director of inmate health
services or his or her designee must review any relevant information, including, but not limited to, medical evidence, and provide the panel with a recommendation regarding the appropriateness of releasing the inmate pursuant to this section.

(b) A majority of the panel members must agree that release pursuant to this section is appropriate for the inmate. If conditional medical release is approved, the inmate must be released by the department to the community within a reasonable amount of time with necessary release conditions imposed pursuant to subsection (6). An inmate who is granted conditional medical release is considered a medical releasee upon release to the community.

(c) An inmate who is denied conditional medical release by the panel may have the decision reviewed by the department’s general counsel and chief medical officer, who must make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of conditional medical release pursuant to this section. The decision of the secretary is a final administrative decision not subject to appeal. An inmate who is denied conditional medical release may be subsequently reconsidered for such release in a manner prescribed by department rule.

(6) RELEASE CONDITIONS.—
(a) An inmate granted release pursuant to this section is released for a period equal to the length of time remaining on his or her term of imprisonment on the date the release is granted. Such inmate is considered a medical releasee upon release from the department into the community. The medical
releasee must comply with all reasonable conditions of release
the department imposes, which must include, at a minimum:

1. Periodic medical evaluations at intervals determined by
the department at the time of release.

2. Supervision by an officer trained to handle special
offender caseloads.

3. Active electronic monitoring, if such monitoring is
determined to be necessary to ensure the safety of the public
and the medical releasee’s compliance with release conditions.

4. Any conditions of community control provided for in s.
948.101.

5. Any other conditions the department deems appropriate to
ensure the safety of the community and compliance by the medical
releasee.

(b) A medical releasee is considered to be in the care,
custody, supervision, and control of the department and remains
eligible to earn or lose gain-time in accordance with s. 944.275
and department rule. The medical releasee may not be counted in
the prison system population, and the medical releasee’s
approved community-based housing location may not be counted in
the capacity figures for the prison system.

(7) REVOCATION HEARING AND RECOMMITMENT.—

(a)1. If the medical releasee’s supervision officer
discovers that the medical or physical condition of the medical
releasee has improved to the extent that she or he would no
longer be eligible for release under this section, then the
conditional medical release may be revoked. The department may
order, as prescribed by department rule, that the medical
releasee be returned to the custody of the department for a
conditional medical release revocation hearing or may allow the medical releasee to remain in the community pending the revocation hearing.

2. The revocation hearing must be conducted by the panel established in subsection (1). Before a revocation hearing pursuant to this paragraph, the director of inmate health services or his or her designee must review any medical evidence pertaining to the medical releasee and provide the panel with a recommendation regarding the medical releasee’s improvement and current medical or physical condition.

3. A majority of the panel members must agree that revocation is appropriate for the medical releasee’s conditional medical release to be revoked. If conditional medical release is revoked due to improvement in his or her medical or physical condition, the medical releasee must be recommitted to the department to serve the balance of his or her sentence with credit for the time served on conditional medical release and without forfeiture of any gain-time accrued before recommitment. If the medical releasee whose conditional medical release is revoked due to an improvement in her or his medical or physical condition would otherwise be eligible for parole or any other release program, he or she may be considered for such release program pursuant to law.

4. A medical releasee whose conditional medical release is revoked pursuant to this paragraph may have the decision reviewed by the department’s general counsel and chief medical officer, who must make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of the revocation of
conditional medical release pursuant to this paragraph. The
decision of the secretary is a final administrative decision not
subject to appeal.

(b)1. The medical releasee’s conditional medical release
may also be revoked for violation of any release conditions the
department establishes, including, but not limited to, a new
violation of law.

2. If the basis of the violation of release conditions is
related to a new violation of law, the medical releasee must be
detained without bond until his or her initial appearance at
which a judicial determination of probable cause is made. If the
judge determines that there was no probable cause for the
arrest, the medical releasee may be released. If the judge
determines that there was probable cause for the arrest, the
judge’s determination also constitutes reasonable grounds to
believe that the medical releasee violated the conditions of the
conditional medical release.

3. The department must order that the medical releasee
subject to revocation under this paragraph be returned to
department custody for a conditional medical release revocation
hearing.

4. A majority of the panel members must agree that
revocation is appropriate for the medical releasee’s conditional
medical release to be revoked. If conditional medical release is
revoked pursuant to this paragraph, the medical releasee must
serve the balance of his or her sentence with credit for the
actual time served on conditional medical release. The
releasee’s gain-time accrued before recommitment may be
forfeited pursuant to s. 944.28(1). If the medical releasee
whose conditional medical release is revoked subject to this
paragraph would otherwise be eligible for parole or any other
release program, he or she may be considered for such release
program pursuant to law.

5. A medical releasee whose conditional medical release has
been revoked pursuant to this paragraph may have the revocation
reviewed by the department’s general counsel, who must make a
recommendation to the secretary. The secretary must review all
relevant information and make a final decision about the
appropriateness of the revocation of conditional medical release
pursuant to this paragraph. The decision of the secretary is a
final administrative decision not subject to appeal.

(c) If the medical releasee subject to revocation under
paragraph (a) or paragraph (b) elects to proceed with a hearing,
the medical releasee must be informed orally and in writing of
the following:

1. The alleged basis for the pending revocation proceeding
against the releasee.

2. The releasee’s right to be represented by counsel.

However, this subparagraph does not create a right to publicly
funded legal counsel.

3. The releasee’s right to be heard in person.

4. The releasee’s right to secure, present, and compel the
attendance of witnesses relevant to the proceeding.

5. The releasee’s right to produce documents on his or her
own behalf.

6. The releasee’s right of access to all evidence used to
support the revocation proceeding against the releasee and to
confront and cross-examine adverse witnesses.
7. The releasee’s right to waive the hearing.

(8) SPECIAL REQUIREMENTS UPON AN INMATE’S DIAGNOSIS OF A TERMINAL CONDITION.—

(a) If an inmate is diagnosed with a terminal medical condition that makes him or her eligible for consideration for release under paragraph (2)(c) while in the custody of the department, subject to confidentiality requirements, the department must:

1. Notify the inmate’s family or next of kin, and attorney, if applicable, of such diagnosis within 72 hours of the diagnosis.

2. Provide the inmate’s family, including extended family, with an opportunity to visit the inmate in person within 7 days upon such diagnosis.

3. Initiate a review for conditional medical release as provided for in this section immediately upon such diagnosis.

(b) If the inmate has mental and physical capacity, he or she must consent to release of confidential information for the department to comply with the notification requirements required in this subsection.

(9) RULEMAKING AUTHORITY.—The department may adopt rules as necessary to implement this section.

Section 2. Section 947.149, Florida Statutes, is repealed.

Section 3. Subsection (6) of section 316.1935, Florida Statutes, is amended to read:

316.1935 Fleeing or attempting to elude a law enforcement officer; aggravated fleeing or eluding.—

(6) Notwithstanding s. 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for
any violation of this section. A person convicted and sentenced to a mandatory minimum term of incarceration under paragraph (3)(b) or paragraph (4)(b) is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency or conditional medical release under s. 945.0911 or s. 947.149, prior to serving the mandatory minimum sentence.

Section 4. Paragraph (k) of subsection (4) of section 775.084, Florida Statutes, is amended to read:

775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.—

(4)

(k)1. A defendant sentenced under this section as a habitual felony offender, a habitual violent felony offender, or a violent career criminal is eligible for gain-time granted by the Department of Corrections as provided in s. 944.275(4)(b).

2. For an offense committed on or after October 1, 1995, a defendant sentenced under this section as a violent career criminal is not eligible for any form of discretionary early release, other than pardon or executive clemency, or conditional medical release granted pursuant to s. 945.0911 or s. 947.149.

3. For an offense committed on or after July 1, 1999, a defendant sentenced under this section as a three-time violent felony offender shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.

Section 5. Paragraph (b) of subsection (2) and paragraph
(b) of subsection (3) of section 775.087, Florida Statutes, are amended to read:

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

(2)

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

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 945.0911 or s. 947.149, prior to serving the minimum sentence.

(3)

(b) Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not prevent a court from imposing a longer sentence of incarceration as authorized by law in addition to the minimum mandatory sentence, or from imposing a sentence of death pursuant to other applicable law. Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not authorize a court to impose a lesser sentence than otherwise required by law.
Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 945.0911 or s. 947.149, prior to serving the minimum sentence.

Section 6. Subsection (3) of section 784.07, Florida Statutes, is amended to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(3) Any person who is convicted of a battery under paragraph (2)(b) and, during the commission of the offense, such person possessed:

(a) A “firearm” or “destructive device” as those terms are defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 3 years.

(b) A semiautomatic firearm and its high-capacity detachable box magazine, as defined in s. 775.087(3), or a machine gun as defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 8 years.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 
944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 945.0911 or s. 947.149, prior to serving the minimum sentence.

Section 7. Subsection (1) of section 790.235, Florida Statutes, is amended to read:

790.235 Possession of firearm or ammunition by violent career criminal unlawful; penalty.—

(1) Any person who meets the violent career criminal criteria under s. 775.084(1)(d), regardless of whether such person is or has previously been sentenced as a violent career criminal, who owns or has in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or carries a concealed weapon, including a tear gas gun or chemical weapon or device, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person convicted of a violation of this section shall be sentenced to a mandatory minimum of 15 years' imprisonment; however, if the person would be sentenced to a longer term of imprisonment under s. 775.084(4)(d), the person must be sentenced under that provision. A person convicted of a violation of this section is not eligible for any form of discretionary early release, other than pardon, executive clemency, or conditional medical release under s. 945.0911 or s. 947.149.

Section 8. Subsection (7) of section 794.0115, Florida Statutes, is amended to read:

794.0115 Dangerous sexual felony offender; mandatory sentencing.—
(7) A defendant sentenced to a mandatory minimum term of imprisonment under this section is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 945.0911 s. 947.149, before serving the minimum sentence.

Section 9. Paragraphs (b), (c), and (g) of subsection (1) and subsection (3) of section 893.135, Florida Statutes, are amended to read:

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

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in s. 893.03(2)(a)4., or of any mixture containing cocaine, but less than 150 kilograms of cocaine or any such mixture, commits a felony of the first degree, which felony shall be known as “trafficking in cocaine,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to
pay a fine of $100,000.

c. Is 400 grams or more, but less than 150 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 150 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., commits the first degree felony of trafficking in cocaine. A person who has been convicted of the first degree felony of trafficking in cocaine under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 945.0911 or 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person’s conduct in committing that act led to a natural, though not inevitable, lethal result, such person commits the capital felony of trafficking in cocaine, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

3. Any person who knowingly brings into this state 300
kilograms or more of cocaine, as described in s. 893.03(2)(a)4., and who knows that the probable result of such importation would be the death of any person, commits capital importation of cocaine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as “trafficking in illegal drugs,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $500,000.
2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of hydrocodone, as described in s. 893.03(2)(a)1.k., codeine, as described in s. 893.03(2)(a)1.g., or any salt thereof, or 28 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as “trafficking in hydrocodone,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 50 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 100 grams or more, but less than 300 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 300 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, as described in s. 893.03(2)(a)1.q., or any salt thereof, or 7 grams or more of any mixture containing any such
substance, commits a felony of the first degree, which felony shall be known as “trafficking in oxycodone,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

   a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

   b. Is 14 grams or more, but less than 25 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

   c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

   d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:

(I) Alfentanil, as described in s. 893.03(2)(b)1.;

(II) Carfentanil, as described in s. 893.03(2)(b)6.;

(III) Fentanyl, as described in s. 893.03(2)(b)9.;

(IV) Sufentanil, as described in s. 893.03(2)(b)30.;

(V) A fentanyl derivative, as described in s. 893.03(1)(a)62.;

(VI) A controlled substance analog, as described in s. 893.0356, of any substance described in sub-sub-subparagraphs...
(VII) A mixture containing any substance described in sub-sub-paragraphs (I)-(VI),

commits a felony of the first degree, which felony shall be known as “trafficking in fentanyl,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. If the quantity involved under sub-subparagraph a.:

(I) Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and shall be ordered to pay a fine of $50,000.

(II) Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and shall be ordered to pay a fine of $100,000.

(III) Is 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and shall be ordered to pay a fine of $500,000.

5. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by
life imprisonment and is ineligible for any form of discretion ary early release except pardon or executive clemency or conditional medical release under § 945.0911 s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person’s conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

6. A person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of a person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.
(g) 1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits a felony of the first degree, which felony shall be known as "trafficking in flunitrazepam," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

   a. Is 4 grams or more but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

   b. Is 14 grams or more but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

   c. Is 28 grams or more but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of $500,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits the first degree felony of trafficking in flunitrazepam. A person who has been convicted of the first degree felony of trafficking in flunitrazepam under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release.
under s. 945.0911 s. 947.149. However, if the court determines
that, in addition to committing any act specified in this
paragraph:
   a. The person intentionally killed an individual or
counseled, commanded, induced, procured, or caused the
intentional killing of an individual and such killing was the
result; or
   b. The person’s conduct in committing that act led to a
natural, though not inevitable, lethal result,
such person commits the capital felony of trafficking in
flunitrazepam, punishable as provided in ss. 775.082 and
921.142. Any person sentenced for a capital felony under this
paragraph shall also be sentenced to pay the maximum fine
provided under subparagraph 1.
   (3) Notwithstanding the provisions of s. 948.01, with
respect to any person who is found to have violated this
section, adjudication of guilt or imposition of sentence shall
not be suspended, deferred, or withheld, nor shall such person
be eligible for parole prior to serving the mandatory minimum
term of imprisonment prescribed by this section. A person
sentenced to a mandatory minimum term of imprisonment under this
section is not eligible for any form of discretionary early
release, except pardon or executive clemency or conditional
medical release under s. 945.0911 s. 947.149, prior to serving
the mandatory minimum term of imprisonment.

Section 10. Subsection (2) of section 921.0024, Florida
Statutes, is amended to read:

921.0024 Criminal Punishment Code; worksheet computations;
(2) The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure. The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. When the total sentence points exceeds 44 points, the lowest permissible sentence in prison months shall be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. The total sentence points shall be calculated only as a means of determining the lowest permissible sentence. The permissible range for sentencing shall be the lowest permissible sentence up to and including the statutory maximum, as defined in s. 775.082, for the primary offense and any additional offenses before the court for sentencing. The sentencing court may impose such sentences concurrently or consecutively. However, any sentence to state prison must exceed 1 year. If the lowest permissible sentence under the code exceeds the statutory maximum sentence as provided in s. 775.082, the sentence required by the code must be imposed. If the total sentence points are greater than or equal to 363, the court may sentence the offender to life imprisonment. An offender sentenced to life imprisonment under this section is not eligible for any form of discretionary early release, except executive clemency or conditional medical release under s. 945.0911 or s. 947.149.

Section 11. Paragraph (b) of subsection (7) of section
944.605, Florida Statutes, is amended to read:

944.605 Inmate release; notification; identification card.—

(7) Paragraph (a) does not apply to inmates who:

1. The department determines have a valid driver license or state identification card, except that the department shall provide these inmates with a replacement state identification card or replacement driver license, if necessary.

2. Have an active detainer, unless the department determines that cancellation of the detainer is likely or that the incarceration for which the detainer was issued will be less than 12 months in duration.

3. Are released due to an emergency release or a conditional medical release under s. 945.0911 s. 947.149.

4. Are not in the physical custody of the department at or within 180 days before release.

5. Are subject to sex offender residency restrictions, and who, upon release under such restrictions, do not have a qualifying address.

Section 12. Subsection (1) of section 944.70, Florida Statutes, is amended to read:

944.70 Conditions for release from incarceration.—

(1)(a) A person who is convicted of a crime committed on or after October 1, 1983, but before January 1, 1994, may be released from incarceration only:

1. Upon expiration of the person’s sentence;

2. Upon expiration of the person’s sentence as reduced by accumulated gain-time;

3. As directed by an executive order granting clemency;
4. Upon attaining the provisional release date;
5. Upon placement in a conditional release program pursuant to s. 947.1405; or
6. Upon the granting of control release pursuant to s. 947.146.

(b) A person who is convicted of a crime committed on or after January 1, 1994, may be released from incarceration only:
1. Upon expiration of the person’s sentence;
2. Upon expiration of the person’s sentence as reduced by accumulated meritorious or incentive gain-time;
3. As directed by an executive order granting clemency;
4. Upon placement in a conditional release program pursuant to s. 947.1405 or a conditional medical release program pursuant to s. 945.0911 or s. 947.149; or
5. Upon the granting of control release, including emergency control release, pursuant to s. 947.146.

Section 13. Paragraph (h) of subsection (1) of section 947.13, Florida Statutes, is amended to read:

947.13 Powers and duties of commission.—
(1) The commission shall have the powers and perform the duties of:
(h) Determining what persons will be released on conditional medical release under s. 947.149, establishing the conditions of conditional medical release, and determining whether a person has violated the conditions of conditional medical release and taking action with respect to such a violation.

Section 14. Section 947.141, Florida Statutes, is amended to read:
947.141 Violations of conditional release, control release, or conditional medical release or addiction-recovery supervision.—

(1) If a member of the commission or a duly authorized representative of the commission has reasonable grounds to believe that an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated the terms and conditions of the release in a material respect, such member or representative may cause a warrant to be issued for the arrest of the releasee; if the offender was found to be a sexual predator, the warrant must be issued.

(2) Upon the arrest on a felony charge of an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.149, or s. 944.4731, the offender must be detained without bond until the initial appearance of the offender at which a judicial determination of probable cause is made. If the trial court judge determines that there was no probable cause for the arrest, the offender may be released. If the trial court judge determines that there was probable cause for the arrest, such determination also constitutes reasonable grounds to believe that the offender violated the conditions of the release. Within 24 hours after the trial court judge’s finding of probable cause, the detention facility administrator or designee shall notify the commission and the department of the finding and transmit to each a facsimile copy of the probable cause affidavit or the sworn offense report upon which the trial court judge’s probable cause determination is based. The offender must continue to be detained without bond for a period not exceeding 72 hours excluding weekends and holidays after the date of the

CODING: Words stricken are deletions; words underlined are additions.
probable cause determination, pending a decision by the commission whether to issue a warrant charging the offender with violation of the conditions of release. Upon the issuance of the commission’s warrant, the offender must continue to be held in custody pending a revocation hearing held in accordance with this section.

(3) Within 45 days after notice to the Florida Commission on Offender Review of the arrest of a releasee charged with a violation of the terms and conditions of conditional release, control release, conditional medical release, or addiction-recovery supervision, the releasee must be afforded a hearing conducted by a commissioner or a duly authorized representative thereof. If the releasee elects to proceed with a hearing, the releasee must be informed orally and in writing of the following:

(a) The alleged violation with which the releasee is charged.

(b) The releasee’s right to be represented by counsel.

(c) The releasee’s right to be heard in person.

(d) The releasee’s right to secure, present, and compel the attendance of witnesses relevant to the proceeding.

(e) The releasee’s right to produce documents on the releasee’s own behalf.

(f) The releasee’s right of access to all evidence used against the releasee and to confront and cross-examine adverse witnesses.

(g) The releasee’s right to waive the hearing.

(4) Within a reasonable time following the hearing, the commissioner or the commissioner’s duly authorized
representative who conducted the hearing shall make findings of fact in regard to the alleged violation. A panel of no fewer than two commissioners shall enter an order determining whether the charge of violation of conditional release, control release, conditional medical release, or addiction-recovery supervision has been sustained based upon the findings of fact presented by the hearing commissioner or authorized representative. By such order, the panel may revoke conditional release, control release, conditional medical release, or addiction-recovery supervision and thereby return the releasee to prison to serve the sentence imposed, reinstate the original order granting the release, or enter such other order as it considers proper.

Effective for inmates whose offenses were committed on or after July 1, 1995, the panel may order the placement of a releasee, upon a finding of violation pursuant to this subsection, into a local detention facility as a condition of supervision.

(5) Effective for inmates whose offenses were committed on or after July 1, 1995, notwithstanding the provisions of ss. 775.08, former 921.001, 921.002, 921.187, 921.188, 944.02, and 951.23, or any other law to the contrary, by such order as provided in subsection (4), the panel, upon a finding of guilt, may, as a condition of continued supervision, place the releasee in a local detention facility for a period of incarceration not to exceed 22 months. Prior to the expiration of the term of incarceration, or upon recommendation of the chief correctional officer of that county, the commission shall cause inquiry into the inmate's release plan and custody status in the detention facility and consider whether to restore the inmate to supervision, modify the conditions of supervision, or enter an
order of revocation, thereby causing the return of the inmate to prison to serve the sentence imposed. The provisions of this section do not prohibit the panel from entering such other order or conducting any investigation that it deems proper. The commission may only place a person in a local detention facility pursuant to this section if there is a contractual agreement between the chief correctional officer of that county and the Department of Corrections. The agreement must provide for a per diem reimbursement for each person placed under this section, which is payable by the Department of Corrections for the duration of the offender’s placement in the facility. This section does not limit the commission’s ability to place a person in a local detention facility for less than 1 year.

(6) Whenever a conditional release, control release, conditional medical release, or addiction-recovery supervision is revoked by a panel of no fewer than two commissioners and the releasee is ordered to be returned to prison, the releasee, by reason of the misconduct, shall be deemed to have forfeited all gain-time or commutation of time for good conduct, as provided for by law, earned up to the date of release. However, if a conditional medical release is revoked due to the improved medical or physical condition of the releasee, the releasee shall not forfeit gain-time accrued before the date of conditional medical release. This subsection does not deprive the prisoner of the right to gain-time or commutation of time for good conduct, as provided by law, from the date of return to prison.

(7) If a law enforcement officer has probable cause to believe that an offender who is on release supervision under s. 
947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated the terms and conditions of his or her release by committing a felony offense, the officer shall arrest the offender without a warrant, and a warrant need not be issued in the case.

Section 15. This act shall take effect October 1, 2020.
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 1/20

Bill Number (if applicable) 556

Amendment Barcode (if applicable)

Topic Conditional Release

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden St

Phone 850-488-6850

City Tallahassee

State FL

Zip 32308

Email ndaniels@flpda.org

Speaking: □ For □ Against □ Information

Waive Speaking: □ In Support □ Against

(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: □ Yes □ No

Lobbyist registered with Legislature: □ Yes □ No

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

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

S-001 (10/14/14)
Cndidency Release

Ida V. Eskamani

Public Policy

Organize Florida

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

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

APPEARANCE RECORD

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

Meeting Date 1-29-2020

Bill Number (if applicable) SB 556

Amendment Barcode (if applicable)

Topic
Inmate Conditional Medical Release

Name Brenda Spitzforth

Job Title Retired

Address 2450 SE Issac Rd.

Port St. Lucie, FL 34952

Phone 772-834-8124

Email BKAYSpitz@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

1.29.2020

Bill Number (if applicable)

0556

Amendment Barcode (if applicable)

Topic

Inmate Conditional Medical Release

Name

Robert Weissert ("Why Cert")

Job Title

EVP & General Counsel

Address

106 N. Bronough St.

Tallahassee, FL 32301

City State Zip

Phone

Email

850.222.5052

robert@florida taxwatch.org

Speaking:

For Against Information

Waive Speaking: Yes No

In Support Against

(The Chair will read this information into the record.)

Representing

Florida Tax Watch

Appearing at request of Chair:

Yes No

Lobbyist registered with Legislature:

Yes No

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

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

S-001 (10/14/14)
The Florida Senate

Appearance Record

Meeting Date: 29 Jan 2020

Bill Number (if applicable): SB 356

Amendment Barcode (if applicable):

Topic: Inmate Medical Release

Name: DIEGO ECHEVERRI

Job Title: Legislative Liaison

Address: 200 W College Ave

City: Tallahassee

State: FL

Zip: 32304

Phone: 

Email: 

Speaking: ☒ For ☐ Against ☐ Information

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

Representing: American For Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

PCS/CS/SB 574 creates section 945.0912, Florida Statutes, to establish a conditional aging inmate release (CAIR) program within the Department of Corrections (DOC) with the purpose of determining whether such release is appropriate for eligible inmates, supervising the released inmates, and conducting revocation hearings.

The bill provides that an inmate is eligible for consideration for release under the CAIR program when the inmate has reached 65 years of age and has served at least 10 years on his or her term of imprisonment. The bill prohibits an inmate from being considered for release through the CAIR program if he or she has ever been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent for committing specified offenses.

The DOC must identify inmates who may be eligible for CAIR and, upon such identification, the DOC must refer such inmate to a panel, appointed by the Secretary for review and determination of release.

The panel must conduct a hearing to determine, by a majority, whether CAIR is appropriate for the inmate within 45 days after receiving the referral. The bill creates a process for an inmate who is denied CAIR by the panel to have the decision reviewed. The Secretary has the final decision about the appropriateness of the release on CAIR. If CAIR is approved, the inmate must
be released by the DOC to the community within a reasonable amount of time and is considered an aging releasee upon release to the community.

The bill requires that an inmate granted CAIR be released for a period equal to the length of time remaining on his or her term of imprisonment on the date the release is granted and to comply with all conditions of release the DOC imposes. The bill also provides a specific exception to the requirement to serve 85 percent of a term of imprisonment prior to release.

The bill provides that an aging releasee is considered to be in the custody, supervision, and control of the DOC and provides that this does not create a duty for the DOC to provide medical care to the aging releasee upon release to the community. The bill provides that the aging releasee remains eligible to earn or lose gain-time in accordance with section 944.275, Florida Statutes, and department rule. However, the bill clarifies that the aging releasee may not be counted in the prison system population and the aging releasee’s approved community-based housing location may not be counted in the capacity figures for the prison system.

The bill establishes a specific process for the revocation of an aging releasee and provides that revocation may be based on the violation of any release conditions the DOC establishes, including, but not limited to, a new violation of law. Additionally, the bill authorizes the aging releasee to be detained when it is alleged that he or she has violated the conditions of the release. The bill provides that an aging releasee may admit to the allegations or elect to have a revocation hearing. The bill specifies a hearing process if the aging releasee elects to proceed with a revocation hearing, provides for the recommitment of an aging releasee whose CAIR has been revoked, and permits forfeiture of gain-time in certain instances.

As is provided for with the initial determination, the bill authorizes an aging releasee whose CAIR is revoked to have the revocation decision reviewed.

The bill includes language providing that unless otherwise provided by law and in accordance with Article X, section 13 of the Florida Constitution, members of the panel who are involved with decisions that grant or revoke CAIR are provided immunity from liability for actions that directly relate to such decisions.

The bill provides legislative findings for the establishment of the program and authorizes the DOC to adopt rules as necessary to implement the act.

The Criminal Justice Impact Conference (CJIC) reviewed the bill on January 27, 2020. The CJIC determined that the bill will likely result in a negative insignificant prison bed impact (i.e. a decrease of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2020.
II. Present Situation:

Aging Population Statistics

In 2016, 49 million adults in the United States, or 15 percent of the population, were 65 or older.\(^1\) It is estimated that the number will rise to approximately 98 million by 2060, which corresponds to approximately 25 percent of residents of the United States. The “baby boomers” generation\(^2\) and post baby-boom generations will all be of advanced age by 2029, which is often defined as 55 years of age or older. A report published by the Institutes of Medicine in 2012 asserted that, by 2030, the population of adults over the age of 65 will reach 72.1 million. The report also estimated that approximately one in five persons in the elder population has a mental health or substance abuse disorder, such as depression, dementia, or related psychiatric and behavioral symptoms. Incarcerated men and women typically have physiological and mental health conditions that are associated with people at least a decade older, a phenomenon known as “accelerated aging.” Therefore, an incarcerated person who is 50 or 55 years of age would exhibit health conditions comparable to a person who is 60 or 65 in the community. The occurrence of accelerated aging in the prison system is a result of many factors, including inadequate access to medical care before incarceration, substance abuse, the stress of incarceration, and a lack of appropriate health care during incarceration.\(^3\)

Special Health Considerations for Aging Inmates

Similarly to aging persons in the community, aging inmates are more likely to experience certain medical and health conditions, including, in part, dementia, impaired mobility, loss of hearing and vision, cardiovascular disease, cancer, osteoporosis, and other chronic conditions.\(^4\) However, such ailments present special challenges within a prison environment and may result in the need for increased staffing levels and enhanced officer training.\(^5\) Such aging inmates can also require structural accessibility adaptations, such as special housing and wheelchair ramps. For example, in

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\(^1\) The Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Promoting Health for Older Adults, September 13, 2019, available at https://www.cdc.gov/chronicdisease/resources/publications/factsheets/promoting-health-for-older-adults.htm (last visited December 5, 2019).


\(^5\) The PEW Charitable Trusts Older Prisoners Report.
Florida, four facilities serve relatively large populations of older inmates, which help meet special needs such as palliative and long-term care. 

**Aging Inmate Statistics in Florida**

The DOC reports that the elderly inmate population has increased by 353 inmates or 1.5 percent from June 30, 2017 to June 30, 2018 and that this trend has been steadily increasing over the last five years for an overall increase of 2,585 inmates or 12.5 percent.

The DOC further reports that during Fiscal Year 2017-18, there were 3,594 aging inmates admitted to Florida prisons, which was a 2.8 percent decrease from Fiscal Year 2017-18. The majority of such inmates were admitted for violent offenses, property crimes, and drug offenses. The oldest male inmate admitted was 92 years of age with a conviction of manslaughter and the oldest female inmate admitted was 77 years of age with a conviction of drug trafficking.

As the population of aging inmates continues to increase, the cost to house and treat such inmates also substantially increases. The DOC reports that the episodes of outside care for aging inmates increased from 10,553 in Fiscal Year 2008-09 to 21,469 in Fiscal Year 2017-18 and further provided that outside care is generally more expensive than treatment provided within a prison facility. The DOC reports that the cost of health care for the aging inmate population is very high compared to other inmates for many reasons, including, in part that aging inmates:

- Account for a majority of inpatient hospital days; and
- Have a longer length for an inpatient hospital stay than seen with younger inmate patients.

**Constitutional Requirement to Provide Healthcare to Inmates**

The United States Supreme Court has established that prisoners have a constitutional right to adequate medical care. The Court determined that it is a violation of the Eighth Amendment prohibition against cruel and unusual punishment for the state to deny a prisoner necessary medical care, or to display “deliberate indifference” to an inmate’s serious medical needs.

Before the 1970s, prison health care operated without “standards of decency” and was frequently delivered by unqualified or overwhelmed providers, resulting in negligence and poor quality. By January 1996, only three states had never been involved in major litigation challenging conditions in their prisons. A majority were under court order or consent decree to make

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6 Id.
7 Section 944.02(4), F.S., defines “elderly offender” to mean prisoners age 50 or older in a state correctional institution or facility operated by the DOC or the Department of Management Services.
9 Id., at p. 20.
10 Id., at p. 21.
11 Id.
improvements in some or all facilities. The development of the correctional health care in Florida has been influenced by a class action lawsuit filed by inmates in 1972. The plaintiffs in Costello v. Wainwright alleged that prison overcrowding and inadequate medical care were so severe that the resulting conditions amounted to cruel and unusual punishment. The overcrowding aspect of the case was settled in 1979, but the medical care issue continued to be litigated for years.

The legal standard today for inmate medical care must be at “a level reasonably commensurate with modern medical science and of a quality acceptable within prudent professional standards” and “designed to meet routine and emergency medical, dental, and psychological or psychiatric care.” Prisoners are entitled to access to care for diagnosis and treatment, a professional medical opinion, and administration of the prescribed treatment and such obligation persists even if some or all of the medical services are provided through the use of contractors. This is also the standard for state prisoners who are under the custody of private prisons or local jails. Recent cases have reinforced states’ constitutional obligations.

**The DOC’s Duty to Provide Health Care**

The DOC is responsible for the inmates of the state correctional system and has supervisory and protective care, custody, and control of the inmates within its facilities. The DOC has the constitutional and statutory imperative to provide adequate health services to state prison inmates directly related to this responsibility. This medical care includes comprehensive medical, mental health, and dental services, and all associated ancillary services. The DOC’s Office of Health Service (OHS) oversees the delivery of health care services and handles statewide functions for such delivery. The OHS is led by the Director of Health Services, who reports to the Secretary.

The DOC contracts with the Centurion of Florida, LLC (Centurion) to provide comprehensive statewide medical, mental health, dental services, and operates the department’s reception medical center. The care provided is under a cost plus model. All inmates are screened at a DOC reception center upon arrival from the county jail. The purpose of this intake process is to determine the inmate’s current medical, dental, and mental health care needs, which is achieved

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16 *Id.* The Correctional Medical Authority, FY 2017-18 Annual Report and Update on the Status of Elderly Offender’s in Florida’s Prisons, p. 1 (on file with the Senate Criminal Justice Committee). The Correctional Medical Authority was created in response to such federal litigation.
18 *Id.*
19 Sections 945.04(1) and 945.025(1), F.S.
20 *Crews v. Florida Public Employers Council 79, AFSCME*, 113 So. 3d 1063 (Fla. 1st DCA 2013); See also s. 945.025(2), F.S.
22 *Id.*
through assessments, in part, for auditory, mobility and vision disabilities, and the need for specialized mental health treatment.23

After the intake process is completed, inmates are assigned to an institution based on their medical and mental health needs and security requirements. The Centurion provides primary care using a staff of clinicians, nurses, mental health, and dental professionals and administrators within each major correctional institution. The health services team provides health care services in the dorms for inmates who are in confinement.24

**Aging Inmate Discretionary Release**

Many states, the District of Columbia, and the federal government authorize discretionary release programs for certain inmates that are based on an inmate’s age without regard to the medical condition of the inmate.25 The National Conference of State Legislatures (NCSL) reports such discretionary release based on age has been legislatively authorized in 17 states.26 The NCSL also reports that such statutes typically require an inmate to be of a certain age and to have served either a specified number of years or a specified percentage of his or her sentence. The NCSL reports that Alabama has the lowest age for aging inmate discretionary release, which is 55 years of age, whereas most other states set the limit somewhere between 60 and 65. Additionally, some states do not set a specific age.27

Most states require a minimum of 10 years of an inmate’s sentence to be served before being eligible for consideration for aging inmate discretionary release, but some states, such as California, set the minimum length of time served at 25 years.28 Other states, such as Mississippi and Oklahoma, provide a term of years or a certain percentage of the sentence to be served.29

Inmates who are sentenced to death or serving a life sentence are typically ineligible for release. Some states specify that inmates must be sentenced for a non-violent offense or specify offenses which are not eligible for release consideration.

Florida does not currently address discretionary release based on an inmate’s age alone.

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23 Id. See also The DOC Annual Report, p. 19.
24 Id.
26 The NCSL Aging Inmate Statistics. Also, the NCSL states that at least 16 states have established both medical and aging inmate discretionary release programs legislatively and that Virginia is the only state that has aging inmate discretionary release but not medical discretionary release.
27 Id.
28 Id.
29 The NCSL Aging Inmate Statistics.
**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.”30 The law makes a number of changes to the federal criminal justice system and procedures applicable to inmates in the Federal Bureau of Prisons, including, in part, modifying provisions related to compassionate release, which applies to the conditional release of medical inmates and aging inmates, to require inmates be informed of reduction in sentence availability and process.31

**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.32 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.33

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, 1994.34 The only forms of gain-time that can currently be earned are:

- Incentive gain-time;35
- Meritorious gain-time;36 and
- Educational achievement gain-time.37

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

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32 Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further 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.
33 Section 944.275(4)(f), F.S.
34 Chapter 93-406, L.O.F.
35 Section 944.275(4)(b), F.S. provides that incentive gain-time 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. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.
36 Section 944.275(4)(c), F.S., provides that meritorious gain-time 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. 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.
37 Section 944.275(4)(d), F.S., provides that educational gain-time 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.
release date may not be later than the maximum sentence expiration date. 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.

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. 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.

The DOC is authorized in certain circumstances to declare all gain-time earned by an inmate forfeited.

**Victim Input**

In 2018, the Florida voters approved Amendment 6 on the ballot, which provided certain rights to victims in the Florida Constitution. In part, Article I, s. 16 of the Florida Constitution, provides that a victim must have the following rights upon request:

- Reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary.
- To be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.
- To be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.
- To be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender.

**Sovereign Immunity**

Sovereign immunity is a principle under which a government cannot be sued without its consent. Article X, s. 13 of the Florida Constitution allows the Legislature to waive this immunity. Further, s. 768.28(1), F.S., allows for suits in tort against the State and its agencies.

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38 Section 944.275(3)(c), F.S.
39 Section 944.275(2)(a), F.S.
40 Section 944.275(3)(a), F.S.
41 Id. See also s. 944.275(4)(b), F.S.
42 Section 944.28(1), F.S.
43 Art. 1, s. 16(b)(6) a., b., f., and g., FLA. CONST.
and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct. Section 768.28, F.S., applies only to “injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee’s office or employment ....”

Section 768.28(5), F.S., limits tort recovery from a governmental entity to $200,000 per person and $300,000 per accident. This limitation does not prevent a judgment in excess of such amounts from being entered, but a claimant is unable to collect above the statutory limit unless a claim bill is passed by the Legislature.

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment, unless the damages result from the employee’s acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property. Thus, the immunity may be pierced only if state employees or agents either act outside the scope of their employment, or act “in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.”

Courts that have construed the bad faith prong of s. 768.28, F.S., to mean the actual malice standard, which means the conduct must be committed with “ill will, hatred, spite, [or] an evil intent.” Conduct meeting the wanton and willful standard is defined as “worse than gross negligence,” and “more reprehensible and unacceptable than mere intentional conduct.”

### III. Effect of Proposed Changes:

The bill creates s. 945.0912, F.S., which establishes a conditional aging inmate release (CAIR) program within the DOC for the purpose of:
- Determining whether release is appropriate for eligible inmates;
- Supervising the released inmates; and
- Conducting revocation hearings.

The CAIR program must include a panel of at least three people appointed by the Secretary for the purpose of determining the appropriateness of CAIR and conducting revocation hearings on the inmate releases.

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45 *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.).
46 Section 768.28(5), F.S.
47 Breaux v. City of Miami Beach, 899 So. 2d 1059 (Fla. 2005).
48 See Peterson v. Pollack, 2019 WL 6884887 (Fla. 4th DCA December 18, 2019).
49 Section 768.28(9)(a), F.S.
51 See Parker v. State Bd. of Regents ex rel. Fla. State Univ., 724 So.2d 163, 167 (Fla. 1st DCA 1998); Reed v. State, 837 So.2d 366, 368–69 (Fla. 2002); and Eiras v. Fla., 239 F. Supp. 3d 1331, 1343 (M.D. Fla. 2017).
52 Eiras v. Fla., 239, supra at 50; Sierra v. Associated Marine Insts., Inc., 850 So.2d 582, 593 (Fla. 2d DCA 2003).
53 Eiras v. Fla., supra at 50; Richardson v. City of Pompano Beach, 511 So.2d 1121, 1123 (Fla. 4th DCA 1987).
54 See also Kastritis v. City of Daytona Beach Shores, 835 F.Supp.2d 1200, 1225 (M.D. Fla. 2011) (defining these standards).
The bill provides legislative findings for the CAIR program.

**Eligibility Criteria**

An inmate is eligible for consideration for release under the CAIR program when the inmate has reached 65 years of age and has served at least 10 years on his or her term of imprisonment.

An inmate may not be considered for release through the CAIR program if he or she has ever been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent for committing:

- Any offense classified as a capital felony, life felony, or first degree felony punishable by a term of years not exceeding life imprisonment;
- Any violation of law that results in the killing of a human being;
- An offense that requires registration as a sexual offender on the sexual offender registry in accordance with s. 943.0435, F.S; or
- Any similar offense committed in another jurisdiction which would be an offense included in this list if it had been committed in violation of the laws of Florida.

The bill also prohibits an inmate who has previously been released on any form of conditional or discretionary release and who was recommitted to the DOC as a result of a finding that he or she subsequently violated the terms of such conditional or discretionary release to be considered for release through the CAIR program.

The bill provides a specific exception to the 85 percent rule that allows an inmate who meets the above criteria to be released from the custody of the DOC pursuant to the CAIR program prior to satisfying 85 percent of his or her term of imprisonment.

**Referral Process**

The bill requires that any inmate in the custody of the DOC who is eligible must be considered for the CAIR program. However, the authority to grant CAIR rests solely with the DOC and an inmate does not have a right to release on CAIR pursuant to s. 945.0912, F.S.

The DOC must identify inmates who may be eligible for CAIR. In considering an inmate for the CAIR program, the DOC may require the production of additional evidence or any other additional investigations that the DOC deems necessary for determining the appropriateness of the eligible inmate’s release.

Upon an inmate’s identification as potentially eligible for release on CAIR, the DOC must refer such inmate to the panel described above for review and determination of release.

The bill requires the DOC to provide notice to a victim of the inmate’s referral to the panel immediately upon identification of the inmate as potentially eligible for release on CAIR if the case that resulted in the inmate’s commitment to the DOC involved a victim and such victim specifically requested notification pursuant to Article I, s. 16 of the Florida Constitution. Additionally, the victim must be afforded the right to be heard regarding the release of the inmate.
Determination of Release

The bill requires the panel to conduct a hearing within 45 days after receiving the referral to determine whether CAIR is appropriate for the inmate. A majority of the panel members must agree that release on CAIR is appropriate for the inmate. If CAIR is approved, the inmate must be released by the DOC to the community within a reasonable amount of time with necessary release conditions imposed.

The bill provides that an inmate who is granted CAIR is considered an aging releasee upon release to the community.

An inmate who is denied CAIR by the panel may have the decision reviewed by the DOC’s general counsel, who must make a recommendation to the Secretary. The Secretary must review all relevant information and make a final decision about the appropriateness of release on CAIR. The decision of the Secretary is a final administrative decision not subject to appeal.

Additionally, an inmate who is denied CAIR that requests to have the decision reviewed must do so in a manner prescribed in rule and may be subsequently reconsidered for such release in a manner prescribed by department rule.

Release Conditions

The bill requires that an inmate granted release on CAIR must be released for a period equal to the length of time remaining on his or her term of imprisonment on the date the release is granted. The aging releasee must comply with all reasonable conditions of release the DOC imposes, which must include, at a minimum:

- Supervision by an officer trained to handle special offender caseloads.
- Active electronic monitoring, if such monitoring is determined to be necessary to ensure the safety of the public and the releasee’s compliance with release conditions.
- Any conditions of community control provided for in s. 948.101, F.S.
- Any other conditions the DOC deems appropriate to ensure the safety of the community and compliance by the aging releasee.

The bill provides that an aging releasee is considered to be in the custody, supervision, and control of the DOC. The bill further states that this does not create a duty for the DOC to provide the aging releasee with medical care upon release into the community. The bill provides that the aging releasee remains eligible to earn or lose gain-time in accordance with s. 944.275, F.S., and department rule. However, the bill clarifies that the aging releasee may not be counted in the prison system population, and the aging releasee’s approved community-based housing location may not be counted in the capacity figures for the prison system.

Revocation Based on Violation of Conditions

The bill provides that CAIR may be revoked for a violation of any release conditions the DOC establishes, including, but not limited to, a new violation of law. The DOC may terminate the
aging releasee’s CAIR and return him or her to the same or another institution designated by the DOC.

The bill provides that if a duly authorized representative of the DOC has reasonable grounds to believe that an aging releasee has violated the conditions of his or her release in a material respect, such representative may cause a warrant to be issued for the arrest of the medical release. Further, a law enforcement officer or a probation officer may arrest the aging releasee without a warrant in accordance with s. 948.06, F.S., if there are reasonable grounds to believe he or she has violated the terms and conditions of his or her CAIR. The law enforcement officer must report the aging releasee’s alleged violations to the supervising probation office or the DOC’s emergency action center for initiation of revocation proceedings.

If the basis of the violation of release conditions is related to a new violation of law, the aging releasee must be detained without bond until his or her initial appearance at which a judicial determination of probable cause is made. If the judge determines that there was no probable cause for the arrest, the aging releasee may be released. If the judge determines that there was probable cause for the arrest, the judge’s probable cause determination constitutes reasonable grounds to believe that the aging releasee violated the conditions of the CAIR.

The bill requires the DOC to order that the aging releasee subject to revocation for a violation of conditions be returned to the custody of the DOC for a CAIR revocation hearing as prescribed by rule. An aging releasee may admit to the alleged violation of the conditions of CAIR or may elect to proceed to a revocation hearing. A majority of the panel must agree that revocation is appropriate for the aging releasee’s CAIR to be revoked.

The bill provides that an aging releasee who has his or her CAIR revoked due to a violation of conditions must serve the balance of his or her sentence with credit for the actual time served on CAIR. Additionally, any gain-time accrued before recommitment may be forfeited pursuant to s. 944.28(1), F.S. If the aging releasee whose CAIR is revoked would otherwise be eligible for parole or any other release program, he or she may be considered for such release program pursuant to law.

**Revocation Hearing Process**

If the aging releasee is subject to revocation and elects to proceed with a hearing, the aging releasee must be informed orally and in writing of certain rights, including the releasee’s:

- Alleged violation with which he or she is charged.
- Right to:
  - Be represented by counsel.\(^{55}\)
  - Be heard in person.
  - Secure, present, and compel the attendance of witnesses relevant to the proceeding.
  - Produce documents on his or her own behalf.
  - Access all evidence used against the releasee and confront and cross-examine adverse witnesses.
  - Waive the hearing.

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\(^{55}\) However, this bill explicitly provides that this does not create a right to publicly funded legal counsel.
If the panel approves the revocation of the aging releasee's CAIR, the panel must provide a written statement as to evidence relied on and reasons for revocation.

**Review Process of Revocation Determination**

The bill authorizes an aging releasee whose CAIR is revoked based on either basis to have the revocation decision reviewed. The bill requires the DOC’s general counsel to review the revocation decision and make a recommendation to the Secretary. The Secretary must review all relevant information and make a final decision about the appropriateness of the revocation of CAIR.

The bill provides that any decision of the Secretary related to a revocation decision is a final administrative decision not subject to appeal.

**Sovereign Immunity**

The bill includes language providing that unless otherwise provided by law and in accordance with Article X, s. 13 of the Florida Constitution, members of the panel who are involved with decisions that grant or revoke CAIR are provided immunity from liability for actions that directly relate to such decisions.

The bill authorizes the DOC to adopt rules as necessary to implement the act.

The bill amends ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 893.135, 921.0024, 944.605, and 944.70, F.S., conforming these provisions to changes made by the Act.

The bill is effective October 1, 2020.

**IV. Constitutional Issues:**

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

   None.

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

   None.

C. **Trust Funds Restrictions:**

   None.

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

   None.
E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) reviewed the bill on January 27, 2020. The CJIC determined that the bill will likely result in a negative insignificant prison bed impact (i.e. a decrease of 10 or fewer prison beds).\(^{56}\) However, this was prior to the bill being amended to lower the age criteria from 70 to 65. Accordingly, the change in the age criteria will increase the pool of potential inmates who could be considered for the program.

The DOC reports that the overall fiscal impact of the bill is indeterminate because release will be at the discretion of the DOC.\(^{57}\) The DOC reports that as of October 18, 2019, there were a total of 1,849 inmates age 70 or older in its custody, and, based on the criteria set forth in the bill, only 168 of these inmates would meet the eligibility criteria for consideration for CAIR. The DOC reported that an additional 291 inmates were projected to become eligible based on the 70 years of age threshold over the next five years.\(^{58}\) This data was provided based on the age threshold contained in CS/SB 574. However, PCS/CS/SB 574 lowers the age threshold for eligibility to 65 years of age and also expands the offenses which preclude eligibility for release under the program. Therefore, PCS/CS/SB 574 may expand the pool of inmates who are eligible for consideration of CAIR release.

The DOC reports that when the inmate population is impacted in small increments statewide, the inmate variable per diem of $20.04 is the most appropriate to use to determine the fiscal impact. The variable per diem includes costs more directly aligned


\(^{57}\) The five highest occurring offenses of incarceration for these inmates are first or second degree murder (s. 782.04, F.S.), sexual battery on a victim under 12 (s. 794.011, F.S.), lewd or lascivious molestation on a victim under 12 (s. 800.04, F.S.), and robbery with a gun or deadly weapon (s. 812.13, F.S.). The DOC, SB 574 Agency Analysis, p. 1 and 4 (December 6, 2019)(on file with the Senate Criminal Justice Committee) [hereinafter cited as “The DOC SB 574 Analysis”].

\(^{58}\) The DOC, SB 574 Agency Analysis Updated, p. 2 and 4 (January 29, 2020)(on file with the Senate Appropriations Subcommittee on Civil and Criminal Justice) [hereinafter cited as “The DOC SB 574 Updated Analysis”].
with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The DOC’s FY 17-18 average per diem for community supervision was $5.47.\textsuperscript{59}

The DOC revised its previous analysis regarding staffing needs and raised the projected need from 2 additional staff for the Bureau of Classification Management to oversee, provide guidance, and coordinate the implementation and administration of the CAIR program, to 9 additional staff and associated costs, as follows.

1. Correctional Program Administrator $90,279 (salary and benefits)
2. Correctional Services Consultant $68,931 (salary and benefits)
3. Correctional Services Asst. Cons. $58,732 (salary and benefits)
5. Senior Attorney $79,073 (salary and benefits)
6. Correctional Probation Senior Ofcr. $246,848 (salary and benefits)

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Total All Funds\textsuperscript{60} $659,447 (recurring) $64,911 (non-recurring)

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 945.0912 of the Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, and 944.70.

\textsuperscript{59} The DOC SB 574 Analysis, p. 5.
\textsuperscript{60} DOC Spreadsheet (January 30, 2019), (on file with the committee on Criminal and Civil Justice Appropriations).
IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on January 29, 2020:
The committee substitute:
- Provides legislative findings;
- Modifies the age of eligible inmates from 70 years of age to 65;
- Expands the list of enumerated offenses that precludes an inmate from consideration to include:
  - Any offense classified as a capital felony, life felony, or first degree felony punishable by a term of years not exceeding life imprisonment;
  - Any violation of law that results in the killing of a human being;
  - An offense that requires registration as a sexual offender on the sexual offender registry in accordance with s. 943.0435, F.S.; or
  - Any similar offense committed in another jurisdiction which would be an offense included in this list if it had been committed in violation of the laws of Florida;
- Prohibits an inmate whose previous conditional release status was subsequently revoked from being considered for the CAIR program;
- Provides an exception to the 85 percent rule for inmates released to the CAIR program;
- Provides that an inmate who is denied release in the CAIR program may request the decision to be reviewed as prescribed by rule;
- Clarifies that the DOC does not have a duty to provide medical care for aging releasee’s released to the community;
- Clarifies that the DOC may terminate the aging releasee’s CAIR release when he or she violates the conditions of such release and return him or her to the same or another institution designated by the DOC;
- Authorizes a duly authorized representative of the DOC to cause a warrant to be issued if there is a reasonable grounds to believe that the aging releasee has violated the conditions of his or her release in a material way;
- Clarifies that the aging releasee may admit the allegations of the violation of CAIR or elect to proceed to a revocation hearing;
- If applicable, requires the panel to provide written statement as to the evidence relied on and reasons for revocation; and
- Clarifies that the members of the panel have sovereign immunity as it relates to the decision to release an inmate on CAIR or to revoke an aging releasee’s CAIR.

CS by Criminal Justice on December 10, 2019:
The committee substitute:
- Ensures that an inmate granted CAIR is released into the community within a reasonable amount of time;
- Makes some technical changes, including, in part, ensuring consistency with the terms used to describe an inmate who has been approved for CAIR and released into the community;
• Amends a number of relevant sections to ensure the changes made by the act are incorporated; and
• Makes the effective date October 1, 2020.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
By the Committee on Criminal Justice; and Senators Brandes and Perry

A bill to be entitled
An act relating to conditional aging inmate release; creating s. 945.0912, F.S.; establishing the conditional aging inmate release program within the Department of Corrections; establishing a panel to consider specified matters; providing for program eligibility; requiring that an inmate who meets certain criteria be considered for conditional aging inmate release; providing that the inmate does not have a right to release; requiring the department to identify eligible inmates; requiring the department to refer an inmate to the panel for consideration; providing victim notification requirements under certain circumstances; requiring the panel to conduct a hearing within a specified timeframe; providing requirements for the hearing; providing that an inmate who is approved for conditional aging inmate release must be released from the department’s custody within a reasonable amount of time; providing that an inmate is considered an aging releasee upon release from the department into the community; providing a review process for an inmate who is denied release; providing conditions for release; prohibiting an aging releasee or his or her community-based housing from being counted in the prison system population and the prison capacity figures, respectively; providing for the revocation of conditional aging inmate release; requiring the aging releasee to be detained if a violation is based on certain circumstances;
authorizing the aging releasee to be returned to the
department if he or she violates any conditions of the
release; requiring a majority of the panel to agree on
the appropriateness of revocation; authorizing the
forfeiture of gain-time if the revocation is based on
certain violations; providing a review process for an
aging releasee who has his or her released revoked;
requiring the aging releasee to be given specified
information in certain instances; providing rulemaking
authority; amending ss. 316.1935, 775.084, 775.087,
784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605,
and 944.70, F.S.; conforming cross-references;
providing an effective date.

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

Section 1. Section 945.0912, Florida Statutes, is created
to read:

945.0912 Conditional aging inmate release.—
(1) CREATION.—There is established a conditional aging
inmate release program within the department for the purpose of
determining eligible inmates who are appropriate for such
release, supervising the released inmates, and conducting
revocation hearings as provided for in this section. The program
must include a panel of at least three people appointed by the
secretary or his or her designee for the purpose of determining
the appropriateness of conditional aging inmate release and
conducting revocation hearings on the inmate releases.
(2) ELIGIBILITY.—
(a) An inmate is eligible for consideration for release under the conditional aging inmate release program when the inmate has reached 70 years of age and has served at least 10 years on his or her term of imprisonment.

(b) An inmate may not be considered for release through the program if he or she has ever been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent for committing:

1. A violation of any of the following sections which results in the actual killing of a human being:
   a. Section 775.33(4).
   b. Section 782.04(1) or (2).
   c. Section 782.09.

2. Any felony offense that serves as a predicate to registration as a sexual offender in accordance with s. 943.0435; or

3. Any similar offense committed in another jurisdiction which would be an offense listed in this paragraph if it had been committed in violation of the laws of this state.

(3) REFERRAL FOR CONSIDERATION.—

(a)1. Notwithstanding any provision to the contrary, an inmate in the custody of the department who is eligible for consideration pursuant to subsection (2) must be considered for the conditional aging inmate release program.

2. The authority to grant conditional aging inmate release rests solely with the department. An inmate does not have a right to such release.

(b) The department must identify inmates who may be eligible for the conditional aging inmate release program. In
considering an inmate for conditional aging inmate release, the department may require the production of additional evidence or any other additional investigations that the department deems necessary for determining the appropriateness of the eligible inmate’s release.

(c) The department must refer an inmate to the panel established under subsection (1) for review and determination of conditional aging inmate release upon his or her identification as potentially eligible for release pursuant to this section.

(d) If the case that resulted in the inmate’s commitment to the department involved a victim, and the victim specifically requested notification pursuant to s. 16, Art. I of the State Constitution, the department must notify the victim of the inmate’s referral to the panel immediately upon identification of the inmate as potentially eligible for release under this section. Additionally, the victim must be afforded the right to be heard regarding the release of the inmate.

(4) DETERMINATION OF RELEASE.—

(a) Within 45 days after receiving the referral, the panel established in subsection (1) must conduct a hearing to determine whether the inmate is appropriate for conditional aging inmate release.

(b) A majority of the panel members must agree that the inmate is appropriate for release pursuant to this section. If conditional aging inmate release is approved, the inmate must be released by the department to the community within a reasonable amount of time with necessary release conditions imposed pursuant to subsection (5). An inmate who is granted conditional aging inmate release is considered an aging releasee upon
release to the community.

(c) An inmate who is denied conditional aging inmate release by the panel may have the decision reviewed by the department’s general counsel, who must make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of conditional aging inmate release pursuant to this section. The decision of the secretary is a final administrative decision not subject to appeal. An inmate who is denied conditional aging inmate release may be subsequently reconsidered for such release in a manner prescribed by rule.

(5) RELEASE CONDITIONS.—

(a) An inmate granted release pursuant to this section is released for a period equal to the length of time remaining on his or her term of imprisonment on the date the release is granted. Such inmate is considered an aging releasee upon release from the department into the community. The aging releasee must comply with all reasonable conditions of release the department imposes, which must include, at a minimum:

1. Supervision by an officer trained to handle special offender caseloads.

2. Active electronic monitoring, if such monitoring is determined to be necessary to ensure the safety of the public and the aging releasee’s compliance with release conditions.

3. Any conditions of community control provided for in s. 948.101.

4. Any other conditions the department deems appropriate to ensure the safety of the community and compliance by the aging releasee.
(b) An aging releasee is considered to be in the care, custody, supervision, and control of the department and remains eligible to earn or lose gain-time in accordance with s. 944.275 and department rule. The aging releasee may not be counted in the prison system population, and the aging releasee’s approved community-based housing location may not be counted in the capacity figures for the prison system.

(6) REVOCATION HEARING AND RECOMMITMENT.—

(a) 1. An aging releasee’s conditional aging inmate release may be revoked for a violation of any condition of the release established by the department, including, but not limited to, a new violation of law.

2. If the basis of the violation of release conditions is related to a new violation of law, the aging releasee must be detained without bond until his or her initial appearance, at which a judicial determination of probable cause is made. If the judge determines that there was no probable cause for the arrest, the aging releasee may be released. If the judge determines that there was probable cause for the arrest, the judge’s determination also constitutes reasonable grounds to believe that the aging releasee violated the conditions of the release.

3. The department must order that the aging releasee subject to revocation under this paragraph be returned to department custody for a conditional aging inmate release revocation hearing as prescribed by rule.

4. A majority of the panel members must agree that revocation is appropriate for the aging releasee’s conditional aging inmate release to be revoked. If conditional aging inmate
release is revoked pursuant to this paragraph, the aging releasee must serve the balance of his or her sentence with credit for the actual time served on conditional aging inmate release. The aging releasee’s gain-time accrued before recommitment may be forfeited pursuant to s. 944.28(1). If the aging releasee whose conditional aging inmate release is revoked subject to this paragraph would otherwise be eligible for parole or any other release program, he or she may be considered for such release program pursuant to law.

5. An aging releasee whose release has been revoked pursuant to this paragraph may have the revocation reviewed by the department’s general counsel, who must make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of the revocation of conditional aging inmate release pursuant to this paragraph. The decision of the secretary is a final administrative decision not subject to appeal.

(b) If the aging releasee subject to revocation under paragraph (a) elects to proceed with a hearing, the aging releasee must be informed orally and in writing of the following:

1. The alleged violation with which the releasee is charged.

2. The releasee’s right to be represented by counsel. However, this subparagraph does not create a right to publicly funded legal counsel.

3. The releasee’s right to be heard in person.

4. The releasee’s right to secure, present, and compel the attendance of witnesses relevant to the proceeding.
5. The releasee’s right to produce documents on his or her own behalf.

6. The releasee’s right of access to all evidence used against the releasee and to confront and cross-examine adverse witnesses.

7. The releasee’s right to waive the hearing.

(7) RULEMAKING AUTHORITY.—The department may adopt rules as necessary to implement this section.

Section 2. Subsection (6) of section 316.1935, Florida Statutes, is amended to read:

316.1935 Fleeing or attempting to elude a law enforcement officer; aggravated fleeing or eluding.—

(6) Notwithstanding s. 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of this section. A person convicted and sentenced to a mandatory minimum term of incarceration under paragraph (3)(b) or paragraph (4)(b) is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency or conditional medical release under s. 947.149, or conditional aging inmate release under s. 945.0912, prior to serving the mandatory minimum sentence.

Section 3. Paragraph (k) of subsection (4) of section 775.084, Florida Statutes, is amended to read:

775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.—

(4)
591-02026-20

(k)1. A defendant sentenced under this section as a habitual felony offender, a habitual violent felony offender, or a violent career criminal is eligible for gain-time granted by the Department of Corrections as provided in s. 944.275(4)(b).

2. For an offense committed on or after October 1, 1995, a defendant sentenced under this section as a violent career criminal is not eligible for any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, or conditional aging inmate release under s. 945.0912.

3. For an offense committed on or after July 1, 1999, a defendant sentenced under this section as a three-time violent felony offender shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.

Section 4. Paragraph (b) of subsection (2) and paragraph (b) of subsection (3) of section 775.087, Florida Statutes, are amended to read:

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

(2)

(b) Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not prevent a court from imposing a longer sentence of incarceration as authorized by law in addition to the minimum mandatory sentence, or from imposing a sentence of death pursuant to other applicable law. Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not authorize a court to impose a lesser sentence than otherwise required by law.
Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, or conditional aging inmate release under s. 945.0912, prior to serving the minimum sentence.

(3)

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

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, or conditional aging inmate release under s. 945.0912, prior to serving the minimum sentence.

Section 5. Subsection (3) of section 784.07, Florida Statutes, is amended to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit...
employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(3) Any person who is convicted of a battery under paragraph (2)(b) and, during the commission of the offense, such person possessed:

(a) A “firearm” or “destructive device” as those terms are defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 3 years.

(b) A semiautomatic firearm and its high-capacity detachable box magazine, as defined in s. 775.087(3), or a machine gun as defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 8 years.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, or conditional aging inmate release under s. 945.0912, prior to serving the minimum sentence.

Section 6. Subsection (1) of section 790.235, Florida Statutes, is amended to read:

790.235 Possession of firearm or ammunition by violent career criminal unlawful; penalty.—

(1) Any person who meets the violent career criminal criteria under s. 775.084(1)(d), regardless of whether such person is or has previously been sentenced as a violent career criminal, who owns or has in his or her care, custody, possession, or control any firearm, ammunition, or electric
weapon or device, or carries a concealed weapon, including a
tear gas gun or chemical weapon or device, commits a felony of
the first degree, punishable as provided in s. 775.082, s.
775.083, or s. 775.084. A person convicted of a violation of
this section shall be sentenced to a mandatory minimum of 15
years’ imprisonment; however, if the person would be sentenced
to a longer term of imprisonment under s. 775.084(4)(d), the
person must be sentenced under that provision. A person
convicted of a violation of this section is not eligible for any
form of discretionary early release, other than pardon,
executive clemency, or conditional medical release under s.
947.149, or conditional aging inmate release under s. 945.0912.

Section 7. Subsection (7) of section 794.0115, Florida
Statutes, is amended to read:

794.0115 Dangerous sexual felony offender; mandatory
sentencing.—

(7) A defendant sentenced to a mandatory minimum term of
imprisonment under this section is not eligible for statutory
gain-time under s. 944.275 or any form of discretionary early
release, other than pardon or executive clemency, or conditional
medical release under s. 947.149, or conditional aging inmate
release under s. 945.0912, before serving the minimum sentence.

Section 8. Paragraphs (b), (c), and (g) of subsection (1)
and subsection (3) of section 893.135, Florida Statutes, are
amended to read:

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

(1) Except as authorized in this chapter or in chapter 499
and notwithstanding the provisions of s. 893.13:
(b) 1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in s. 893.03(2)(a)4., or of any mixture containing cocaine, but less than 150 kilograms of cocaine or any such mixture, commits a felony of the first degree, which felony shall be known as “trafficking in cocaine,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

If the quantity involved:

   a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

   b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

   c. Is 400 grams or more, but less than 150 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 150 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., commits the first degree felony of trafficking in cocaine. A person who has been convicted of the first degree felony of trafficking in cocaine under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency, or conditional medical
release under s. 947.149, or conditional aging inmate release under s. 945.0912. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person’s conduct in committing that act led to a natural, though not inevitable, lethal result, such person commits the capital felony of trafficking in cocaine, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

3. Any person who knowingly brings into this state 300 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., and who knows that the probable result of such importation would be the death of any person, commits capital importation of cocaine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or
(3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as “trafficking in illegal drugs,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $500,000.

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of hydrocodone, as described in s. 893.03(2)(a)1.k., codeine, as described in s. 893.03(2)(a)1.g., or any salt thereof, or 28 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as “trafficking in hydrocodone,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 50 grams or more, but less than 100 grams, such
person shall be sentenced to a mandatory minimum term of
imprisonment of 7 years and shall be ordered to pay a fine of
$100,000.

c. Is 100 grams or more, but less than 300 grams, such
person shall be sentenced to a mandatory minimum term of
imprisonment of 15 years and shall be ordered to pay a fine of
$500,000.

d. Is 300 grams or more, but less than 30 kilograms, such
person shall be sentenced to a mandatory minimum term of
imprisonment of 25 years and shall be ordered to pay a fine of
$750,000.

3. A person who knowingly sells, purchases, manufactures,
delivers, or brings into this state, or who is knowingly in
actual or constructive possession of, 7 grams or more of
oxycodone, as described in s. 893.03(2)(a)1.q., or any salt
thereof, or 7 grams or more of any mixture containing any such
substance, commits a felony of the first degree, which felony
shall be known as “traflcking in oxycodone,” punishable as
provided in s. 775.082, s. 775.083, or s. 775.084. If the
quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person
shall be sentenced to a mandatory minimum term of imprisonment
of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 25 grams, such person
shall be sentenced to a mandatory minimum term of imprisonment
of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 25 grams or more, but less than 100 grams, such
person shall be sentenced to a mandatory minimum term of
imprisonment of 15 years and shall be ordered to pay a fine of
d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:
   (I) Alfentanil, as described in s. 893.03(2)(b)1.;
   (II) Carfentanil, as described in s. 893.03(2)(b)6.;
   (III) Fentanyl, as described in s. 893.03(2)(b)9.;
   (IV) Sufentanil, as described in s. 893.03(2)(b)30.;
   (V) A fentanyl derivative, as described in s. 893.03(1)(a)62.;
   (VI) A controlled substance analog, as described in s. 893.0356, of any substance described in sub-sub-subparagraphs (I)-(V); or
   (VII) A mixture containing any substance described in sub-sub-subparagraphs (I)-(VI), commits a felony of the first degree, which felony shall be known as "trafficking in fentanyl," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. If the quantity involved under sub-subparagraph a.:
   (I) Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and shall be ordered to pay a fine of $50,000.
   (II) Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of
imprisonment of 15 years, and shall be ordered to pay a fine of $100,000.

(III) Is 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and shall be ordered to pay a fine of $500,000.

5. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency, or conditional medical release under s. 947.149, or conditional aging inmate release under s. 945.0912. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person’s conduct in committing that act led to a natural, though not inevitable, lethal result,
such person commits the capital felony of trafficking in illegal
drugs, punishable as provided in ss. 775.082 and 921.142. A
person sentenced for a capital felony under this paragraph shall
also be sentenced to pay the maximum fine provided under

6. A person who knowingly brings into this state 60
kilograms or more of any morphine, opium, oxycodone,
hydrocodone, codeine, hydromorphone, or any salt, derivative,
isomer, or salt of an isomer thereof, including heroin, as
described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or
60 kilograms or more of any mixture containing any such
substance, and who knows that the probable result of such
importation would be the death of a person, commits capital
importation of illegal drugs, a capital felony punishable as
provided in ss. 775.082 and 921.142. A person sentenced for a
capital felony under this paragraph shall also be sentenced to
pay the maximum fine provided under subparagraph 1.

(g)1. Any person who knowingly sells, purchases,
manufactures, delivers, or brings into this state, or who is
knowingly in actual or constructive possession of, 4 grams or
more of flunitrazepam or any mixture containing flunitrazepam as
described in s. 893.03(1)(a) commits a felony of the first
degree, which felony shall be known as “trafficking in
flunitrazepam,” punishable as provided in s. 775.082, s.
775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more but less than 14 grams, such person
shall be sentenced to a mandatory minimum term of imprisonment
of 3 years, and the defendant shall be ordered to pay a fine of
$50,000.
592. Is 14 grams or more but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.
593. c. Is 28 grams or more but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of $500,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits the first degree felony of trafficking in flunitrazepam. A person who has been convicted of the first degree felony of trafficking in flunitrazepam under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency, or conditional medical release under s. 947.149, or conditional aging inmate release under s. 945.0912. However, if the court determines that, in addition to committing any act specified in this paragraph:
594. a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or
595. b. The person’s conduct in committing that act led to a natural, though not inevitable, lethal result,
596. such person commits the capital felony of trafficking in flunitrazepam, punishable as provided in ss. 775.082 and
921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(3) Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section. A person sentenced to a mandatory minimum term of imprisonment under this section is not eligible for any form of discretionary early release, except pardon or executive clemency, conditional medical release under s. 947.149, or conditional aging inmate release under s. 945.0912, prior to serving the mandatory minimum term of imprisonment.

Section 9. Subsection (2) of section 921.0024, Florida Statutes, is amended to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(2) The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure. The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. When the total sentence points exceeds 44 points, the lowest permissible sentence in prison months shall be calculated by subtracting 28 points from the total sentence points and
decreasing the remaining total by 25 percent. The total sentence points shall be calculated only as a means of determining the lowest permissible sentence. The permissible range for sentencing shall be the lowest permissible sentence up to and including the statutory maximum, as defined in s. 775.082, for the primary offense and any additional offenses before the court for sentencing. The sentencing court may impose such sentences concurrently or consecutively. However, any sentence to state prison must exceed 1 year. If the lowest permissible sentence under the code exceeds the statutory maximum sentence as provided in s. 775.082, the sentence required by the code must be imposed. If the total sentence points are greater than or equal to 363, the court may sentence the offender to life imprisonment. An offender sentenced to life imprisonment under this section is not eligible for any form of discretionary early release, except executive clemency, conditional medical release under s. 947.149, or conditional aging inmate release under s. 945.0912.

Section 10. Paragraph (b) of subsection (7) of section 944.605, Florida Statutes, is amended to read:

944.605 Inmate release; notification; identification card.—
(7)
(b) Paragraph (a) does not apply to inmates who:
1. The department determines have a valid driver license or state identification card, except that the department shall provide these inmates with a replacement state identification card or replacement driver license, if necessary.
2. Have an active detainer, unless the department determines that cancellation of the detainer is likely or that
the incarceration for which the detainer was issued will be less than 12 months in duration.

3. Are released due to an emergency release, or a conditional medical release under s. 947.149, or conditional aging inmate release under s. 945.0912.

4. Are not in the physical custody of the department at or within 180 days before release.

5. Are subject to sex offender residency restrictions, and who, upon release under such restrictions, do not have a qualifying address.

Section 11. Subsection (1) of section 944.70, Florida Statutes, is amended to read:

944.70 Conditions for release from incarceration.—
(1)(a) A person who is convicted of a crime committed on or after October 1, 1983, but before January 1, 1994, may be released from incarceration only:
1. Upon expiration of the person’s sentence;
2. Upon expiration of the person’s sentence as reduced by accumulated gain-time;
3. As directed by an executive order granting clemency;
4. Upon attaining the provisional release date;
5. Upon placement in a conditional release program pursuant to s. 947.1405; or
6. Upon the granting of control release pursuant to s. 947.146.

(b) A person who is convicted of a crime committed on or after January 1, 1994, may be released from incarceration only:
1. Upon expiration of the person’s sentence;
2. Upon expiration of the person’s sentence as reduced by
accumulated meritorious or incentive gain-time;

3. As directed by an executive order granting clemency;
4. Upon placement in a conditional release program pursuant to s. 947.1405 or a conditional medical release program pursuant to s. 947.149, or a conditional aging inmate release program pursuant to s. 945.0912; or
5. Upon the granting of control release, including emergency control release, pursuant to s. 947.146.

Section 12. This act shall take effect October 1, 2020.
THE FLORIDA SENATE

APPEARANCE RECORD

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

1-29-2020
Meeting Date

SB 574
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Conditional Aging Inmate Release

Name Brenda Spitzbarth Spitzbarth

Job Title Retired

Address 2450 SE Issac Rd

PO. Box FL 34952

Phone 772-834-8124

Email bkayspitz@gmail.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

S-001 (10/14/14)
Conditional Aging Inmate Release

Robert Weissert (*Why-cert*)

EVP * General Counsel

106 N. Bronough St.
Tallahassee, Florida 32301

650.222.5452
robert@floridatxwatch.org

For  Against  Information

Florida Tax Watch

Appearing at request of Chair: Yes  No

This form is part of the public record for this meeting.
1/29/20

Meeting Date

Topic
Conditional Release

Name
Nancy Daniels

Job Title
Legislative Consultant

Address
103 N. Gadsden St
Tallahassee, FL 32301

Phone
(850) 851-6850

Email
ndaniels@flpda.org

Speaking:
☑ For ☐ Against ☐ Information

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

Representing
Florida Public Defender Association

Appearing at request of Chair:
☐ Yes ☑ No

Lobbyist registered with Legislature:
☑ Yes ☐ No

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

This form is part of the public record for this meeting.
Meeting Date: 1/29/2022

Bill Number (if applicable): 574

Amendment Barcode (if applicable): 

The Florida Senate

APPEARANCE RECORD

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

Topic: Conditional Release

Name: Ida V. Eskamani

Job Title: Public Policy

Address: Street

Phone: 

Email: 

Speaking: □ For □ Against □ Information

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

Representing: Organize Florida

Appearing at request of Chair: □ Yes □ No

Lobbyist registered with Legislature: □ Yes □ No

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

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

S-001 (10/14/14)
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### CHAIRMAN’S PROPOSAL

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1/28/2020  8:45 PM Page 2 of 10
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# Appropriations Subcommittee on Criminal and Civil Justice
## Proposed Budget

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Total JUSTICE ADMIN COMMISSION (JAC) 109.00 4,410,824 117,830,694 6,209,978 118,123,745 119,145,781

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### Appropriations Subcommittee on Criminal and Civil Justice

**Proposed Budget**

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9:35:25 AM    Sen. Brandes
9:36:19 AM    B. Cervone
9:36:24 AM    Sen. Rouson
9:37:18 AM    Sen. Brandes
9:37:18 AM    Sen. Gainer