Tab 1	**CS/SB 1308** by **CJ, Brandes (CO-INTRODUCERS) Bracy, Powell, Rouson**; (Compare to H 01131) Criminal Justice					
139324	D	S		ACJ, Brandes	Delete everything after	02/24 08:29 AM
291996	AA	S	RCS	ACJ, Brandes	Delete L.997 - 1002:	02/25 12:27 PM

Tab 2	**CS/SB 1496** by **MS, Lee (CO-INTRODUCERS) Broxson**; (Similar to CS/H 01085) Veterans Treatment Courts					
251488	A	S	RCS	ACJ, Lee	Delete L.53 - 328:	02/25 12:32 PM
~~930566~~	AA	S	WD	ACJ, Brandes	Delete L.5 - 66:	02/25 12:32 PM
446302	AA	S	RCS	ACJ, Brandes	Delete L.5 - 66:	02/25 12:32 PM
~~142094~~	A	S	WD	ACJ, Brandes	Delete L.63 - 121:	02/25 12:32 PM

Tab 3	**CS/SB 1552** by **CJ, Flores**; (Compare to CS/H 01055) Law Enforcement Activities					
540900	A	S	RCS	ACJ, Flores	btw L.499 - 500:	02/25 05:49 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS SUBCOMMITTEE ON CRIMINAL AND CIVIL JUSTICE
Senator Brandes, Chair
Senator Bracy, Vice Chair

MEETING DATE: Tuesday, February 25, 2020
TIME: 9:00 a.m.—12:00 noon
PLACE: *Mallory Horne Committee Room,* 37 Senate Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 1308** Criminal Justice / Brandes (Compare H 1131)	Criminal Justice; Authorizing the resentencing and release of certain persons who are eligible for sentence review under specified provisions; precluding eligibility for a sentence review for young adult offenders who previously committed, or conspired to commit, murder; requiring the Department of Corrections to notify young adult offenders in writing of their eligibility for sentence review within certain timeframes; requiring the department to provide inmates with certain information upon their release, etc. CJ 02/04/2020 Fav/CS ACJ 02/25/2020 Fav/CS AP	Fav/CS Yeas 6 Nays 1
2	**CS/SB 1496** Military and Veterans Affairs and Space / Lee (Similar CS/H 1085)	Veterans Treatment Courts; Authorizing the establishment of veterans treatment courts by the chief judge of a judicial circuit; specifying eligibility requirements for participation in the program; providing factors that a court must consider in determining a defendant's eligibility to participate; authorizing a court to impose a condition requiring a probationer or community controllee who is eligible to participate in a veterans treatment court to participate in certain treatment programs under certain circumstances, etc. MS 02/12/2020 Fav/CS ACJ 02/25/2020 Fav/CS AP	Fav/CS Yeas 7 Nays 0
3	**CS/SB 1552** Criminal Justice / Flores (Compare CS/H 1055)	Law Enforcement Activities; Authorizing a citizen support organization for Florida Missing Children's Day to provide grants to law enforcement agencies for specified purposes; authorizing sexual predators and sexual offenders to report online certain information to the Department of Law Enforcement; revising reporting requirements for sexual predators and sexual offenders, etc. CJ 02/11/2020 Fav/CS ACJ 02/25/2020 Fav/CS AP	Fav/CS Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	PCS/CS/SB 1308 (695928)
INTRODUCER:	Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee; and Senators Brandes, Bracy and Powell
SUBJECT:	Criminal Justice
DATE:	February 27, 2020 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1308 makes a number of changes to the criminal justice system, including:

- Providing for the retroactive application of the changes made by CS/HB 7125 (2019) to section 322.34, Florida Statutes, related to the offense of driving while license suspended or revoked (DWLSR).
- Requiring offenders convicted of DWLSR who have not been sentenced as of October 1, 2020, to be sentenced in accordance with the new penalties outlined in CS/HB 7125 (2019).
- Authorizing offenders convicted of DWLSR who have been sentenced and are still serving such sentence to be resentenced in accordance with the penalties in CS/HB 7125 (2019).
- Providing procedures for the resentencing of eligible persons previously convicted of DWLSR and requires the court of original jurisdiction, upon receiving an application for sentence review from the eligible person, to hold a sentence review hearing to determine if the eligible person meets the criteria for resentencing.
- Providing that a person is eligible to expunge a criminal history record of a conviction that resulted from former section 322.34, Florida Statutes, in specified circumstances.
- Renaming of the Criminal Punishment Code to the "Public Safety Code" and changing the primary purpose from punishing the offender to public safety.
- Removing various mandatory minimum terms of imprisonment for specified offenses.
- Reducing the mandatory minimum penalties imposed upon a prison releasee reoffender (PRR), a category of repeat offenders, under section 775.082(9), Florida Statutes, and expressly applying such changes retroactively.

- Providing a process for resentencing certain prison releasee reoffenders and removing a provision of law that prohibits a prison releasee reoffender from any form of early release.
- Authorizing a court to depart from the imposition of a mandatory minimum sentence in drug trafficking cases if certain circumstances are met.
- Clarifying that a court is only required to modify or continue an offender's probationary term if *all* of the enumerated specified factors apply.
- Modifying the list of prior offenses that exclude juvenile offenders convicted of capital murder from a sentence review hearing in accordance with section 921.1402, Florida Statutes, enacted subsequent to the *Graham v. Florida* and *Miller v. Alabama* cases, to only murder and applying this modification retroactively.
- Providing that juvenile offenders who are no longer barred from a sentence review hearing due to the modified list of enumerated prior offenses and who have served 25 years of the imprisonment imposed on the effective date of the bill must have a sentence review hearing conducted immediately.
- Providing all other juvenile offenders who are no longer barred from a sentence review hearing due to the modified list of enumerated prior offenses must be given a sentence review hearing when 25 years of the imprisonment imposed have been served.
- Establishing a sentence review process similar to that created for juvenile offenders pursuant to section 921.1402, Florida Statutes, for "young adult offenders."
- Defining the term "young adult offender."
- Allowing certain young adult offenders to request a sentence review hearing with the original sentencing court if specified conditions are met, specifically:
    - A young adult offender convicted of a life felony offense, or an offense reclassified as such, who was sentenced to 20 years imprisonment may request a sentence review after 20 years; and
    - A young adult offender convicted of a first degree felony offense, or an offense reclassified as such, who was sentenced to 15 years imprisonment may request a sentence review after 15 years.
- Expanding the types of forensic analysis available to a petitioner beyond DNA testing.
- Requiring a petitioner to show that forensic analysis may result in evidence material to the identity of the perpetrator of, or an accomplice to, the crime that resulted in the person's conviction, rather than having to show the evidence would exonerate the person or mitigate his or her sentence.
- Authorizing a private laboratory to perform forensic analysis under specified circumstances at the petitioner's expense.
- Requiring the Florida Department of Law Enforcement (FDLE) to conduct a search of the statewide DNA database and request the National DNA Index System (NDIS) to search the federal database if forensic analysis produces a DNA profile.
- Authorizing a court to order a governmental entity that is in possession of physical evidence claimed to be lost or destroyed to search for the physical evidence and produce a report to the court, the petitioner, and the prosecuting authority regarding such lost evidence.
- Repealing 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).
- Providing definitions and eligibility criteria for the CMR program.

- Providing a process for the referral, determination of release, and revocation of release for the CMR program.
- Establishing a conditional aging inmate release (CAIR) program within the DOC.
- Providing eligibility criteria for the CAIR program.
- Providing a process for the referral, determination of release, and revocation of release for the CAIR program.
- Deleting and modifying terms related to the "Victims of Wrongful Incarceration Compensation Act."
- Eliminating specified factors barring from consideration for certain persons from compensation for wrongful incarceration.
- Extending the time for a person who was wrongfully incarcerated to file a petition with the court to determine eligibility for compensation from 90 days to two years.
- Authorizing certain persons who were previously barred from filing a petition for wrongful compensation to file a petition with the court by July 1, 2021.
- Requiring the DOC and county detention facilities to provide documentation to inmates upon release specifying the total length of the term of imprisonment at the time of release.
- Allowing the time spent incarcerated in a county detention facility or state correctional facility to apply towards satisfaction of residing for a specified amount of time in Florida for designation as a resident for tuition purposes.
- Requiring the time spent incarcerated in a county detention facility or state correctional facility to be credited toward the residency requirement, with any combination of documented time living in Florida before or after incarceration.
- Requiring the Office of Program Policy and Governmental Accountability (OPPAGA) to conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment and submit a report by November 1, 2020.

The bill will likely have a fiscal impact to various agencies and a prison bed impact to the DOC. See Section V.

Unless otherwise expressly stated, the bill is effective October 1, 2020.

II. Present Situation:

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

III. Effect of Proposed Changes:

Retroactive Application of Certain Offenses Related to Driver Licenses (Sections 1 and 15)

Driver Licenses - Generally

Florida law requires a person to hold a driver license[1] or be exempted from licensure to operate a motor vehicle on the state's roadways.[2] Exemptions to the licensure requirement include nonresidents who possess a valid driver license issued by their home states, federal government, employees operating a government vehicle for official business, and people operating a road machine, tractor, or golf cart.[3]

The Department of Highway Safety and Motor Vehicles (DHSMV) can suspend or revoke a driver license or driving privilege for both driving-related and non-driving related reasons. Suspension means the temporary withdrawal of the privilege to drive[4] and revocation means a termination of the privilege to drive.[5]

Among the driving-related reasons that a person may have had his or her license suspended or revoked are convictions for fleeing or attempting to elude a law enforcement officer,[6] driving under the influence (DUI),[7] and refusal to submit to a lawful breath, blood, or urine test in a DUI investigation.[8] Alternatively, some of the non-driving related convictions a person may have his or her license suspended or revoked for are graffiti by a minor[9] and certain drug offenses.[10]

Additionally, the clerk of the court can direct the DHSMV to suspend a license for several reasons, including failure to comply with civil penalties.[11] Such a suspension lasts until the individual is compliant with the court's requirements for reinstatement[12] or if the court grants relief from the suspension.[13] A person with a suspended or revoked license cannot drive, which can inhibit his or her ability to work and can further impede the process of resolving outstanding financial obligations.[14]

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[1] "Driver license" is a certificate that, subject to all other requirements of law, authorizes an individual to drive a motor vehicle and denotes an operator's license as defined in 49 U.S.C. s. 30301. Section 322.01(17), F.S.
[2] Section 322.03(1), F.S.
[3] Section 322.04, F.S.
[4] Section 322.01(40), F.S.
[5] Section 322.01(36), F.S.
[6] Section 316.1935(5), F.S.
[7] *See* ss. 316.193, 322.26, 322.271, and 322.28, F.S.
[8] *See* ss. 316.193 and 322.2615(1)(b), F.S.
[9] Section 806.13, F.S.
[10] Section 322.055, F.S.
[11] Section 322.245, F.S.
[12] *See* ss. 318.15(2) and 322.245(5), F.S.
[13] Section 322.245(5), F.S.
[14] Section 322.271, F.S., allows a person to have his or her driving privilege reinstated on a restricted basis solely for business or employment purposes under certain circumstances.

Section 322.34, F.S. (2018)

Prior to October 1, 2019, a person committed the offense of DWLSR if his or her driver license or driving privilege had been canceled, suspended, or revoked and he or she, knowing of such cancellation, suspension, revocation, or suspension,[15] drove any motor vehicle. The penalties for DWLSR ranged from a moving traffic violation to a third degree felony.[16]

Under the former provisions, a person could be charged with a third-degree felony[17] for the offense of DWLSR if:

- He or she knew of the suspension or revocation and had at least two prior convictions for DWLSR;
- He or she qualified as a habitual traffic offender;[18] or
- His or her license had been permanently revoked.[19]

Section 322.34, F.S. (2019) and CS/HB 7125 (2019)

The 2019 Legislature passed and the Governor signed into law CS/HB 7125, which, in part, amended the provisions related to DWLSR.[20] Subsequent to the effective date of CS/HB 7125 (2019), the offense of DWLSR is classified as a:

- Misdemeanor of the second degree, upon a first conviction.[21]
- Misdemeanor of the first degree, upon a second or subsequent conviction, unless the suspension is related to an enumerated offense discussed below.[22]
- A felony of the third degree, upon a third or subsequent conviction if the current violation of DWLSR or the most recent prior violation of DWLSR is resulting from a violation of:
  - DUI;
  - Refusal to submit to a urine, breath-alcohol, or blood alcohol test;
  - A traffic offense causing death or serious bodily injury; or
  - Fleeing or eluding.[23]

CS/HB 7125 (2019) also added the term "suspension or revocation equivalent status" to ch. 322, F.S., and defined it to mean a designation for a person who does not have a driver license or

[15] The element of knowledge is satisfied in several ways, including: if the person has been previously cited as provided in s. 322.34(1), F.S., the person admits to knowledge of the cancellation, suspension, or revocation, or the person received notice of such status. There is a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order appears in the DHSMV's records for any case except for one involving a suspension by the DHSMV for failure to pay a traffic fine or for a financial responsibility violation. *See* s. 322.34(2), F.S.

[16] *See* s. 322.34(2), F.S.

[17] A third degree felony is punishable by up to 5 years' imprisonment and a fine of up to $5,000. Sections 775.082 and 775.083, F.S.

[18] *See* s. 322.264, F.S.

[19] *See* ss. 322.34 and 322.341, F.S. (2018).

[20] Chapter 2019-167, L.O.F.

[21] Section 322.34(2)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to $500. Sections 775.082 and 775.083, F.S.

[22] Additionally, a person convicted under this paragraph for a third or subsequent conviction must serve a minimum of ten days in jail. Section 322.34(2)(b), F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to $1,000. Sections 775.082 and 775.083, F.S.

[23] The penalties amended in CS/HB 7125 (2019) do not apply to all persons who commit the offense of DWLSR. Section 322.34(5)-(7) and (10), F.S., provide different penalties for certain offenders who violate these provisions.

driving privilege but would qualify for suspension or revocation of his or her driver license or driving privilege if licensed.[24] This term was added to s. 322.34(2), F.S., therefore expanding the criminal penalties for DWLSR to apply to a person who does not have a driver license or driving privilege, but is under suspension or revocation equivalent status.

Collateral Consequences of Felony Convictions

A collateral consequence is any adverse legal effect of a conviction that is not a part of a sentence.[25] If the consequence does not affect the range of punishment, it is said to be collateral to the plea.[26] Such consequences are legal and regulatory restrictions that limit or prohibit people convicted of crimes from accessing employment, business and occupational licensing, housing, voting, education, and other rights, benefits, and opportunities.[27] Some examples of collateral consequences that occur upon any felony conviction in Florida include the loss of the right to vote,[28] hold public office,[29] serve on a jury,[30] obtain certain professional licenses,[31] and owning or possessing a firearm.[32] There are additional collateral consequences that can occur as a result of a felony conviction of specified offenses, such as the loss of driving privileges related to drug and theft offenses.[33] Conviction of a crime may also result in disqualification to hold a government job and other limits on employment opportunities or even loss of employment.[34]

Constitutional and Statutory Savings Clauses

Until recently, Article X, Section 9 of the State Constitution (Florida's constitutional savings clause) expressly prohibited any repeal or amendment of a criminal statute that affected prosecution or punishment for any crime previously committed, and therefore, the Florida Legislature was "powerless to lessen penalties for past transgressions; to do so would require constitutional revision."[35]

In 2018, Florida voters adopted the following amendment to Article X, Section 9 of the State Constitution:

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[24] The DHSMV is authorized to designate a person as having suspension or revocation equivalent status in the same manner as it is authorized to suspend or revoke a driver license or driving privilege by law. *See* s. 322.34(41), F.S.
[25] The Miami-Dade Florida Public Defender's Office, *What You Don't Know Can Hurt You: The Collateral Consequences of a Conviction in Florida*, Updated April 2019, p. 7, available at http://www.pdmiami.com/ConsequencesManual.pdf (last visited February 21January 29, 2020).
[26] *See Bolware v. State*, 995 So.2d 268 (Fla. 2008).
[27] U.S. Commission on Civil Rights, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, Executive Summary, June 2019, p. 1, available at https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf (last visited February 21January 29, 2020).
[28] Art. VI, s. 4, FLA. CONST.; s. 97.041, F.S.
[29] *Id*.
[30] Section 40.013(1), F.S.
[31] For example, s*ee* chs. 455, 489, and 626, F.S.
[32] Section 790.23, F.S.
[33] *See* ss. 322.055 and 812.0155, F.S.
[34] 16 Fla. Prac., Sentencing, s. 6:120 (2019-2020 ed.).
[35] Comment, *Today's Law and Yesterday's Crime: Retroactive Application of Ameliorative Criminal Legislation*, 121 U. Pa. L. Rev. 120, 129 (1972).

> Repeal ~~or amendment~~ of a criminal statute shall not affect prosecution ~~or punishment~~ for any crime ~~previously~~ committed before such repeal.

Revised Article X, Section 9 of the State Constitution only prohibits applying the repeal of a criminal statute to any crime committed before such repeal if this retroactive application "affects prosecution." The revised constitutional savings clause does not expressly prohibit retroactive application of a repeal that does not affect prosecution, a repeal that affects punishment, or an amendment of a criminal statute that affects prosecution or punishment.

The elimination of the expressed prohibition on certain retroactive applications is not a directive to the Legislature to retroactively apply what was formerly prohibited. As the Florida Supreme Court recently stated: "… [T]here will no longer be any provision in the Florida Constitution that would prohibit the Legislature from applying an amended criminal statute retroactively to pending prosecutions or sentences. However, nothing in our constitution does or will require the Legislature to do so, and the repeal of the prohibition will not require that they do so."[36]

In 2019, the Legislature created s. 775.022, F.S., a general savings statute for criminal statutes. The statute defines a "criminal statute" as a statute, whether substantive or procedural, dealing in any way with a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime.[37]

The statute specifies legislative intent to preclude:
- Application of the common law doctrine of abatement to a reenactment or an amendment of a criminal statute; and
- Construction of a reenactment or amendment as a repeal or an implied repeal[38] of a criminal statute for purposes of Article X, Section 9 of the State Constitution (Florida's constitutional savings clause).[39]

The statute also states that, except as expressly provided in an act of the Legislature or as provided in two specified exceptions, the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate any of the following:
- The prior operation of the statute or a prosecution or enforcement under the criminal statute;
- A violation of the criminal statute based on any act or omission occurring before the effective date of the act; and
- A prior penalty, prior forfeiture, or prior punishment incurred or imposed under the statute.[40]

The first exception is a retroactive amelioration exception that provides that if a penalty, forfeiture, or punishment for a violation of a criminal statute is reduced by a reenactment or an amendment of a criminal statute, the penalty, forfeiture, or punishment, if not already imposed,

[36] *Jimenez v. Jones*, 261 So.3d 502, 504 (Fla. 2018).
[37] Section 775.022(2), F.S.
[38] The Florida Supreme Court previously indicated that the "standard [is] that implied repeals are disfavored and should only be found in cases where there is a 'positive repugnancy' between the two statutes or 'clear legislative intent' indicating that the Legislature intended the repeal[.]" *Flo-Sun, Inc. v. Kirk*, 783 So.2d 1029, 1036 (Fla. 2001).
[39] Section 775.022(1), F.S.
[40] Section 775.022(3), F.S.

must be imposed according to the statute as amended.[41] This means the penalty, forfeiture, or punishment reduction must be imposed retroactively *if the sentence has not been imposed*, including the situation in which the sentence is imposed after the effective date of the amendment. However, nothing in the general savings statute precludes the Legislature from providing for a more extensive retroactive application either to legislation in the future or legislation that was enacted prior to the effective date of the general savings statute. This is because the general savings statute specifically provides for a legislative exception to the default position of prospectivity. The Legislature only has to "expressly provide" for this retroactive application.[42]

Expunction of Criminal History Records

Overview

Another consequence of a felony conviction in Florida is the prohibition of obtaining a court-ordered expunction. Florida law makes adult criminal history records accessible to the public unless the record has been sealed or expunged.[43] Criminal history records related to certain offenses are barred from being expunged through the court-order process.[44] Section 943.0585, F.S., sets forth procedures for expunging criminal history records through court-order.

Persons who have had their criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,[45] petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.[46]

Process for Obtaining a Court-Ordered Expunction

To qualify for a court-ordered expunction, a person must first obtain a certificate of eligibility (COE) from the FDLE.[47] To obtain the COE from the FDLE, a person must comply with a number of requirements, including, in part, that he or she has never been adjudicated guilty or delinquent of a:

- Criminal offense;
- Comparable ordinance violation; or
- Specified felony or misdemeanor prior to the COE application date.[48]

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[41] Section 775.022(4), F.S.
[42] Section 775.022(3), F.S.
[43] Florida Department of Law Enforcement, *Seal and Expunge Process*, available at http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Seal-and-Expunge-Home.aspx (last visited February 21, 2020). *See also* s. 943.053, F.S.
[44] *See* 943.0584, F.S., for a complete list of offenses that are ineligible for court-ordered expunction.
[45] These include candidates for employment with a criminal justice agency; applicants for admission to the Florida Bar; those seeking a sensitive position involving direct contact with children, the developmentally disabled, or the elderly with the Department of Children and Family Services, Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; persons seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or a Florida seaport.
[46] Section 943.0585(6)(a), F.S.
[47] *See* s. 943.0585(2), F.S.
[48] *See* s. 943.0585(1) and (2), F.S., for full requirements for obtaining a COE.

Further, a person may seek a court-ordered expunction immediately, provided the person is no longer subject to court supervision, if none of the charges related to the arrest or alleged criminal activity resulted in a trial or relate to an offense enumerated in s. 943.0584, F.S., and:

- An indictment, information, or other charging document was not filed or issued in the case (no-information); or
- An indictment, information, or other charging document was filed or issued in the case, but it was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction (dismissal).[49]

Upon receipt of a COE, the person must then petition the court to expunge the criminal history record. The petition must include the COE and a sworn statement from the petitioner that he or she is eligible for expunction to the best of his or her knowledge.[50] A copy of the completed petition is then served upon the appropriate state attorney or statewide prosecutor and the arresting agency, any of which may respond to the court regarding the petition.[51]

There is no statutory right to a court-ordered expunction and any request for such an expunction of a criminal history record may be denied at the sole discretion of the court.[52] The court is only authorized to order the expunction of a record that pertains to one arrest or one incident of alleged criminal activity.[53] However, the court may order the expunction of a record pertaining to more than one arrest if such additional arrests directly relate to the original arrest.[54]

Effect of an Expunction

Any record that the court grants the expunction of must be physically destroyed or obliterated by any criminal justice agency having such record. The FDLE, however, is required to maintain the record. Records that have been expunged are confidential and exempt[55] from the public records law.[56] Only a court order would make the record available to a person or entity that is otherwise excluded.[57]

[49] *See* s. 943.0585(1), F.S.
[50] *See* s. 943.0585(3)(b), F.S.
[51] Section 943.0585(5)(a), F.S.
[52] Section 943.0585(4)(e), F.S.
[53] Section 943.0585(4)(c), F.S.
[54] *Id*. The court must articulate in writing its intention to expunge or seal a record pertaining to multiple arrests and a criminal justice agency may not expunge or seal multiple records without such written documentation. The court is also permitted to expunge or seal only a portion of a record.
[55] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* 85-62 Fla. Op. Att'y Gen. (1985).
[56] Section 943.0585(6)(d), F.S.
[57] *See* s. 943.0585(6), F.S.

Effect of the Bill

Retroactive Application of the New DWLSR Offense

The bill creates s. 322.3401, F.S., expressly providing for the retroactive application of the changes made by CS/HB 7125 (2019) to s. 322.34, F.S., related to the offense of DWLSR.

The bill provides legislative intent language, which states:

> It is the intent of the Legislature to retroactively apply section 12 of chapter 2019-167, Laws of Florida, only as provided in this section, to persons who committed the offense of driving while license suspended, revoked, canceled, or disqualified before October 1, 2019, the effective date of section 12 of chapter 2019-167, Laws of Florida, which amended s. 322.34 to modify criminal penalties and collateral consequences for offenses under that section.

The bill defines two terms for purposes of s. 322.3401, F.S.:
- "Former s. 322.34", which means a reference to s. 322.34, F.S., as it existed at any time before its amendment by ch. 2019-167, L.O.F.
- "New s. 322.34", which means a reference to s. 322.34, F.S., as it exists after the amendments made by ch. 2019-167, L.O.F., became effective.

The bill requires a person who committed the offense of DWLSR before October 1, 2019, but who was not sentenced under former s. 322.34, F.S., before October 1, 2020, to be sentenced for the degree of offense as provided for in the new s. 322.34, F.S.

Further, the bill authorizes a person who committed the offense of DWLSR before October 1, 2019, who was sentenced before October 1, 2019, to a term of imprisonment or supervision pursuant to former s. 322.34, F.S., and who is serving such penalty on or after October 1, 2020, to be resentenced to the degree of offense that is consistent with the degree provided for in the new s. 322.34, F.S.

The bill provides procedures for the resentencing of eligible persons. Specifically:
- A person who is eligible for resentencing must be given notification of such eligibility by the facility in which the person is imprisoned or the entity who is supervising the person.
- A person seeking a sentence review must submit an application to the court of original jurisdiction requesting that a sentence review hearing be conducted. This request serves to initiate the review procedures provided for under the bill.
- The sentencing court must retain original jurisdiction for the duration of the sentence for the purpose of conducting sentence review hearings.
- A person who is eligible for a sentence review hearing may be represented by counsel and the court is required to appoint a public defender to represent the person if he or she cannot afford an attorney.

Upon receiving an application for sentence review from the eligible person, the court must hold a sentence review hearing to determine if the person meets the criteria for resentencing.

If the court determines at the sentence review hearing that the person meets the criteria for resentencing, the court may resentence the person for the degree of offense that is consistent with the degree provided for in the new s. 322.34, F.S. If the court does not resentence the person, the court must provide written findings why resentencing is not appropriate.

In addition to the retroactive application of sentencing provisions of the new s. 322.34, F.S., the bill provides that a person who has been convicted of a felony under former s. 322.34, F.S., and whose offense would not be classified as a felony under the new s. 322.34, F.S., must have all outstanding fines, fees, and costs related to such felony conviction waived.

Further, he or she must be treated as if he or she had been convicted of a misdemeanor for purposes of any right, privilege, benefit, remedy, or collateral consequence that the person might be entitled to but for such felony conviction. However, the bill provides that this provision does not serve to remove the designation of the person as a convicted felon, but the statutory consequences of such felony conviction no longer apply.

Because the bill expressly provides for retroactive application of the changes the bill makes, the bill has provided a legislative exception to the default position of prospectively.

Expunction Related to DWLSR Offenses

The bill also creates s. 943.0587, F.S., authorizing a person to petition a court to expunge a criminal history record for a conviction under former s. 322.34, F.S., if the person:

- Received a withholding of adjudication or adjudication of guilt for a violation of DWLSR under former s. 322.34, F.S., and whose conviction would not be classified as a felony under the new s. 322.34, F.S.; and
- Only has felony convictions for the offense of DWLSR pursuant to the former s. 322.34, F.S.

The bill defines the terms of "former s. 322.34" and "new s. 322.34" in the same manner as described above.

Unlike other expunctions, an expunction granted in accordance with the bill does not prevent the person who receives such relief from petitioning for the expunction or sealing of a later criminal history record as provided for in ss. 943.0583, 943.0585, and 943.059, F.S., if the person is otherwise eligible under those sections.

The bill provides that a person seeking to expunge a criminal history record must apply to the FDLE for a COE prior to petitioning a court to expunge a criminal history record for eligible DWLSR offenses. The FDLE is required to adopt rules to establish procedures for applying for and issuing a COE for expunction. The FDLE is required to issue the COE to a person who is the subject of a criminal history record eligible under the bill if that person satisfies the eligibility criteria listed below:

- Has submitted to the FDLE a written certified statement from the appropriate state attorney or statewide prosecutor which confirms the criminal history record complies with the criteria;
- Has submitted to the FDLE a certified copy of the disposition of the charge or charges to which the petition to expunge pertains; and

- Remits a $75 processing fee to the FDLE for placement in the Department of Law Enforcement Operating Trust Fund, unless the executive director waives such fee.

As with COE certificates for other court-ordered expunctions, the bill provides that the COE is valid for 12 months after the date stamped on the certificate when issued by the FDLE. After that time, the petitioner must reapply for a new COE. The petitioner's status and the law in effect at the time of the renewal application determine the petitioner's eligibility.

The bill provides that a petition to expunge a criminal history record must be accompanied by:
- A valid COE issued by the FDLE.
- The petitioner's sworn statement that he or she:
  - Satisfies the eligibility requirements for expunction; and
  - Is eligible for expunction to the best of his or her knowledge.

Further, the bill provides that it is a third degree felony for a person to knowingly provide false information on a sworn statement for expunction pursuant to the bill.

The bill requires a copy of the completed petition to expunge to be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency, which entity is then able to respond to the court regarding the completed petition to expunge.

If relief is granted by the court, the following actions must be taken:
- The clerk of the court must certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency.
- The arresting agency is required to forward the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains.
- The FDLE must forward the order to expunge to the Federal Bureau of Investigation.
- The clerk of the court must certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

The FDLE or any other criminal justice agency is not required to act on an order to expunge entered by a court when such order does not comply with the requirements of the bill. Upon receipt of such an order, the FDLE must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor must take action within 60 days to correct the record and petition the court to void the order. The bill provides that a cause of action, including contempt of court, does not arise against any criminal justice agency for failure to comply with an order to expunge when the petitioner for such order failed to obtain the COE as required or when the order does not otherwise comply with the requirements.

The bill provides that the effect of the expunction order is identical to the effect of court-ordered expunction orders that have been issued pursuant to s. 943.0585, F.S. The bill provides:

- The person who is the subject of a criminal history record that is expunged may lawfully deny or fail to acknowledge the arrests and convictions covered by the expunged record, except when the subject of the record:
  - Is a candidate for employment with a criminal justice agency;
  - Is a defendant in a criminal prosecution;
  - Concurrently or subsequently petitions for relief under this section, s. 943.0583, F.S., s. 943.059, F.S., or s. 943.0585, F.S.;
  - Is a candidate for admission to The Florida Bar;
  - Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation of the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;
  - Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;
  - Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services; or
  - Is seeking to be appointed as a guardian pursuant to s. 744.3125, F.S.
- Except as mentioned above, a person who has been granted an expunction may not be held to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge an expunged criminal history record.

Section 1 of the bill, which relates to the retroactive application of the changes to the DWLSR offense, is effective October 1, 2020. Section 15, which relates to the expunction of certain DWLSR offenses is effective on the same date as SB 1506 or similar legislation, which is tied to this bill, goes into effect if such legislation is adopted during this session.

Criminal Punishment Code (Sections 6, 9, 33, 34, 38, 40-51, and 56-62)

In 1997, the Legislature enacted the Criminal Punishment Code[58] (Code) as Florida's "primary sentencing policy."[59] The primary purpose of the Code is to "punish the offender."[60] Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).[61] Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a Level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points,

[58] Sections 921.002-921.0027, F.S. The Code is effective for offenses committed on or after October 1, 1998.
[59] *See* chs. 97-194 and 98-204, L.O.F.
[60] Section 921.002(1)(b), F.S.
[61] Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.[62]

Absent mitigation,[63] the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S. Except as otherwise provided by law, the statutory maximum sentence for an offense committed, which is classified as a:

- Capital felony is:
  - Death, if the proceeding held according to the procedure set forth in s. 921.141, F.S., results in a determination that it is appropriate for the person to be punished by death; or
  - Life imprisonment without the possibility of parole.
- Life felony is a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.
- First-degree felony is:
  - 30 years; or
  - Imprisonment for a term of years not exceeding life imprisonment when specifically provided by statute.
- Second-degree felony is 15 years.
- Third degree felony is 5 years.[64]

Effect of the Bill

The bill amends s. 921.002, F.S., to revise the name and primary purpose of the Criminal Punishment Code, Florida's primary sentencing policy for noncapital felonies. Under current law, the primary purpose of the Criminal Punishment Code is to punish the offender. The bill renames the Criminal Punishment Code as the Public Safety Code and provides that the primary purpose of the Public Safety Code is public safety.

Conforming changes are made to numerous other statutes consistent with these changes.

These provisions of the bill are effective October 1, 2020.

Mandatory Minimum Sentencing (Sections 2-5, 7, 8, and 39)

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence."[65] As previously noted, the sentencing range under the Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the

[62] Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.
[63] The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.
[64] *See* s. 775.082, F.S.
[65] Fla. R. Crim. P. 3.704(d)(26).

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

Prosecutors have "complete discretion" in the charging decision.[66] The exercise of this discretion may determine whether a defendant is subject to a mandatory minimum term or a reduced mandatory minimum term. Further, a prosecutor could move the court to reduce or suspend a sentence if the defendant renders substantial assistance.

There are few circumstances in which a court of its own accord can depart from a mandatory minimum term. A court may depart from a mandatory minimum term if the defendant is a youthful offender.[67] A court may also depart from a mandatory minimum term for a violation of s. 316.027(2)(c), F.S., (driver involved in a fatal crash fails to stop and remain at the scene of a crash), if the court "finds that a factor, consideration or circumstance clearly demonstrates that imposing a mandatory minimum term of imprisonment would constitute or result in an injustice."[68]

Possession of Certain Spiny Lobsters and Saltwater Products

Section 379.407(5), F.S., prohibits a person, firm, or corporation to be in possession of spiny lobster during the closed season or, while on the water, to be in possession of spiny lobster tails that have been wrung or separated from the body, unless such possession is allowed by commission rule.[69] Certain repeat violations of this provision are punishable by mandatory minimum terms of imprisonment, including:

- A third violation is a first degree misdemeanor with, in part, a mandatory minimum term of imprisonment of 6 months.[70]
- A third violation within 1 year after a second violation is a third degree felony with, in part, a mandatory minimum term of imprisonment of 1 year.
- A fourth or subsequent violation is a third degree felony with, in part, a mandatory minimum term of imprisonment of 1 year.

Additionally, s. 379.407(7), F.S., prohibits any unlicensed person, firm, or corporation who is required to be licensed under ch. 379, F.S., as a commercial harvester or a wholesale or retail dealer to sell or purchase any saltwater product or to harvest or attempt to harvest any saltwater product with intent to sell the saltwater product. Certain repeat violations of this provision are punishable by mandatory minimum terms of imprisonment, including:

- A third violation is a first degree misdemeanor with, in part, a mandatory minimum term of imprisonment of 6 months.

[66] "Under Florida's constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute." *State v. Bloom*, 497 So.2d 2, 3 (Fla. 1986).
[67] Section 958.04, F.S.
[68] Section 316.027(2)(g), F.S.
[69] *See* the Florida Fish and Wildlife Conservation Commission, *Spiny Lobster*, available at https://myfwc.com/fishing/saltwater/recreational/lobster/ (last visited February 12, 2020).
[70] A second degree misdemeanor is punishable by up to 60 days in county jail and up to a $500 fine and a first degree misdemeanor is punishable by up to one year in jail and up to a $1,000 fine. Sections 775.082 and 775.083, F.S.

- A third violation within 1 year after a second violation is a third degree felony with, in part, a mandatory minimum term of imprisonment of 1 year.
- A fourth or subsequent violation is a third degree felony with, in part, a mandatory minimum term of imprisonment of 1 year.[71]

It is also a third degree felony for any person whose license privileges have been permanently revoked to thereafter sell or purchase, or attempt to sell or purchase, any saltwater product. This violation is punishable with a mandatory minimum term of imprisonment of 1 year.[72]

Any commercial harvester or wholesale or retail dealer whose license privileges are under suspension is also prohibited from selling or purchasing during such period of suspension, or attempting to sell or purchase, any saltwater product. Certain violations of such provision includes mandatory minimum penalties, including:

- A second violation occurring within 12 months of a first violation is a third degree felony with, in part, a mandatory minimum term of imprisonment of 1 year.
- A third violation within 24 months of the second violation or subsequent violation is a third degree felony with, in part, a mandatory minimum term of imprisonment of 1 year.[73]

Any commercial harvester is prohibited from harvesting or attempting to harvest any saltwater product with intent to sell the saltwater product without having purchased a saltwater products license with the requisite endorsements. Certain violations of such provision includes mandatory minimum penalties, including:

- A third violation is a first degree misdemeanor with, in part, a mandatory minimum term of imprisonment of 6 months.
- A third violation within 1 year after a second violation is a third degree felony with, in part, a mandatory minimum term of imprisonment of 1 year.
- A fourth or subsequent violation is a third degree felony with, in part, a mandatory minimum term of imprisonment of 1 year.[74]

Effect of the Bill

The bill amends s. 379.407(5) and (7), F.S., removing any mandatory minimum terms of imprisonment from the sentencing provisions for these offenses.

This provision of the bill is effective October 1, 2020.

Phosphogypsum Stack Offenses

According to the Florida Department of Environmental Protection (DEP) Geospatial Open Data, Phosphogypsum is calcium sulfate (gypsum) that is formed as a byproduct from the chemical reaction of sulfuric acid with phosphate rock in the production of phosphoric acid. The Phosphogypsum Stack System layer contains the approximate boundaries of the phosphogypsum stacks in Florida and phosphogypsum stacks are formed as a means to store the phosphogypsum

[71] Section 379.401(7)(a), F.S.
[72] Section 379.401(7)(b), F.S.
[73] Section 379.407(7)(c), F.S.
[74] Section 379.407(7)(d), F.S.

and associated process water resulting from the chemical manufacturing of phosphoric acid and related fertilizer products. Phosphogypsum stacks are located in Polk, Hillsborough, Manatee, and Hamilton counties. This layer was designed to provide the Bureau of Mining and Mineral Regulation and other interested parties with a graphical representation of the phosphogypsum stack systems and their relative locations in the state. The layer is maintained by the Bureau of Mining and Mineral Regulation in the Division of Water Resource Management at the DEP.[75]

Section 403.4154, F.S., creates a regulatory program for the management of such stacks and imposes criminal penalties, including mandatory minimum terms of imprisonment, for certain actions related to the management of such stacks. Specifically, it is a third degree felony for a person to willfully, knowingly, or with reckless indifference or gross carelessness:

- Misstate or misrepresent the financial condition or closure costs of an entity engaged in managing, owning, or operating a phosphogypsum stack or stack system.
- Make a distribution which would be prohibited under s. 607.06401(3), F.S., after failing to comply with the DEP rules requiring demonstration of closure financial responsibility, until the noncompliance is corrected.

Both of these provisions are punishable by, in part, imprisonment for 5 years for each offense.

Effect of the Bill

The bill amends s. 403.4154(2), F.S., removing the specific language related to imprisonment of five years for each offense.

This provision of the bill is effective October 1, 2020.

Health Care Practitioners Operating Without a Valid License

Section 456.065, F.S., prohibits the unlicensed practice of a health care profession or the performance or delivery of medical or health care services to patients in this state without a valid, active license to practice that profession, regardless of the means of the performance or delivery of such services. Further, the unlicensed practice of a health care profession is a:

- Third degree felony, with, in part, a minimum mandatory period of incarceration of one year, to:
  - Practice, attempt to practice, or offer to practice a health care profession without an active, valid Florida license to practice that profession, which includes practicing on a suspended, revoked, or void license, but does not include practicing, etc., with an inactive or delinquent license for a period of up to 12 months.
  - Apply for employment for a position that requires a license without notifying the employer that the person does not currently possess a valid, active license to practice that profession.
  - Hold oneself out, regardless of the means of communication, as able to practice a health care profession or as able to provide services that require a health care license.

[75] The FDEP, *Florida Gypsumstacks*, available at https://geodata.dep.state.fl.us/datasets/6277c3b1eeae4a818f8683fc29e6b35b_0 (last visited February 12, 2020). *See also* ch. 62-673.200, F.A.C.

- Second degree felony, with in part, a minimum mandatory period of incarceration of one year, to:
  - Practice a health care profession without an active, valid Florida license to practice that profession when such practice results in serious bodily injury.[76]
- First degree misdemeanor with, in part, a term of imprisonment of 30 days, to:
  - Practice, attempt to practice, or offer to practice a health care profession with an inactive or delinquent license for any period of time up to 12 months.[77]

Effect of the Bill

The bill amends s. 456.065(2)(d), F.S., removing the requirement that the person must serve a minimum term of imprisonment as described above. Further, the bill amends s. 456.065(2)(d)2., F.S., requiring that a person must *knowingly* apply for employment for a position that requires a license without notifying the employer that the person does not currently possess a valid, active license to practice that profession to violate this provision.

This provision of the bill is effective October 1, 2020.

Insurers Operating Without a Certificate of Authority

Section 624.401, F.S., prohibits a person to act as an insurer, transact insurance, or otherwise engage in insurance activities in Florida without a certificate of authority. The degree of offense and specific penalties applicable for the violation are determined by the amount of any insurance premium collected with respect to any violation, including when the premium:

- Is less than $20,000, the offender commits a third degree felony and must be sentenced to a minimum term of imprisonment of 1 year.
- Is $20,000 or more, but less than $100,000, the offender commits a second degree felony and must be sentenced to a minimum term of imprisonment of 18 months.
- Is $100,000 or more, the offender commits a first degree felony and the offender must be sentenced to a minimum term of imprisonment of two years.[78]

Effect of the Bill

The bill amends s. 624.401(4)(b), F.S., to remove the mandatory minimum terms of imprisonment mentioned above for specified violations of engaging in insurance activities.

This provision of the bill is effective October 1, 2020.

False and Fraudulent Insurance Claims

In part, s. 817.234, F.S., provides it is a second degree felony for any person to intend to defraud any other person to solicit or cause to be solicited any business from a person involved in a motor vehicle accident for the purpose of making, adjusting, or settling motor vehicle tort claims

[76] Section 465.065(2)(d)2., F.S., defines "serious bodily injury" to mean death; brain or spinal damage; disfigurement; fracture or dislocation of bones or joints; limitation of neurological, physical, or sensory function; or any condition that required subsequent surgical repair.
[77] However, practicing, attempting to practice, or offering to practice a health care profession when that person's license has been inactive or delinquent for a period of time of 12 months or more is a third degree felony.
[78] Section 624.401(4), F.S.

or claims for personal injury protection benefits required by s. 627.736, F.S., related to the requirement to carry personal injury protection benefits.

Any person convicted of a violation of s. 817.234(8), F.S., must be sentenced to a minimum term of imprisonment of two years.

Effect of the Bill

The bill amends s. 817.234(8)(a), F.S., deleting the mandatory minimum term of imprisonment required in this provision.

This provision of the bill is effective October 1, 2020.

Drug Trafficking

Section 893.135, F.S., requires mandatory minimum prison sentences for certain drug trafficking offenses. That section provides that possession of more than certain specified amounts of cannabis, cocaine, certain narcotic opioids, sedatives, stimulants, hallucinogens, and other illicit substances constitutes "trafficking," with increasing mandatory prison terms and fines for possession of amounts beyond certain thresholds.

Effect of the Bill

This bill allows a sentencing court to impose a sentence other than the mandatory minimum on drug trafficking offenders if the court finds on the record that the offender did not:

- Engage in a continuing criminal enterprise as defined in s. 893.20, F.S.;[79]
- Use or threaten violence or use a weapon during the commission of the offense; and
- Cause a death or serious bodily injury.

The bill authorizes a sentencing court to impose a sentence other than the mandatory minimum on an offender convicted of trafficking in the following substances:

- Cannabis or cannabis plants;[80]
- Cocaine;[81]
- Morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin;[82]
- Hydrocodone, Oxycodone, Alfentanil, Carfentanil, Fentanyl, Sufentanil, or a fentanyl derivative;[83]

[79] Under s. 893.20, F.S., a person is guilty of engaging in a continuing criminal enterprise if he or she "commits three or more felonies under [chapter 893] in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts … ."
[80] Section 893.135(1)(a), F.S.
[81] Section 893.135(1)(b), F.S.
[82] Section 893.135(1)(c), F.S.
[83] *Id.*

- Phencyclinide;[84]
- Methaqualone;[85]
- Amphetamine or methamphetamine;[86]
- Flunitrazepam;[87]
- Gamma-butyrolactone (GBL);[88]
- 1,4-Butanediol;[89]
- Substituted phenycyclohexylamine, substituted cathinone, substituted phenethylamine[90]
- Lysergic acid diethylamide (LSD);[91]
- Synthetic cannabinoids;[92] and
- N-benzyl phenethylamines.[93]

Because the lowest permissible sentence under the Code Scoresheet is distinct from a "mandatory minimum sentence,"[94] the bill does not grant a court any additional authority to deviate from the lowest permissible Code Scoresheet sentence.[95]

Section 775.084, F.S., which is not amended by the bill, requires "mandatory minimum" prison terms for "habitual felony offenders."[96] An offender convicted of drug trafficking in violation of s. 893.135, F.S., would still be subject to certain mandatory minimum sentences if he or she meets the definition of a "habitual felony offender."

This provision of the bill is effective October 1, 2020.

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[84] Section 893.135(1)(d), F.S.; Phencylidine is a "hallucinogen formerly used as a veterinary anesthetic, and briefly as a general anesthetic for humans." Phencyclidine, PubChem, U.S. National Library of Medicine, available at https://pubchem.ncbi.nlm.nih.gov/compound/Phencyclidine (last visited February 21, 2020).
[85] Section 893.135(1)(e), F.S.; "Methaqualone is a sedative, hypnotic agent that was used for insomnia, but was taken off of the market, in the U.S., in 1983 due to its high risk of abuse." Methaqualone, PubChem, U.S. National Library of Medicine, available at https://pubchem.ncbi.nlm.nih.gov/compound/6292 (last visited February 21, 2020).
[86] Section 893.135(1)(f), F.S.
[87] Section 893.135(1)(g), F.S.; "Some reports indicate that it is used as a date rape drug and suggest that it may precipitate violent behavior. The United States Government has banned the importation of this drug." Flunitrazepam, PubChem, U.S. National Library of Medicine, available at https://pubchem.ncbi.nlm.nih.gov/compound/3380 (last visited February 21, 2020).
[88] Section 893.135(1)(h), F.S.; GBL is commercial solvent.
[89] Section 893.135(1)(j), F.S.
[90] Section 893.135(1)(k)1., F.S.
[91] Section 893.135(1)(l)1., F.S.
[92] Section 893.135(1)(m), F.S., synthetic cannabinoids do not derive their psychoactive effects through THC, but rather are "cannabinoid receptor agonists" that act on various brain receptors in a similar manner to cannabinoids.
[93] Section 893.135(1)(n), F.S.
[94] *See* Fla. R. Crim. P. 3.704(d)(26) (differentiating between a mandatory minimum sentence and the lowest permissible sentence under the Code).
[95] Section 921.0026, F.S., authorizes a court to depart downward from the lowest permissible sentence under the Code Scoresheet based on a non-exhaustive list of mitigating factors described in that section.
[96] Habitual felony offenders are defendants who have been convicted of two or more prior felonies, or whose conduct meets certain criteria: the offense was committed while the offender was serving a prison sentence or within 5 years after release from a prison sentence, the felony is not simple possession under s. 893.13, F.S., and any of the qualifying felonies were not pardoned or set aside in a postconviction proceeding. Section 775.084(1)(a), F.S.

Prison Releasee Reoffenders (Section 6)

A prison releasee reoffender is a person who is being sentenced for committing or attempting to commit a qualifying offense, such as murder, manslaughter, sexual battery, or robbery,[97] within three years of being released from a:

- State correctional facility operated by the DOC or a private vendor;
- Correctional institution of another jurisdiction following incarceration for which the sentence is punishable by more than one year in Florida; or
- County detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence,[98] if the person is otherwise eligible.[99]

A prison releasee reoffender also includes a person who commits or attempts to commit a qualifying offense while serving a prison sentence or while on escape status from a state correctional facility operated by the DOC or a private vendor or from a correctional institution of another jurisdiction.[100]

A judge must also sentence a defendant as a prison releasee reoffender if the defendant committed or attempted to commit any of the previously-described offenses while the defendant was serving a prison sentence or on escape status from a Florida state or private correctional facility or while the defendant was on escape status from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.[101]

A person who qualifies as a prison releasee reoffender is subject to a mandatory minimum sentence. Specifically, a court must sentence a prison releasee reoffender to:

- A 5-year mandatory minimum term for a third degree felony;
- A 15-year mandatory minimum term for a second degree felony;
- A 30-year mandatory minimum term for a first degree felony; and
- Life imprisonment for a first degree felony punishable by life or a life felony.[102]

A person sentenced as a prison releasee reoffender can be released only by expiration of sentence and is not eligible for parole, control release, or any form of early release. A prison releasee reoffender must also serve 100 percent of the court-imposed sentence.[103]

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[97] *See* s. 775.082(9)(a)3., F.S., for a complete list of qualifying offenses.
[98] In December of 2018, the Florida Supreme Court held that a defendant released from a county jail after having been committed to the legal custody of the DOC was not a prison releasee reoffender within the current meaning of that term as provided in s. 775.082, F.S. CS/HB 7125 (2019), codified in ch. 2019-167, L.O.F., amended s. 775.082(9), F.S., to include language to cure this issue. *See State v. Lewars*, 259 So.3d 793 (Fla. 2018).
[99] Section 775.082(9)(a)1., F.S.
[100] Section 775.082(9)(a)2., F.S.
[101] Section 775.082(9)(a)2., F.S.
[102] Section 775.082(9)(a)3., F.S.
[103] Section 775.082(9)(b), F.S. Section 775.082(9), F.S., does not prevent a court from imposing a greater sentence of incarceration as authorized by law, pursuant to s. 775.084, F.S., or any other provision of law. Section 775.082(9)(c), F.S.

The prison releasee reoffender provisions provide legislative intent that prison releasee reoffenders "be punished to the fullest extent of the law" unless the prosecuting attorney does not have sufficient evidence to prove the highest charge available, the testimony of material witness cannot be obtained, the victim provides a written statement that he or she does not want the offender to receive a mandatory sentence, or other extenuating circumstances exist which preclude the just prosecution of the offender.[104]

For every case in which the offender meets the prison releasee reoffender criteria and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney.[105]

Effect of the Bill

The bill amends s. 775.082(9), F.S., to reduce mandatory minimum penalties applicable to a prison releasee reoffender. A prison releasee reoffender must be sentenced to a term of imprisonment of at least:

- 25 years for a felony punishable by life (current law requires life imprisonment);
- 20 years for a first degree felony (current law requires 30 years);
- 10 years for a second degree felony (current law requires 15 years); and
- 3 years for a third degree felony (current law requires 5 years).

The bill provides for retroactive application of the previously-described penalty changes to:

- A person who qualified as a prison releasee reoffender before July 1, 2020 (referred to in the bill as "former 775.082(9)"), and who was not sentenced as a prison releasee reoffender before July 1, 2020; and
- A person who qualified as a prison releasee reoffender before July 1, 2020, who was sentenced as such before July 1, 2020, to a mandatory minimum term of imprisonment pursuant to former s. 775.082(9), F.S., and who is serving such mandatory minimum term of imprisonment on or after July 1, 2020.

A person who qualified as a prison releasee reoffender before July 1, 2020, and who was not sentenced as a prison releasee reoffender before July 1, 2020, must be sentenced as provided in the bill (see previous description of changes to penalties).

A person who qualified as a prison releasee reoffender before July 1, 2020, who was sentenced as such before July 1, 2020, to a mandatory minimum term of imprisonment pursuant to former s. 775.082(9), F.S., and who is serving such mandatory minimum term of imprisonment on or after July 1, 2020, may be resentenced in the following manner:

- The DOC must notify this person of his or her eligibility to request a sentence review hearing.
- The person seeking sentence review must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The sentencing court retains original jurisdiction for the duration of the sentence for this purpose.

[104] Section 775.082(9)(d)1., F.S.
[105] Section 775.082(9)(d)2., F.S.

- A person who is eligible for this sentence review hearing is entitled to representation by counsel and the court may appoint a public defender to represent the person if he or she cannot afford an attorney.
- Upon receiving an application from an eligible person, the court of original jurisdiction must hold a sentence review hearing to determine if the eligible person meets the criteria for resentencing. If the court determines at the sentence review hearing that the eligible person meets such criteria, the court may resentence the person as provided in the bill (see previous description of changes to penalties); however, the new sentence may not exceed the person's original sentence with credit for time served. If the court does not resentence the person, the court must provide written findings why resentencing is not appropriate.
- A person resentenced as previously described is eligible to receive any gain-time pursuant to s. 944.275, F.S., he or she was previously ineligible to receive under former s. 775.082(9), F.S.

Because the bill expressly provides for retroactive application of the changes the bill makes, the bill has provided a legislative exception to the default position of prospectivity.

The bill modifies s. 775.082(9)(a)3., F.S., which currently provides that "upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced" under the penalties specified in s. 775.082(9), F.S. The bill removes reference to the "preponderance of evidence" standard of proof and ineligibility for sentencing under the sentencing guidelines. Neither of these changes appear to be substantive. Whether stated in the statute or not "preponderance of the evidence" would likely be the standard of proof because s. 775.082(9), F.S., does not increase the penalty beyond the statutory maximum.[106] Further, it does not need to be in the statute that a prison releasee reoffender is ineligible to be sentenced under the sentencing guidelines because s. 775.082(9), F.S., specifies that a prison releasee reoffender must be sentenced under that subsection.

The bill also removes language from s. 775.082(9), F.S., that:
- Indicates legislative intent that offenders previously released from prison or a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence who meet the prison releasee reoffender criteria be punished to the fullest extent of the law.
- Requires a state attorney to explain in writing why he or she seeks prison releasee reoffender sanctions for an offender who meets prison releasee reoffender criteria.
- Prohibits a prison releasee reoffender from any form of early release.

This provision of the bill is effective October 1, 2020.

[106] "In [*Apprendi v. New Jersey*, 530 U.S. 466 (2000)], the United States Supreme Court held that other than the fact of a prior conviction, any fact that increases the punishment for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. *Apprendi* is inapplicable to the Prison Releasee Reoffender Act, because the Act merely limits the court's discretion in sentencing. It does not increase the penalty beyond the statutory maximum." *Stabile v. State*, 790 So.2d 1235, 238 (Fla. 5th DCA 2001) (citations omitted), approved, 838 So.2d 557 (Fla. 2003).

Probation Supervision through the Department of Corrections (Section 22)

At sentencing, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.[107] The DOC supervises more than 164,000 offenders on active community supervision. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control.[108]

Probation

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose to ensure the offender's compliance with the terms of the sentence and the safety to the community.[109] Section 948.03, F.S., provides that a court must determine the terms and conditions of probation. Standard conditions of probation that are enumerated in s. 948.03, F.S., are not required to be announced on the record, but the court must orally pronounce, and provide in writing, any special conditions of probation.

Violations of Probation

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.[110] A violation of probation (VOP) can be the result of a new violation of law or a technical violation of the conditions imposed. If reasonable grounds exist to believe that an offender has violated his or her terms of supervision in a material respect, an offender may be arrested without a warrant by a:

- Law enforcement officer who is aware of the inmate's supervised community release status;
- Probation officer; or
- County or municipal law enforcement officer upon request by a probation officer.[111]

The offender must be returned to the court granting such probation.[112] Additionally, the committing court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the offender.[113]

Upon a finding through a VOP hearing, a court may revoke, modify, or continue the supervision. If the court chooses to revoke the supervision, it may impose any sentence originally permissible before placing the offender on supervision.[114] In addition, if an offender qualifies as a violent felony offender of special concern (VFOSC), the court must revoke supervision, unless it makes

[107] Section 948.01, F.S.
[108] The DOC, *Probation Services*, available at http://www.dc.state.fl.us/cc/index.html (last visited February 21January 29, 2020).
[109] Section 948.001(8), F.S. Terms and conditions of probation are provided in s. 948.03, F.S.
[110] Section 948.10(3), F.S.
[111] Section 948.06(1)(a), F.S.
[112] *Id*.
[113] Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the probationer or controlee has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as enumerated in s. 948.06(8)(c), F.S.
[114] Section 948.06(2)(b), F.S.

written findings that the VFOSC does not pose a danger to the community.[115] The VFOSC status also accrues sentence points under the Code, which affects the scoring of the lowest permissible sentence.[116]

Prior to October 1, 2019, the effective date for section 63 of CS/HB 7125 (2019), the sentencing court had the complete discretion to determine whether to continue, modify, or revoke an offender's probation subsequent to a violation of probation.[117] However, in part, CS/HB 7125 (2019) amended s. 948.06, F.S., providing that the court must modify or continue a probationary term upon finding a probationer in violation when *any* of the following applies:

- The term of supervision is probation.
- The probationer does not qualify as a VFOSC.
- The violation is a low-risk technical violation, as defined in s. 948.06(9)(b), F.S.[118]
- The court has not previously found the probationer in violation of his or her probation pursuant to a filed violation of probation affidavit during the current term of supervision. A probationer who has successfully completed sanctions through the alternative sanctioning program is eligible for mandatory modification or continuation of his or her probation.

Further, if the court is required to modify or continue the probationary term, the court may include in the sentence a maximum of 90 days in county jail as a special condition of probation.

CS/HB 7125 (2019) also provided that if a probationer has less than 90 days of supervision remaining on his or her term of probation and meets the criteria for mandatory modification or continuation, the court may revoke probation and sentence the probationer to a maximum of 90 days in county jail.

Effect of the Bill

The bill amends s. 948.06(2)(f), F.S., clarifying that the court is only required to modify or continue an offender's probationary term if *all*, rather than any, of the enumerated factors applies.

This provision of the bill is effective upon becoming law.

[115] *See* s. 948.06(8)(a), F.S., for all VFOSC qualifications and enumerated list of felonies that are considered qualifying offenses. *See also* ch. 2007-2, L.O.F.
[116] Section 921.0024, F.S.
[117] *See* s. 948.06, F.S. (2018).
[118] Section 948.06(9)(b), F.S., defines a "low-risk violation" to mean any of the following: a positive drug or alcohol test result; failure to report to the probation office; failure to report a change in address or other required information; failure to attend a required class, treatment or counseling session, or meeting; failure to submit to a drug or alcohol test; a violation of curfew; failure to meet a monthly quota on any required probation condition, including, but not limited to, making restitution payments, paying court costs, or completing community service hours; leaving the county without permission; failure to report a change in employment; associating with a person engaged in criminal activity; or any other violation as determined by administrative order of the chief judge of the circuit.

Sentence Review Hearings for Specified Offenders (Sections 10-12)

Juvenile Offenders Convicted of Offenses Punishable by Life Without Parole

In recent years, the U.S. Supreme Court issued several decisions addressing the application of the Eighth Amendment's prohibition against cruel and unusual punishment as it relates to the punishment of juvenile offenders.[119] The first of these was *Roper v. Simmons*,[120] in which the Court held that juvenile offenders cannot be subject to the death penalty for any offense. More recently, the Court expanded juvenile sentencing doctrine in *Graham v. Florida*[121] and *Miller v. Alabama*.[122]

Graham v. Florida

In *Graham*, the U.S. Supreme Court held that a juvenile offender may not be sentenced to life in prison without the possibility of parole for a non-homicide offense. More specifically, the Court found that if a non-homicide juvenile offender is sentenced to life in prison, the state must "provide him or her with some realistic opportunity to obtain release before the end of that term."[123] Because Florida abolished parole[124] and the possibility of executive clemency was deemed to be remote,[125] the Court held that a juvenile offender in Florida could not be given a life sentence for a non-homicide offense without a meaningful opportunity to obtain release.[126]

Graham applies retroactively to previously sentenced offenders because it established a fundamental constitutional right.[127] Therefore, a juvenile offender who is serving a life sentence for a non-homicide offense that was committed after parole eligibility was eliminated is entitled to be resentenced to a term less than life.

The U.S. Supreme Court did not give any guidance as to the maximum permissible sentence for a non-homicide juvenile offender other than to exclude the possibility of life without parole. This led to different results among the District Courts in reviewing sentences for a lengthy term of years. Prior to the 2014 Legislative Session, there were conflicts in the case law regarding whether a term of years could be deemed to equate to a life without parole sentence. The Florida

[119] The term "juvenile offender" refers to an offender who was less than 18 years of age at the time the offense was committed for which he or she was sentenced. Most crimes committed by juveniles are dealt with through delinquency proceedings as set forth in ch. 985, F.S. However, the law provides a mechanism for juveniles to be tried and handled as adults. A juvenile who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned. A juvenile who is older than 13 years may be tried as an adult for certain felony offenses if a grand jury indictment is returned, if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S., or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Regardless of age, s. 985.58, F.S., requires a grand jury indictment to try a juvenile as an adult for an offense that is punishable by death or life imprisonment.
[120] 125 S.Ct. 1183 (2005).
[121] 130 S.Ct. 2011 (2010).
[122] 132 S.Ct. 2455 (2012).
[123] *Graham* at 82.
[124] Parole was abolished in 1983 for all non-capital felonies committed on or after October 1, 1983, and was completely abolished in 1995 for any offense committed on or after October 1, 1995.
[125] *Graham* at 70.
[126] *Graham* at 75.
[127] *See, e.g., St. Val v. State,* 107 So.3d 553 (Fla. 4th DCA 2013); *Manuel v. State,* 48 So.3d 94 (Fla. 2d DCA 2010).

First District Court of Appeal held that a lengthy term of years is a *de facto* life sentence if it exceeds the juvenile offender's life expectancy.[128] On the other hand, the Florida Fourth and Fifth District Courts of Appeal strictly construed *Graham* to apply only to life sentences and not to affect sentences for a lengthy term of years.[129]

On March 19, 2015, the Florida Supreme Court issued opinions on two cases that had been certified for it to resolve, *Gridine v. State*, 89 So.3d 909 (Fla. 1st DCA 2011) and *Henry v. State*, 82 So.3d 1084 (Fla. 5th DCA 2012). The Court held that a sentence proscribing a lengthy term of years imprisonment, such as a 70-year sentence as was pronounced in *Gridine* or the 90-year sentence pronounced in *Henry* that does not provide a meaningful opportunity for release is a de facto life sentence that violates the Eighth Amendment to the U.S. Constitution and the holding in *Graham*.[130]

Miller v. Alabama

In *Miller*, the U.S. Supreme Court held that juvenile offenders who commit homicide may not be sentenced to life in prison without the possibility of parole as the result of a mandatory sentencing scheme. The Court did not find that the Eighth Amendment prohibits sentencing a juvenile murderer to life without parole, but rather that individualized factors related to the offender's age must be considered before a life without parole sentence may be imposed. The Court also indicated that it expects few juvenile offenders will be found to merit life without parole sentences.

The majority opinion in *Miller* noted mandatory life without parole sentences "preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it."[131] Although the Court did not require consideration of specific factors, it highlighted the following concerns:

> Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or

[128] *Adams v. State*, 2012 WL 3193932 (Fla. 1st DCA 2012). The First District Court of Appeal has struck down sentences of 60 years (*Adams)* and 80 years (*Floyd v. State*, 87 So.3d 45 (Fla. 1st DCA 2012)), while approving sentences of 50 years (*Thomas v. State*, 78 So.3d 644 (Fla. 1st DCA 2011)) and 70 years (*Gridine v. State*, 89 So. 3d 909 (Fla. 1st DCA 2011)).
[129] *See Guzman v. State*, 110 So.3d 480 (Fla. 4th DCA 2013)*; Henry v. State*, 82 So.3d 1084 (Fla. 5th DCA 2012). It also appears that the Second District Court of Appeal may agree with this line of reasoning: *see Young v. State*, 110 So.3d 931 (Fla. 2d DCA 2013).
[130] *Gridine v. State*, 175 So.3d 672 (Fla. 2015) and *Henry v. State*, 175 So.3d 675 (Fla. 2015).
[131] *Miller* at 2467.

> his incapacity to assist his own attorneys….[A]nd finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.[132]

CS/HB 7035 (2014)

In response to the above-mentioned cases, the 2014 Legislature passed and the Governor signed into law CS/HB 7035 (2014)[133], ensuring Florida had a constitutional sentencing scheme for juvenile offenders who are convicted of offenses punishable by a sentence of life without parole.

CS/HB 7035 (2014) amended s. 775.082, F.S., *requiring* a court to sentence a juvenile offender who is convicted of a homicide offense[134] that is a capital felony or an offense that was reclassified as a capital felony (capital felony homicide) and where the person actually killed, intended to kill, or attempted to kill the victim to:

- Life imprisonment, if, after conducting a sentencing hearing in accordance with the newly created s. 921.1401, F.S., the court concluded that life imprisonment is an appropriate sentence; or
- A term of imprisonment of not less than 40 years, if the judge concluded at the sentencing hearing that life imprisonment is not an appropriate sentence.[135]

The court *may* sentence a juvenile offender to life imprisonment or a term of years equal to life imprisonment, if, after conducting a sentencing hearing in accordance with s. 921.1401, F.S., the court finds such sentence appropriate and the juvenile offender is convicted of a:

- Life or first degree felony homicide where the person actually killed, intended to kill, or attempted to kill the victim;[136]
- Capital, life, or first degree felony homicide offense where the person did not actually kill, intend to kill, or attempt to kill the victim;[137] or
- Nonhomicide offense.[138]

Section 775.082(1)(b)1., F.S., requires the court to impose a minimum sentence (40 years) only in instances where the court determines that life imprisonment is not appropriate for a juvenile offender convicted of a capital felony homicide where the person actually killed, intended to kill, or attempted to kill the victim.[139]

Section 775.082(1) and (3), F.S., also provides that all juvenile offenders are entitled to have their sentence reviewed by the court of original jurisdiction after specified periods of imprisonment. However, a juvenile offender convicted of a capital felony homicide, where the person actually killed, intended to kill, or attempted to kill the victim, is not entitled to review if

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[132] *Miller* at 2468.
[133] Chapter 201-220, L.O.F.
[134] Section 782.04, F.S., establishes homicide offenses.
[135] Section 775.082(1)(b)1., F.S.
[136] Section 775.082(3)(a)5. and (b), F.S.
[137] Section 775.082(1)(b)2., F.S.
[138] Section 775.082(3)(c), F.S.
[139] Section 775.082(1)(b)1., F.S.

he or she has previously been convicted of a list of enumerated offenses, or conspiracy to commit one of the enumerated offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence for the capital felony homicide.[140]

Sentencing Proceedings for Juvenile Offenders Sentenced to Life Imprisonment

CS/HB 7035 (2014) created s. 921.1401, F.S., which authorized the court to conduct a separate sentencing hearing to determine whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence for a juvenile offender convicted of one of the above-described homicide or nonhomicide offenses that was committed on or after July 1, 2014.[141] When determining whether such sentence is appropriate, the court is required to consider factors relevant to the offense and to the juvenile offender's youth and attendant circumstances, including, but not limited to the:

- Nature and circumstances of offense committed by the juvenile offender;
- Effect of crime on the victim's family and on the community;
- Juvenile offender's age, maturity, intellectual capacity, and mental and emotional health at time of offense;
- Juvenile offender's background, including his or her family, home, and community environment;
- Effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the juvenile offender's participation in the offense;
- Extent of the juvenile offender's participation in the offense;
- Effect, if any, of familial pressure or peer pressure on the juvenile offender's actions;
- Nature and extent of the juvenile offender's prior criminal history;
- Effect, if any, of characteristics attributable to the juvenile offender's youth on the juvenile offender's judgment; and
- Possibility of rehabilitating the juvenile offender.[142]

This sentencing hearing is mandatory when sentencing any juvenile offender for a capital felony homicide offense where the offender actually killed, intended to kill, or attempted to kill the victim. The hearing is not required in any of the other above-described offenses, but must be conducted before the court can impose a sentence of life imprisonment or a term of years equal to life imprisonment.

Sentence Review Proceedings

CS/HB 7035 (2014) also created s. 921.1402, F.S., which entitles certain juvenile offenders to a review of the sentence by the court of original jurisdiction after specified periods of time. The sentence review hearing is to determine whether the juvenile offender has been rehabilitated and is deemed fit to re-enter society.

[140] *See* s. 775.082(1) and (3), F.S., providing that reviews of sentences will be conducted in accordance with s. 921.1402, F.S.
[141] Section 921.1401(1), F.S.
[142] Section 921.1401(2), F.S.

Section 921.1402(1), F.S., defines "juvenile offender" to mean a person sentenced to imprisonment in the custody of the DOC for an offense committed on or after July 1, 2014, and committed *before* he or she was 18 years of age.

A juvenile offender convicted of a capital felony homicide offense where the person actually killed, intended to kill, or attempted to kill the victim is entitled to a sentence review hearing after 25 years.[143] However, a juvenile offender is not entitled to review if he or she has previously been convicted of one of the following offenses, or conspiracy to commit one of the following offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence for which he or she was sentenced to life:

- Murder;
- Manslaughter;
- Sexual battery;
- Armed burglary;
- Armed robbery;
- Armed carjacking;
- Home-invasion robbery;
- Human trafficking for commercial sexual activity with a child under 18 years of age;
- False imprisonment under s. 787.02(3)(a), F.S.; or
- Kidnapping.[144]

A juvenile offender convicted of a life felony or first degree felony homicide offense where the person actually killed, intended to kill, or attempted to kill the victim, is entitled to a sentence review hearing after 25 years, if he or she is sentenced to a term of imprisonment for more than 25 years.[145]

A juvenile offender convicted of a capital felony, life felony, or first degree felony homicide offense where the person did not actually kill, intend to kill, or attempt to kill the victim is entitled to have the court review the sentence after 15 years, if he or she is sentenced to a term of imprisonment of more than 15 years.[146]

A juvenile offender convicted of a nonhomicide offense is entitled to have the court review the sentence after 20 years if the juvenile is sentenced to a term of imprisonment of more than 20 years. The juvenile offender is eligible for one subsequent review hearing 10 years after the initial review hearing.[147]

The juvenile offender must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The DOC must notify a juvenile offender of his or her eligibility to request a sentencing review hearing 18 months before the juvenile offender

[143] Section 775.082(1)(b)1., F.S.
[144] Section 921.1402(2)(a), F.S.
[145] Section 921.1402(2)(b), F.S.
[146] Section 921.1402(2)(c), F.S.
[147] Section 921.1402(2)(d), F.S.

becomes entitled to such review. Additionally, an eligible juvenile offender is entitled to be represented by counsel at the sentence review hearing, including a court appointed public defender, if the juvenile offender cannot afford an attorney.[148]

Section 921.1402(6), F.S., requires the original sentencing court to consider any factor it deems appropriate during the sentence review hearing, including all of the following:

- Whether the offender demonstrates maturity and rehabilitation;
- Whether the offender remains at the same level of risk to society as he or she did at the time of the initial sentencing;
- The opinion of the victim or the victim's next of kin;[149]
- Whether the offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person;
- Whether the offender has shown sincere and sustained remorse for the criminal offense;
- Whether the offender's age, maturity, and psychological development at the time of the offense affected his or her behavior;
- Whether the offender has successfully obtained a general educational development certificate or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available;
- Whether the offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense; and
- The results of any mental health assessment, risk assessment, or evaluation of the offender as to rehabilitation.[150]

If a court, after conducting a sentence review hearing, finds that the juvenile offender has been rehabilitated and is reasonably fit to reenter society, the court must modify the offender's sentence and impose a term of probation of at least five years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court must issue an order in writing stating the reasons why the sentence is not being modified.[151]

These sentencing provisions are limited to the juvenile offenders that fall under the strict findings in *Graham* and *Miller*.[152] Thus, the sentence review hearings do not currently apply to persons who were convicted and sentenced to very similar offenses and who are close in age to the juvenile offenders who have received sentence review hearings because of *Graham* and *Miller*.

[148] Section 921.1402(3)-(5), F.S.
[149] Section 921.1402(6)(c), F.S., further states that the absence of the victim or the victim's next of kin from the resentencing hearing may not be a factor in the court's determination. The victim or victim's next of kin is authorized to appear in person, in writing, or by electronic means. Additionally, if the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentence review hearings.
[150] Section 921.1402(6), F.S.
[151] Section 921.1402(7), F.S.
[152] *See Graham v. Florida*, 130 S.Ct. 2011 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

Case Law Subsequent to CS/HB 7035 (2014)

Valid Sentence Options for *Miller* Offenders

Subsequent to the U.S. Supreme Court's holdings in *Roper* and *Miller*, the options for permissible sentences under Florida law for juveniles who were convicted of such capital and life offenses punishable by life imprisonment without the possibility of parole became unclear. The Florida Fifth District Court of Appeal in *Horsley v. State*,[153] held that the principal of statutory revival should be applied mandating that the last constitutional sentence, life with the possibility of parole after 25 years, should be imposed for convictions of such juveniles. However, in 2015, the Florida Supreme Court heard and overturned this decision in *Horsley*,[154] holding that the proper remedy for such juveniles convicted of offenses classified as capital offenses is to apply the sentencing provisions enacted by CS/HB 7035 (2014), which codified the above-mentioned ss. 775.082, 921.1401, and 921.1402, F.S., rather than utilize statutory revival principles and impose a sentence of life with the possibility of parole after 25 years.[155]

Retroactive Application of *Miller*

Another outstanding question at the time CS/HB 7035 (2014) was implemented was whether *Miller* applied retroactively in the same manner that *Graham* did. Other state and federal courts had issued differing opinions as to whether *Miller* applies retroactively. The question has turned on whether *Miller* is considered to be a procedural change in the law that does not apply retroactively to sentences that were final before the opinion was issued or an opinion of fundamental significance, similar to *Graham*.

The Florida Supreme Court decided this issue in *Falcon v. State*.[156] The Court held that *Miller* applied retroactively because the ruling is a development of fundamental significance. The Court held that given that *Miller* invalidated the only statutory means for imposing a sentence of life without the possibility of parole on juveniles convicted of a capital felony it dramatically impacted the ability of Florida to impose a nondiscretionary sentence of life without parole on a juvenile convicted of a capital felony. Therefore, *Falcon* ensured that juvenile offenders whose convictions and sentences were final prior to the *Miller* decision could seek collateral relief based on it.[157]

[153] 121 So.3d 1130 (Fla. 5th DCA 2013).
[154] 160 So.3d 393 (Fla. 2015).
[155] Life with the possibility of parole after 25 years is the penalty for capital murder under the 1993 version of s. 775.082(1), F.S., the most recent capital murder penalty statute that was constitutional under *Miller* when applied to a juvenile offender.
[156] 162 So.3d 954 (Fla. 2015).
[157] *Falcon v. State*, 162 So.3d 954, 961 (Fla. 2015).

Impact of Parole or Conditional Release Options for Juvenile Offenders

The U.S. Supreme Court further distinguished the *Graham* and *Miller* progeny of cases with *Virginia v. LeBlanc*, which denied habeas corpus relief for the juvenile offender holding that release programs for prisoners that consider factors in a similar manner as parole, such as Virginia's geriatric release program, did not violate *Graham* or *Miller* because it provides a juvenile offender a meaningful opportunity for release. In *LeBlanc*, the Court reasoned that Virginia's geriatric release program considered individualized factors of the offender, such as the individual's rehabilitation and maturity, history and conduct before and during incarceration, his or her inter-personal relationships with staff and inmates, and development and growth in attitude toward himself, herself, and others.[158]

The Florida Supreme Court has held that the *Graham* and *Miller* rules do not apply to juvenile offenders sentenced to life or lengthy terms of years equal to life, but who are eligible for parole.[159]

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.[160]

[158] *Virginia v. LeBlanc*, 137 S.Ct. 1726 (2017).
[159] *See Franklin v. State*, 258 So.3d 1329 (Fla. 2018); *Carter v. State*, 283 So.3d 409 (Fla. 3d DCA 2019); *Brown v. State*, 283 So.3d 424 (Fla. 3d DCA 2019).
[160] Art. 1, s. 16(b)(6)a., b., f., and g., FLA. CONST.

Effect of the Bill

Juvenile Offenders

As discussed above, a juvenile offender sentenced to a sentence of life without parole for a capital felony[161] where a finding was made that he or she actually killed, intended to kill, or attempted to kill the victim is entitled to a review of his or her sentence after 25 years if he or she has never previously been convicted of a specified enumerated felony.[162] The bill amends the list of enumerated offenses that bar such juvenile offenders from having a sentence review hearing to only include murder. Therefore, the bill provides such a juvenile offender is only prohibited from having a sentence review hearing if he or she has previously been convicted of committing or conspiracy to commit murder, if the murder for which the person was previously convicted was part of a separate criminal transaction or episode than the murder that resulted in the sentence.

The bill also creates s. 921.14021, F.S., providing for the retroactive application of the above mentioned amendment to remove certain prior convictions as a prohibition for a juvenile offender to have a sentence review hearing in accordance with s. 921.1402(2)(a), F.S. The bill requires that a juvenile offender is entitled to a review of his or her sentence after 25 years or, if 25 years on the term of imprisonment has already been served by October 1, 2020, the sentence review hearing must be conducted immediately. The bill provides legislative findings related to the retroactive application of such provisions.

Because the bill expressly provides for retroactive application of the changes the bill makes, the bill has provided a legislative exception to the default position of prospectively.

Young Adult Offenders

The bill creates s. 921.1403, F.S., expanding the sentence review hearing process created by CS/HB 7035 (2014) for juveniles in response to the *Graham* and *Miller* cases to persons convicted of similar offenses, but who were not entitled to a sentence review hearing.

The bill defines the term "young adult offender" to mean a person who committed an offense before he or she reached 25 years of age and for which he or she is sentenced to a term of years in the custody of the DOC, regardless of the date of sentencing. The bill also provides that the provisions allowing sentence review hearings of young adult offenders applies retroactively.

The sentence review procedures and hearing process are substantively identical to those in place for juvenile offenders in accordance with s. 921.1402, F.S., and discussed above. However, the eligibility criteria for a young adult offender to have a sentence review hearing is different.

[161] In violation of s. 782.04, F.S.
[162] *See* ss. 775.082(1)(b)1. and 921.1402, F.S.

Eligibility

The bill prohibits a young adult offender convicted of a violation of s. 782.04, F.S., related to homicide, which is punishable by death from being eligible for a sentence review hearing. The bill only permits young adult offenders convicted of offenses that are life or first degree felony offenses to be eligible for a sentence review hearing in accordance with s. 921.1403, F.S.

The bill excludes a young adult offender convicted and sentenced for certain life felony or first degree felony[163] offenses from a sentence review hearing if he or she has previously been convicted of committing, or of conspiring to commit murder, if such prior offense was part of a separate criminal transaction or episode than the offense that resulted in the sentence.

The bill provides that a young adult offender who is convicted of an offense that is a:
- Life felony, or that was reclassified as a life felony, and who is sentenced to a term of more than 20 years[164] is entitled to a review of his or her sentence after 20 years.[165]
- Felony of the first degree or that was reclassified as a felony of the first degree and who is sentenced to a term of more than 15 years[166] is entitled to a review of his or her sentence after 15 years.

Procedures for Initiating the Sentence Review Hearing Process

Similar to the process developed in s. 921.1402(3), F.S., applicable to a juvenile offender, the bill provides that the DOC must notify a young adult offender in writing of his or her eligibility to request a sentence review hearing:
- 18 months before the young adult offender is entitled to a sentence review hearing if such offender is not eligible when the bill becomes effective; or
- Immediately if the offender is eligible as of October 1, 2020.

A young adult offender seeking a sentence review must submit an application to the original sentencing court requesting that the court hold a sentence review hearing. The bill provides that such court retains jurisdiction for the duration of the sentence for this purpose. The bill also provides that a young adult offender who is eligible for a sentence review hearing may be represented by an attorney, who must be appointed by the court if the young adult offender cannot afford an attorney.

[163] *See* s. 775.082(3)(a)1., 2., 3., 4., or 6., or (b)1., F.S., which are the citations included in the bill. Each of these citations includes different sentence terms based upon the degree of offense or the date of commission of the offense.
[164] Pursuant to s. 775.082(3)(a)1., 2., 3., 4., or 6., F.S.
[165] The bill provides that this does not apply to a person who is eligible for sentencing under s. 775.082(3)(a)5., or s. 775.082(3)(c), F.S., which only applies to an offender who committed certain life offenses before attaining the age of 18.
[166] Pursuant to s. 775.082(3)(b)1., F.S.

Sentence Review Hearing

The bill requires the court to hold a sentence review hearing to determine whether to modify the young adult offender's sentence upon receiving an application for such hearing. The court is required to consider any factor it deems appropriate to determine the appropriateness of modifying the young adult offender's sentence, including, but not limited to, the following:

- Whether the young adult offender demonstrates maturity and rehabilitation.
- Whether the young adult offender remains at the same level of risk to society as he or she did at the time of the initial sentencing.
- The opinion of the victim or the victim's next of kin.[167]
- Whether the young adult offender was a relatively minor participant in the criminal offense or whether he or she acted under extreme duress or under the domination of another person.
- Whether the young adult offender has shown sincere and sustained remorse for the criminal offense.
- Whether the young adult offender's age, maturity, or psychological development at the time of the offense affected his or her behavior.
- Whether the young adult offender has successfully obtained a high school equivalency diploma or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available.
- Whether the young adult offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.
- The results of any mental health assessment, risk assessment, or evaluation of the young adult offender as to rehabilitation.[168]

Terms of Release for Young Adult Offenders Resentenced Pursuant to s. 921.1403, F.S.

The terms that a young adult offender must comply with if he or she is resentenced under the bill are similar to those that a juvenile offender must comply with if resentenced in accordance with s. 921.1402, F.S.

Upon conducting the sentence review hearing, the court may modify the young adult offender's sentence if the court makes a determination that the young adult offender is rehabilitated and is reasonably believed to be fit to reenter society. The court must modify the sentence to a term of probation for at least:

- Five years, if the young adult offender was originally sentenced for a life felony, or an offense reclassified as a life felony; or
- Three years, if the young adult offender was originally sentenced for a first degree felony, or an offense reclassified as a first degree felony.

[167] The bill states that the absence of the victim or the victim's next of kin from the hearing may not be a factor in the determination of the court. The court must allow the victim or victim's next of kin to be heard in person, in writing, or by electronic means. Finally, if the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or previous sentencing review hearings.

[168] These enumerated factors mirror the criteria used for the sentence review hearings conducted for juvenile offenders in accordance with s. 921.1402(6), F.S.

However, the bill prohibits the court from resentencing a young adult offender if the court determines that he or she has not demonstrated rehabilitation or is not fit to reenter society and requires the court to issue a written order stating the reasons why the sentence is not being modified.

Subsequent Reviews

The bill allows a young adult offender to have one subsequent sentence review hearing after five years if he or she is not resentenced at the initial sentence review hearing. The bill requires the young adult offender seeking a subsequent sentence review hearing to submit a new application to the original sentencing court to request a subsequent sentence review hearing.

These provisions of the bill are effective October 1, 2020.

Postconviction Forensic Analysis (Sections 13, 14, 16, and 17)

Deoxyribonucleic acid (DNA) is hereditary material existing in the cells of all living organisms. A DNA profile may be created by testing the DNA in a person's cells.[169] Similar to fingerprints, a person's DNA profile is a unique identifier, except for identical twins, who have the exact same DNA profile.[170] DNA is frequently collected at a crime scene and analyzed to assist in convicting or exonerating a suspect. DNA evidence may be collected from any biological material, such as hair, teeth, bones, skin cells, blood, semen, saliva, urine, feces, and other bodily substances.[171] A DNA sample may be used to solve a current crime or a crime that occurred before DNA-testing technology.[172]

According to the National Registry of Exonerations (Registry), which tracks both DNA and non-DNA based exonerations, the misapplication of forensic science has contributed to 45 percent of wrongful convictions in the United States that later resulted in an exoneration by DNA evidence.[173] Additionally, false or misleading forensic evidence was a contributing factor in 24 percent of all wrongful convictions nationally.[174] Data compiled through 2019 shows there have been 73 exonerations in Florida, and that false or misleading forensic evidence was a contributing factor to the person's wrongful conviction in 18 of those cases.[175] In some cases, science that was generally accepted at the time it was used in a criminal case has since been

[169] FindLaw, *How DNA Evidence works*, available at https://criminal.findlaw.com/criminal-procedure/how-dna-evidence-works.html (last visited February 13, 2020).
[170] *Id.*
[171] *Id.*
[172] *Id.*; Dr. Alec Jeffreys developed the DNA profiling technique in 1984.
[173] Innocence Project, *Overturning Wrongful Convictions Involving Misapplied Forensics*, available at https://www.innocenceproject.org/overturning-wrongful-convictions-involving-flawed-forensics/ (last visited February 13, 2020).
[174] *Id.*
[175] The National Registry of Exonerations, available at https://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View=%7bB8342AE7-6520-4A32-8A06-4B326208BAF8%7d&FilterField1=State&FilterValue1=Florida (last visited February 13, 2020).

undermined by subsequent scientific advancements. Examples of scientific disciplines that have been discredited in recent years include:

- Microscopic hair analysis;[176]
- Arson investigation techniques;
- Comparative bullet lead analysis;[177] and
- Bite mark matching.[178]

DNA Databases

Combined DNA Index System (CODIS) and National DNA Index System (NDIS)

The most common form of DNA analysis used to match samples and test for identification in forensic laboratories analyzes only certain parts of DNA, known as short tandem repeats or satellite tandem repeats (STRs).[179] In the early 1990s, the Federal Bureau of Investigation (FBI) chose 13 STRs as the basis for a DNA identification profile, and the 13 STRs became known as the Combined DNA Index System (CODIS).[180] The CODIS is now the general term used to describe the software maintained by the FBI and used to compare an existing DNA profile to a DNA sample found at a crime scene to identify the source of the crime scene sample.[181]

The DNA Identification Act of 1994 (DNA Act)[182] authorized the government to establish a National DNA Index, and in 1998 the National DNA Index System (NDIS) was established. The NDIS contains DNA profiles contributed by federal, state, and local participating forensic laboratories,[183] enabling law enforcement to exchange and compare DNA profiles electronically, thereby linking a crime or a series of crimes to each other or to a known offender. A state seeking to participate in the NDIS must sign a memorandum of understanding with the FBI agreeing to the DNA Act's requirements, including record-keeping requirements and other procedures. To submit a DNA record to the NDIS, a participating laboratory must adhere to federal law regarding expungement[184] procedures, and the DNA sample must:

- Be generated in compliance with the FBI Director's Quality Assurance Standards;
- Be generated by an accredited and approved laboratory;

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[176] Microscopic hair comparison involves comparing hair found at a crime scene with the hair of a defendant. *Id.*

[177] Comparative bullet lead analysis linked bullets found at a crime scene to bullets possessed by a suspect based on the belief that the bullet's lead composition was unique and limited to the originating batch. *Id*.

[178] Bite mark matching is the process of determining that a patterned injury left on a victim was made by human dentition and attempting to match the injury impression with the bite mark of the suspect. Liliana Segura and Jordan Smith, *Bad Evidence, Ten Years After a Landmark Study Blew the Whistle on Junk Science, the Fight Over Forensics Rages On*, The Intercept (May 5, 2019), available at https://theintercept.com/2019/05/05/forensic-evidence-aafs-junk-science/ (last visited February 13, 2020).

[179] Kelly Lowenberg, *Applying the Fourth Amendment when DNA Collected for One Purpose is Tested for Another*, 79 U. Cin. L. Rev. 1289, 1293 (2011), available at https://law.stanford.edu/wp-content/uploads/2011/11/APPLYING-THE-FOURTH-AMENDMENT-WHEN-DNA-COLLECTED-FOR-ONE-PURPOSE.pdf (last visited February 13, 2020).

[180] *Id.*

[181] *Id.* at 1294.

[182] 42 U.S.C. s. 14132.

[183] All 50 states, the District of Columbia, the federal government, the U.S. Army Criminal Investigation Laboratory, and Puerto Rico participate in NDIS. FBI Services, *Laboratory Services, Frequently Asked Questions on CODIS and NDIS*, available at https://www.fbi.gov/services/laboratory/biometric-analysis/codis/codis-and-ndis-fact-sheet (last visited February 13, 2020).

[184] *See* 42 U.S.C. s. 14132(d)(2)(A)(ii) (requiring states to expunge a DNA record when a charge is dismissed, results in an acquittal, or when no charge is filed).

- Be generated by a laboratory that undergoes an external audit every two years to demonstrate compliance with the FBI Director's Quality Assurance Standards;
- Be from an acceptable data category, such as:
  - Convicted offender;
  - Arrestee;
  - Detainee;
  - Forensic case;
  - Unidentified human remains;
  - Missing person; or
  - Relative of a missing person.
- Meet minimum the CODIS requirements for the specimen category; and
- Be generated using an approved kit.

Statewide DNA Database

In 1989, the Legislature established the Statewide DNA database (statewide database) to be administered by the FDLE, capable of classifying, matching, and storing analyses of DNA and other biological material and related data.[185] The statewide database contains DNA samples, including those:

- Submitted by persons convicted of or arrested for felony offenses and specified misdemeanor offenses; and
- Necessary for identifying missing persons and unidentified human remains, including samples voluntarily contributed by relatives of missing persons.[186]

All accredited local government crime laboratories in Florida have access to the statewide database in accordance with rules and agreements established by the FDLE.[187] Local laboratories can access the statewide database through the CODIS, allowing for the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories.[188]

The statewide database may contain DNA data obtained from the following types of biological samples:

- Crime scene samples.
- Samples required by law to be obtained from qualifying offenders.[189]
- Samples lawfully obtained during the course of a criminal investigation, including those from deceased victims or deceased suspects.
- Samples from unidentified human remains.
- Samples from persons reported missing.

[185] Chapter 89-335, L.O.F.
[186] Section 943.325(1), F.S.
[187] Section 943.325(4), F.S.
[188] Section 943.325(2), F.S.
[189] A "qualifying offender" is any person, convicted of a felony or attempted felony in Florida or a similar offense in another jurisdiction, or specified misdemeanors, who is: committed to a county jail; committed to or under the supervision of the ODc, including a private correctional institution; committed to or under the supervision of the Department of Juvenile Justice; transferred to Florida under the Interstate Compact on Juveniles or the Interstate Corrections Compact. Section 943.325(2)(g), F.S.

- Samples voluntarily contributed by relatives of missing persons.
- Other samples approved by the FDLE.[190]

A qualifying offender is required to submit a DNA sample for inclusion in the statewide database if he or she is:

- Arrested or incarcerated in Florida; or
- On probation, community control, parole, conditional release, control release, or any other type of court-ordered supervision.[191]

An arrested offender must submit a DNA sample at the time he or she is booked into a jail, correctional facility, or juvenile facility. An incarcerated person and a juvenile in the custody of the Department of Juvenile Justice must submit a DNA sample at least 45 days before his or her presumptive release date.[192] The FDLE must retain all DNA samples submitted to the statewide database and such samples may be used for any lawful purpose.[193]

The FDLE specifies database procedures to maintain compliance with national quality assurance standards to ensure that DNA records will be accepted into the NDIS. Results of any DNA analysis must be entered into the statewide database and may only be released to criminal justice agencies. Otherwise, the information is confidential and exempt from s. 119.07(1), F.S., and article I, s. 24(a), of the Florida Constitution.[194]

Postsentencing DNA Testing

Defendants Sentenced After Trial

Florida law authorizes a person, who has been tried and found guilty of committing a felony, to petition a court to examine physical evidence collected during the investigation of the crime for which he or she has been sentenced that may contain DNA which would exonerate the person or mitigate the sentence that he or she received.[195] A sentenced defendant can file a petition for postsentencing DNA testing any time after the judgment and sentence becomes final.[196]

A petition for postsentencing DNA testing must be made under oath, and include the following:

- A statement of the facts supporting the petition, including a description of the physical evidence containing DNA to be tested and, if known, the present location or last known location of the evidence and how it was originally obtained;
- A statement that the evidence was not previously tested for DNA or that the results of any previous DNA testing were inconclusive and that subsequent scientific developments in DNA testing techniques would likely produce a definitive result establishing that the petitioner is not the person who committed the crime;

[190] Section 943.325(6), F.S.
[191] Section 943.325(7), F.S.
[192] *Id.*
[193] *Id.*
[194] Section 943.325(14), F.S.
[195] Section 925.11(1)(a)1., F.S.
[196] Section 925.11(1)(a)2., F.S.

- A statement that the sentenced defendant is innocent and how the DNA testing requested by the petition will exonerate the defendant of the crime for which he or she was sentenced or will mitigate the sentence he or she received;
- A statement that identification is a genuinely disputed issue in the case, and why it is an issue;
- Any other facts relevant to the petition; and
- A certification that a copy of the petition has been served on the prosecuting authority.[197]

A court must review the petition and deny it if it is insufficient. If the petition is sufficient, the prosecuting authority must respond within 30 days.[198] After reviewing the prosecuting authority's response, the court must either issue an order on the merits or set the petition for a hearing. If the court sets the petition for a hearing, it may appoint counsel to assist an indigent defendant, upon finding such assistance necessary.[199]

The court must make the following findings when ruling[200] on the petition:
- Whether the sentenced defendant has shown that the physical evidence that may contain DNA still exists;
- Whether the results of DNA testing of that physical evidence would be admissible at trial and whether there exits reliable proof to establish that the evidence has not been materially altered and would be admissible at a future hearing; and
- Whether there is a reasonable probability that the sentenced defendant would have been acquitted or would have received a lesser sentence if the DNA evidence had been admitted at trial.[201]

Defendants Sentenced After Entering a Plea

A defendant who entered a plea of guilty or nolo contendere to a felony offense before July 1, 2006, are eligible to petition for DNA testing based on the general eligibility requirements under s. 925.11, F.S. However, a defendant who entered a plea of guilty or nolo contendere to a felony offense on or after July 1, 2006, may only petition for postsentencing DNA testing when:
- The facts on which the petition is based were unknown to the petitioner or his or her attorney at the time the plea was entered and could not have been ascertained through the exercise of due diligence; or
- The physical evidence for which DNA testing is sought was not disclosed to the defense prior to the entry of the petitioner's plea.[202]

[197] Section 925.11(2)(a), F.S.
[198] Section 925.11(2)(c), F.S.
[199] Section 925.11(2)(e), F.S.
[200] Any party adversely affected by the court's ruling on a petition for postsentencing DNA testing has the right to appeal. Section 925.11(3), F.S.
[201] Section 925.11(2)(f), F.S.
[202] Section 925.12(1), F.S.

Since July 1, 2006,[203] prior to the entry of a felony plea, the court must inquire of the defendant, the defense counsel, and the state regarding:

- The existence of known physical evidence that may contain DNA that could exonerate the defendant;
- Whether discovery in the case disclosed or described the existence of such physical evidence; and
- Whether the defense has reviewed the discovery.[204]

If no such evidence is known to exist, the court may accept the defendant's plea. If physical evidence containing DNA that could exonerate the defendant exists, the court may postpone the plea and order DNA testing to be conducted.[205]

Laboratory Testing

To preserve access to evidence, a governmental entity[206] must maintain any physical evidence collected in a case for which postsentencing DNA testing may be requested. In a death penalty case, the evidence must be maintained for 60 days after execution of the sentence. In any other case, a governmental entity can dispose of the evidence if the term of the sentence imposed in the case has expired and the physical evidence is not otherwise required to be preserved by any other law or rule.[207]

The FDLE or its designee must perform any DNA testing ordered under s. 925.11, F.S.[208] The sentenced defendant is responsible for the cost of testing, unless he or she is indigent, in which case, the state bears the cost. The FDLE must provide the results of DNA testing to the court, the sentenced defendant, and the prosecuting authority. Fla. R. Crim. P. Rule 3.853 authorizes a court to order DNA testing by a private laboratory upon a petitioner's showing of good cause, when he or she can bear the cost of testing.[209]

Effect of the Bill

The bill amends s. 925.11, F.S., to expand access to postsentencing testing of physical evidence. The bill expands the scope of current law to authorize postsentencing testing to include other scientific techniques, in addition to DNA testing. Under the bill, a petitioner found guilty of committing a felony after trial or by entering a plea of guilty or nolo contendere before July 1, 2020, may petition for forensic analysis of physical evidence, rather than only DNA testing. "Forensic analysis" is defined as the process by which a forensic or scientific technique is applied to evidence or biological material to identify the perpetrator of, or an accomplice to, a crime and includes, but is not limited to, DNA testing.

[203] Chapter 2006-292, L.O.F.
[204] Section 925.11(2) and (3), F.S.
[205] Section 925.11, F.S. Any postponement is attributable to the defendant for the purposes of speedy trial.
[206] A "governmental entity" includes, but is not limited to, any investigating law enforcement agency, the clerk of the court, the prosecuting authority, or the FDLE. Section 925.11(4)(a), F.S.
[207] Section 925.11(4), F.S.
[208] Section 943.3251(1), F.S.
[209] Fla. R. Crim. P. Rule 3.853(4)(a), F.S.

The bill lowers the initial standard a petitioner must meet to gain access to forensic analysis. Under the bill, the petitioner must show that forensic analysis may result in evidence material to the identity of the perpetrator of, or an accomplice to, the crime that resulted in the person's conviction, rather than having to show the evidence would exonerate the person or mitigate his or her sentence.

Additionally, the bill amends the relevant petition requirements under s. 925.11, F.S., to reflect the new standards a petitioner must meet including all the following:

- A statement that the evidence was not previously subjected to forensic analysis or that the results of any previous forensic analysis were inconclusive and that subsequent scientific developments in forensic analysis would likely produce evidence material to the identity of the perpetrator of, or an accomplice to, the crime;
- A statement that the petitioner is innocent and how the forensic analysis requested by the petitioner may result in evidence that is material to the identity of the perpetrator of, or an accomplice to, the crime; and
- A statement that the petitioner will comply with any court order to provide a biological sample for the purpose of conducting requested forensic analysis and acknowledging such analysis could produce exculpatory evidence or evidence confirming the petitioner's identity as the perpetrator of, or an accomplice to, the crime or a separate crime.

The bill specifies postsentencing forensic analysis eligibility criteria for defendants who entered a plea of guilty or nolo contendere to a felony, depending on the date the plea was entered. Defendants who entered a plea on or after July 1, 2006, but before July 1, 2020, may petition for DNA testing under the same standards currently required under s. 925.11, F.S. The bill maintains current criteria for these sentenced defendants because each had the benefit of the plea colloquy concerning the potential existence of exculpatory DNA evidence administered by the court since 2006.

Beginning July 1, 2020, the bill requires a court, prior to accepting a plea of guilty or nolo contendere to a felony, to perform a plea colloquy inquiring whether the defendant, defense counsel, or the state is aware of any physical evidence that, if subjected to forensic analysis, could produce evidence material to the identification of the perpetrator of, or an accomplice to, the crime. As such, beginning July 1, 2020, a defendant entering a plea of guilty or nolo contendere to a felony will only be authorized to petition for postsentencing forensic analysis when either:

- The facts on which the petition is predicated were unknown to the petitioner or the petitioner's attorney at the time the plea was entered and could not have been ascertained through the exercise of due diligence; or
- The physical evidence for which forensic analysis is sought was not disclosed to the defense by the state prior to the petitioner's plea.

When ruling on a petition for postsentencing forensic analysis the court must make all the following findings:

- Whether the petitioner has shown that the physical evidence, which may be subjected to forensic analysis, still exists;

- Whether the results of forensic analysis would be admissible at trial and whether reliable proof exists to establish that the evidence has not been materially altered and would be admissible at a future hearing; and
- Whether there is a reasonable probability the forensic analysis may result in evidence that is material to the identity of the perpetrator of, or an accomplice to, the crime.

The bill authorizes a court to order a private laboratory, certified by the petitioner to meet specified accreditation requirements, to perform forensic analysis when:

- The prosecuting authority and the petitioner mutually select a private laboratory to perform the testing; or
- The petitioner makes a sufficient showing that the forensic analysis:
  - Ordered by the court is of such a nature that the FDLE or its designee cannot perform the testing; or
  - Will be significantly delayed because of state laboratory backlog.

If the forensic analysis ordered by the court includes DNA testing, and the resulting DNA sample meets statewide database submission requirements, the FDLE must perform a DNA database search. A private laboratory ordered to conduct testing must cooperate with the prosecuting authority and the FDLE to carry out the database search. The FDLE must compare the submitted DNA profile to:

- DNA profiles of known offenders;
- DNA profiles from unsolved crimes; and
- Any local DNA databases maintained by a law enforcement agency in the judicial circuit where the petitioner was convicted.

The bill authorizes the FDLE to maintain DNA samples obtained from testing ordered under ss. 925.11 or 925.12, F.S., in the statewide database. If the testing conducted complies with FBI requirements and the data meets NDIS criteria, the FDLE must request NDIS to search its database of DNA profiles using any profiles obtained from the court ordered testing. The FDLE must provide the results of the forensic analysis and the results of any search of the national, statewide, and local DNA databases to the court, the petitioner, and the prosecuting authority. The petitioner and the state are authorized to use the information for any lawful purpose.

The bill authorizes a court to order a governmental entity, last known to possess evidence reported to be lost or destroyed in violation of law, to conduct a search and produce a report detailing:

- The nature of the search conducted;
- The date the search was conducted;
- The results of the search;
- Any records showing the physical evidence was lost or destroyed; and
- The signature of the person supervising the search, attesting to the report's accuracy.

The report must be provided to the court, the petitioner, and the prosecuting authority in the case.

These provisions of the bill are effective July 1, 2020.

Conditional Release for Specified Inmate Populations (Sections 8, 19, 20, 31-33, 35-37, 45, and 52-55)

Aging Population Statistics

In 2016, 49 million adults in the United States, or 15 percent of the population, were 65 or older.[210] 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[211] 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.[212]

Special Health Considerations for 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.[213] However, such ailments present special challenges within a prison environment and may result in the need for increased staffing levels and enhanced officer training.[214] Such aging or ill inmates can also require structural accessibility adaptions, such as special housing and wheelchair ramps.

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[210] 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 February 21, 2020).

[211] The "baby boomer" generation is generally defined as persons born from 1946 through 1964. *See* Senior Living, *The Baby Boomer Generation*, available at https://www.seniorliving.org/life/baby-boomers/ (last visited February 21, 2020).

[212] Yarnell, S., MD, PhD, Kirwin, P. MD, and Zonana, H. MD, *Geriatrics and the Legal System*, Journal of the American Academy of Psychiatry and the Law, November 2, 2017, p. 208-209, available at http://jaapl.org/content/jaapl/45/2/208.full.pdf (last visited February 21, 2020).

[213] McKillop, M. and McGaffey, F., The PEW Charitable Trusts, *Number of Older Prisoners Grows Rapidly, Threatening to Drive Up Prison Health Costs*, October 7, 2015, available at https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/10/07/number-of-older-prisoners-grows-rapidly-threatening-to-drive-up-prison-health-costs (hereinafter cited as "PEW Trusts Older Prisoners Report"); *See also* Jaul, E. and Barron, J., Frontiers in Public Health, *Age-Related Diseases and Clinical and Public Health Implications for the 85 Years Old and Over Population*, December 11, 2017, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5732407/; HealthinAging.org, *A Guide to Geriatric Syndromes: Common and Often Related Medical Conditions in Older Adults*, available at https://www.healthinaging.org/tools-and-tips/guide-geriatric-syndromes-common-and-often-related-medical-conditions-older-adults (all sites last visited February 21, 2020).

[214] The PEW Charitable Trusts Older Prisoners Report.

For example, in Florida, four facilities serve relatively large populations of older or ill inmates, which help meet special needs such as palliative and long-term care.[215]

Aging Inmate Statistics in Florida

The DOC reports that the elderly inmate[216] 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.[217]

The DOC further reports that during FY 2017-18, there were 3,594 aging inmates admitted to Florida prisons, which was a 2.8 percent decrease from FY 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.[218]

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 FY 2008-09 to 21,469 in FY 2017-18 and further provided that outside care is generally more expensive than treatment provided within a prison facility.[219] 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.[220]

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.[221] The National Conference of State Legislatures (NCSL) reports such discretionary release based on age has been legislatively authorized in 17 states.[222] The NCSL also reports that such statutes typically require an inmate to be of a certain age and to have

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[215] *Id*.
[216] 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.
[217] The DOC, *2017-18 Annual Report*, p. 19, available at http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf (last visited February 21, 2020).
[218] *Id*. at p. 20.
[219] *Id*. at p. 21.
[220] *Id*.
[221] The National Conference of State Legislatures (NCSL), *State Medical and Geriatric Parole Laws*, August 27, 2018, available at http://www.ncsl.org/research/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws.aspx (hereinafter cited as "The NCSL Aging Inmate Statistics"); Code of the District of Columbia, *Section 24-465 Conditions for Geriatric Release*, available at https://code.dccouncil.us/dc/council/code/sections/24-465.html; Section 603(b) of the First Step Act, codified at 18 USC s. 3582. *See also* U.S. Department of Justice, Federal Bureau of Prisons, *Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. Section 3582 and 4205(g)*, January 17, 2019, p. 6-7, available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf (all sites last visited February 21, 2020).
[222] 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.

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.[223]

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.[224] Other states, such as Mississippi and Oklahoma, provide a term of years or a certain percentage of the sentence to be served.[225]

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, but as discussed below Florida has discretionary release based on an inmate's medical condition.

Conditional Medical Release

Conditional Medical Release (CMR), outlined in s. 947.149, F.S., was created by the Florida Legislature in 1992,[226] as a discretionary release of inmates who are "terminally ill" or "permanently incapacitated" and who are not a danger to themselves or others.[227] The Florida Commission on Offender Review (FCOR), which consists of three members, reviews eligible inmates for release under the CMR program pursuant to the powers established in s. 947.13, F.S.[228] 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

[223] *Id*.
[224] *Id*.
[225] The NCSL Aging Inmate Statistics.
[226] Chapter 92-310, L.O.F.
[227] The FCOR, *Release Types, Post Release*, available at https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease (last visited February 21, 2020).
[228] Section 947.149(3), F.S. Section 947.01, F.S., provides that the membership of the FCOR is three-members.

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.[229]

Inmates sentenced to death are ineligible for CMR.[230]

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.[231]

An inmate does not have a right to CMR or to a medical evaluation to determine eligibility for such release.[232] 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.[233]

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.[234]

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.[235] 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.[236]

Victim Input for CMR

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.[237] As discussed above, Art. I, s. 16 of the Florida Constitution, which was

[229] Section 947.149(1), F.S.
[230] Section 947.149(2), F.S.
[231] Section 947.149(3), F.S.
[232] Section 947.149(2), F.S.
[233] Section 947.149(3), F.S.
[234] Rule 23-24.020(1), F.A.C.
[235] Rule 23-24.020(2), F.A.C.
[236] Rule 23-24.020(3), F.A.C.
[237] 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.

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 has the following rights upon request:

- 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.[238]

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.[239]

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.[240] Additionally, other interested parties may also speak on behalf of victims since the FCOR meetings are public meetings.[241] 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.[242]

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.[243] An inmate who has been approved for release on CMR is considered a medical releasee when released.

[238] Art. 1, s. 16(b)(6)b., f., and g., FLA. CONST.
[239] Rule 23-24.025(1), F.A.C.
[240] 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.
[241] Rule 23-24.025(3), F.A.C.
[242] Rule 23-24.025(5), F.A.C.
[243] Section 947.149(4), F.S.

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.
- 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.[244]

Additionally, the FCOR can impose special conditions of CMR.[245]

[244] Rule 23-24.030(1), F.A.C.
[245] Rule 23-24.030(2), F.A.C.

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.[246]

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.[247]

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 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.[248] Further, if a law enforcement officer has probable cause to believe that a medical releasee 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.[249]

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.[250] 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

[246] Section 947.149(5), F.S.
[247] 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.
[248] Section 947.141(1), F.S.
[249] Section 947.141(7), F.S.
[250] Section 947.141(2), F.S., further states that the chief county detention officer must transmit to the FCOR and the DOC 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.

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.[251]

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.[252]

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 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.[253]

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.[254] Gain-time or commutation of time for good conduct may be earned from the date of return to prison.

Statistics

The FCOR has approved and released 73 inmates for CMR in the last three fiscal years:

- 38 in FY 2018-19;
- 21 in FY 2017-2018; and
- 14 in FY 2016-2017.[255]

[251] *Id*.
[252] Section 947.141(3), F.S.
[253] Section 947.141(4), F.S.
[254] Section 947.141(6), F.S.
[255] Emails from Alexander Yarger, Legislative Affairs Director, FCOR, RE: Conditional Medical Release Data and RE: Updated Conditional Medical Release Numbers (attachments on file with the Appropriations Subcommittee on Criminal and

The DOC has recommended 149 inmates for release in the past three fiscal years:
- 76 in FY 2018-19;
- 39 in FY 2017-2018; and
- 34 in FY 2016-2017.[256]

Currently, the DOC's role in the CMR process is making the initial designation of medical eligibility, referring the inmate's case to the FCOR for an investigation and final decision, and supervising inmates who are granted CMR.[257]

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.[258]

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.[259] 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 improvements in some or all facilities.[260] 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*[261] 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.[262]

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

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Civil Justice) (December 15, 2017 and November 1, 2019, respectively). *See also* FCOR Annual Report FY 2017-18, p. 8, available at https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf (last visited February 21, 2020).

[256] *Id*.

[257] The FCOR, *Draft Agency Analysis for SB 556*, October 24, 2019, p. 2 (on file with the Appropriations Subcommittee on Civil and Criminal Justice).

[258] *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

[259] The PEW Charitable Trusts, Urahn, S. and Thompson, M., *Prison Health Care: Costs and Quality*, October 2017, p. 4, available at https://www.pewtrusts.org/-/media/assets/2017/10/sfh_prison_health_care_costs_and_quality_final.pdf (last visited February 21, 2020) (hereinafter cited as "The PEW Trusts Prison Health Care Cost Report").

[260] *Id*. *See also* McDonald, D., *Medical Care in Prisons*, Crime and Justice, Vol. 26, 1999, p. 431, available at https://www.journals.uchicago.edu/doi/abs/10.1086/449301 (last visited February 21, 2020); *See also Newman et al. v. Alabama et al.*, 349 F. Supp. 278 (M.D. Ala. 1972).

[261] 430 U.S. 325 (1977).

[262] *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 Appropriations Subcommittee on Criminal and Civil Justice). The Correctional Medical Authority was created in response to such federal litigation.

care."[263] 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.[264]

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.[265] The DOC has the constitutional and statutory imperative to provide adequate health services to state prison inmates directly related to this responsibility.[266] This medical care includes comprehensive medical, mental health, and dental services, and all associated ancillary services.[267] 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.[268]

The DOC contracts with the Centurion of Florida, LLC (Centurion) to provide comprehensive statewide medical, mental health, dental services, and operates the DOC'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 through assessments, in part, for auditory, mobility and vision disabilities, and the need for specialized mental health treatment.[269]

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.[270]

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.[271] An inmate is not eligible to

[263] The PEW Trusts Prison Health Care Cost Report, p. 4.
[264] *Id*.
[265] Sections 945.04(1) and 945.025(1), F.S.
[266] *Crews v. Florida Public Employers Council 79, AFSCME*, 113 So. 3d 1063 (Fla. 1st DCA 2013); *See also* s. 945.025(2), F.S.
[267] The DOC, Office of Health Services, available at http://www.dc.state.fl.us/org/health.html (last visited February 21, 2020).
[268] *Id*.
[269] *Id*. *See also* the DOC Annual Report, p. 19.
[270] *Id*.
[271] 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

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.[272]

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.[273] The only forms of gain-time that can currently be earned are:

- Incentive gain-time;[274]
- Meritorious gain-time;[275] and
- Educational achievement gain-time.[276]

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.[277] 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.[278]

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.[279] 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.[280]

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.[281]

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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.

[272] Section 944.275(4)(f), F.S.

[273] Chapter 93-406, L.O.F.

[274] 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.

[275] 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.

[276] 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.

[277] Section 944.275(3)(c), F.S.

[278] Section 944.275(2)(a), F.S.

[279] Section 944.275(3)(a), F.S.

[280] *Id*. *See also* s. 944.275(4)(b), F.S.

[281] Section 944.28(1), F.S.

Federal First Step Act

In December, 2018, the United States Congress passed, and President Trump signed into law, the "Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act" or the "FIRST STEP Act" (First Step Act).[282] 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;
- 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.[283]

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.[284]

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 to ensure requirements are met.[285]

Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.[286] 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 Florida and its agencies and

[282] The First Step Act of 2018, Pub. L. No. 115-391 (2018).
[283] Section 603(b) of the First Step Act, codified at 18 USC s. 3582. *See also* U.S. Department of Justice, Federal Bureau of Prisons, *Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. Section 3582 and 4205(g)*, January 17, 2019, p. 3-4, available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf (last visited February 21, 2020).
[284] *Id*.
[285] *Id*.
[286] The Legal Information Institute, *Sovereign immunity*, available at https://www.law.cornell.edu/wex/sovereign_immunity (last visited February 21, 2020).

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 ...."[287]

Section 768.28(5), F.S., limits tort recovery from a governmental entity at $200,000 per person and $300,000 per accident.[288] 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.[289]

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.[290, 291] 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."[292]

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."[293] Conduct meeting the wanton and willful standard is defined as "worse than gross negligence,"[294] and "more reprehensible and unacceptable than mere intentional conduct."[295, 296]

Effect of the Bill

The bill creates two programs for conditional release within the DOC, CMR and conditional aging inmate release (CAIR). 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. The bill also creates s. 945.0912, F.S., which establishes a CAIR program within the DOC. Both programs have the same stated purpose, which is to:

- Determine whether release is appropriate for eligible inmates;
- Supervise the released inmates; and
- Conduct revocation hearings.

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[287] *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.).
[288] Section 768.28(5), F.S.
[289] *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).
[290] *See Peterson v. Pollack*, 2019 WL 6884887 (Fla. 4th DCA December 18, 2019).
[291] Section 768.28(9)(a), F.S.
[292] *Eiras v. Fla.*, 239 F. Supp. 3d 1331, 1343 (M.D. Fla. 2017).
[293] *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).
[294] *Eiras v. Fla.*, 239 , *supra* at 50; *Sierra v. Associated Marine Insts., Inc.*, 850 So.2d 582, 593 (Fla. 2d DCA 2003).
[295] *Eiras v. Fla.*, *supra* at 50; *Richardson v. City of Pompano Beach*, 511 So.2d 1121, 1123 (Fla. 4th DCA 1987).
[296] *See also Kastritis v. City of Daytona Beach Shores*, 835 F.Supp.2d 1200, 1225 (M.D. Fla. 2011) (defining these standards).

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 CAIR program also 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.

The eligibility criteria for each program differs, but both programs have very similar structures and will be discussed together below when possible.

Eligibility Criteria

The bill provides a specific exception to the 85 percent rule that allows an inmate who meets the eligibility criteria for CMR or CAIR to be released from the custody of the DOC pursuant to the applicable program prior to satisfying 85 percent of his or her term of imprisonment. The specific eligibility criteria for each program are discussed below.

CMR

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, 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.

CAIR

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.

Referral Process

The bill requires that any inmate in the custody of the DOC who meets one or more of the above-mentioned eligibility requirements must be considered for CMR or CAIR, respectively. However, the authority to grant CMR or CAIR rests solely with the DOC. 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., or a right to release on CAIR pursuant to s. 945.0912, F.S., respectively.

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. Further, 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 CMR or CAIR, the DOC must refer such inmate to the respective 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 or 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 three-member panel established in s. 945.0911(1), F.S., or s. 945.0912, F.S., whichever is applicable, to conduct a hearing within a specified time after receiving the referral to determine whether CMR or CAIR, respectively, is appropriate for the inmate. The bill specifies that the hearing must be conducted by the panel:

- By April 1, 2021, if the inmate is immediately eligible for consideration for the CMR program or the CAIR program when the provisions take effect on October 1, 2020.
- By July 1, 2021, if the inmate becomes eligible for consideration for the CMR program or the CAIR program after October 1, 2020, but before July 1, 2021.
- Within 45 days after receiving the referral if the inmate becomes eligible for the CMR program or the CAIR program any time on or after July 1, 2021.

Before the hearing for an inmate being referred for the CMR program, 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 or CAIR is appropriate for the inmate. If CMR or 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 CMR is considered a medical releasee upon release to the community. Similarly, the bill provides that an inmate released on CAIR is considered an aging releasee upon release to the community.

An inmate who is denied CMR or CAIR by the three-member panel is able to have the decision reviewed. For an inmate who is denied release on CMR, 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. For an inmate who is denied release on CAIR, the decision is only 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 the release on CMR or CAIR and 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 or CAIR 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 or 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 medical releasee or 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.[297]
- Any other conditions the DOC deems appropriate to ensure the safety of the community and compliance by the medical releasee or aging releasee.

Additionally, the bill requires a medical releasee to have periodic medical evaluations at intervals determined by the DOC at the time of release.

The bill provides that a medical releasee or 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 medical releasee or aging releasee with medical care upon release into the community. The bill provides that the medical releasee or 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 medical releasee or aging releasee may not be counted in the prison system population, and the medical releasee's or aging releasee's approved community-based housing location may not be counted in the capacity figures for the prison system.

Revocation of Conditional 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.

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 medical releasee's CMR or the aging releasee's CAIR and return him or her to the same or another institution designated by the DOC.

Revocation Based on Medical or Physical Improvement - CMR

This provision only applies to revocation of a medical releasee's CMR.

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 releasee.

[297] 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.

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 recommitment. If the medical releasee whose CMR 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, the medical releasee may be considered for such release program pursuant to law.

Revocation Based on Violation of Conditions

The bill provides that CMR or CAIR may 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 or 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 releasee or aging releasee.

Further, a law enforcement officer or a probation officer may arrest the medical releasee or 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 CMR or CAIR, respectively. The law enforcement officer must report the medical releasee's or 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 medical releasee or 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 medical releasee or aging 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 or aging releasee violated the conditions of the CMR or CAIR, respectively.

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

The bill provides that a medical releasee who has his or her CMR, or an aging releasee who has had his or her CAIR, 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 or CAIR, respectively. Additionally, the medical releasee's or aging releasee's gain-time accrued before recommitment may be forfeited pursuant to s. 944.28(1), F.S. If the medical releasee whose CMR is revoked or 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.

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

Revocation Hearing Process

CMR

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.[298]
  - 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.

CAIR

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.[299]
  - 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.

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

[298] However, this bill explicitly provides that this does not create a right to publicly funded legal counsel.
[299] However, this bill explicitly provides that this does not create a right to publicly funded legal counsel.

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 or 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 also amends a number of sections to conform these provisions to changes made by the Act.

These provisions of the bill are effective October 1, 2020.

Wrongful Incarceration Compensation Eligibility (Sections 24-28)

In Florida, 13 people have been exonerated or released from incarceration since 2000 as a result of post-conviction DNA testing. [300] The Victims of Wrongful Incarceration Compensation Act (the Act) has been in effect since July 1, 2008.[301] The Act provides a process whereby a person may petition the original sentencing court for an order finding the petitioner to be a wrongfully incarcerated person who is eligible for compensation from the state.

A person is considered a "wrongfully incarcerated person" when his or her felony conviction and sentence have been vacated by a court of competent jurisdiction and he or she is the subject of an order issued by the original sentencing court pursuant to s. 961.03, F.S., finding that the person did not:

- Commit the act or offense that served as the basis for the conviction and incarceration; and
- Aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.[302]

A person is deemed "eligible for compensation" if he or she meets the definition of the term "wrongfully incarcerated person" and is not disqualified from seeking compensation under the criteria prescribed in s. 961.04, F.S.[303] Further, a person is considered to be "entitled to compensation" if he or she is deemed "eligible for compensation" and satisfies the application

[300] These persons include Frank Lee Smith, Jerry Townsend, Wilton Dedge, Luis Diaz, Alan Crotzer, Orlando Boquete, Larry Bostic, Chad Heins, Cody Davis, William Dillon, James Bain, Anthony Caravella, and Derrick Williams who have been released from prison or exonerated in Florida based on DNA testing. The National Registry of Exonerations, *Browse Cases, Florida*, available at https://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View={B8342AE7-6520-4A32-8A06-4B326208BAF8}&FilterField1=State&FilterValue1=Florida&FilterField2=DNA&FilterValue2=8%5FDNA (last visited on February 12, 2020).

[301] Chapter 961, F.S. (ch. 2008-39, L.O.F.). To date, four persons have been compensated under the Act. E-mail and documentation received from the Office of the Attorney General, October 16, 2019 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).

[302] Section 961.02(7), F.S.

[303] Section 961.02(4), F.S.

requirements prescribed in s. 961.05, F.S., and may receive compensation pursuant to s. 961.06, F.S.[304]

The Department of Legal Affairs (DLA) administers the eligible person's application process and verifies the validity of the claim.[305] The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a rate of $50,000 for each year of wrongful incarceration up to a total of $2 million.[306] To date, four persons have been compensated under the Act for a total of $4,276,901.[307]

In cases where sufficient evidence of actual innocence exists, s. 961.04, F.S., provides that a person is nonetheless *ineligible* for compensation if:

- *Before* the person's wrongful conviction and incarceration the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication *any single violent felony*, or *more than one nonviolent felony*, or a crime or crimes committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;
- *During* the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, *any violent felony offense* or *more than one nonviolent felony*; or
- *During* the person's wrongful incarceration, the person was also serving a *concurrent sentence for another felony* for which the person was not wrongfully convicted.

A person could be wrongfully incarcerated for a crime and then placed on parole or community supervision for that crime after the incarcerative part of the sentence is served.[308] Section 961.06(2), F.S., addresses this situation in terms of eligibility for compensation for the period of wrongful incarceration. Under this provision, if a person commits a misdemeanor, no more than one nonviolent felony, or some technical violation of his or her supervision that results in the revocation of parole or community supervision, the person is still eligible for compensation. If, however, any single violent felony law violation or multiple nonviolent felony law violations result in revocation, the person is ineligible for compensation.[309]

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[304] Section 961.02(5), F.S.
[305] Section 961.05, F.S.
[306] Additionally, the wrongfully incarcerated person is entitled to: waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any state college as defined in s. 1000.21(3), F.S., or any state university as defined in s. 100.21(6), F.S., if the wrongfully incarcerated person meets certain requirements; the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person; the amount of any reasonable attorney's fees and expenses incurred and paid by the wrongfully incarcerated person in connection with all criminal proceedings and appeals regarding the wrongful conviction; and notwithstanding any provision to the contrary in s. 943.0583, F.S., or s. 943.0585, F.S., and immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. Section 961.06, F.S.
[307] E-mail and documentation received from the Office of the Attorney General, October 16, 2019 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).
[308] Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines, which was October 1, 1983, and only then if they meet the statutory criteria. Chapter 82-171, L.O.F., and s. 947.16, F.S. The term "community supervision" as used in s. 961.06(2), F.S., could include control release, conditional medical release, or conditional release under the authority of the FCOR (ch. 947, F.S.), or community control or probation under the supervision of the DOC (ch. 948, F.S.).
[309] Section 961.06(2), F.S.

The term "violent felony" is defined in s. 961.02(6), F.S., by cross-referencing felonies listed in s. 775.084(1)(c)1. or s. 948.06(8)(c), F.S. The combined list of those violent felony offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar. The violent felonies referenced in s. 961.02(6), F.S., are:

- Kidnapping;
- False imprisonment of a child;
- Luring or enticing a child;
- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- Robbery;
- Carjacking;
- Home invasion robbery;
- Sexual Battery;
- Aggravated battery;
- Armed burglary and other burglary offenses that are first or second degree felonies;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Arson;
- Aggravated assault;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Treason;
- Aggravated stalking;
- Aircraft piracy;
- Abuse of a dead human body;
- Poisoning food or water;
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer;
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer pornography;
- Transmission of child pornography; and
- Selling or buying of minors.

Since the Act's inception, a number of claim bills have been filed on behalf of wrongfully incarcerated persons who are ineligible for compensation under the Act because of a felony conviction prior to the person's wrongful incarceration. At least two such persons have received compensation for wrongful incarceration through the claim bill process.

In 2008, Alan Crotzer prevailed in a claim bill for his wrongful incarceration. Crotzer was ineligible for compensation under the Act because of a prior violent felony conviction for armed

robbery when he was 18 years old.[310] In 2012, prior to the eligibility expansion in 2017, William Dillon prevailed in a claim bill for his wrongful incarceration. Dillon was barred from seeking compensation under the Act because of a prior felony conviction for possession of a single Quaalude.[311]

Effect of the Bill

The bill makes a number of changes to ch. 961, F.S., the "Victims of Wrongful Incarceration Compensation Act." The bill amends s. 961.03, F.S., to extend the time for a person who was wrongfully incarcerated for a petition from 90 days to within two years after an order vacating a conviction and sentence becomes final and the criminal charges against a person are dismissed, if the person's conviction and sentence is vacated on or after July 1, 2020.

The bill also authorizes a person to file a petition for determination of status as a wrongfully incarcerated person and determination of eligibility for compensation by July 1, 2022, if the:

- Person's conviction and sentence was vacated and the criminal charges against the person were dismissed, or the person was retried and found not guilty after January 1, 2006, but before July 1, 2020; and
- Person previously filed a claim that was dismissed or did not file a claim under ch. 961, F.S., because the:
  - Date when the criminal charges against the person were dismissed or the date the person was acquitted occurred more than 90 days after the date of the final order vacating the conviction and sentence; or
  - Person was convicted of an unrelated felony before his or her wrongful conviction and incarceration and was previously barred under the clean hands provision.

Additionally, the bill repeals s. 961.04, F.S., removing the bar to compensation for a claimant who has been convicted of a violent felony or multiple nonviolent felonies prior to or during his or her wrongful conviction and incarceration. Accordingly, an otherwise eligible claimant who was convicted of a violent felony or multiple nonviolent felonies will not be disqualified from receiving compensation under the Act for their unrelated wrongful conviction and incarceration.

A deceased person's heirs, successors, or assigns do not have standing to file a claim on the deceased person's behalf for wrongful incarceration compensation.

If a sentencing court determines that a person is a wrongfully incarcerated person and eligible for compensation under s. 961.03, F.S., the person is authorized to apply for compensation with the DLA.

The bill removes the requirement for a wrongfully incarcerated person to release the state or any agency from all claims arising out of the facts relating to the person's wrongful conviction and incarceration. The bill also removes the bar to applying for wrongful incarceration compensation if the person has a pending lawsuit against the state or any agency, or any political subdivision thereof for damages relating to the person's wrongful conviction and incarceration.

[310] *See* ch. 2008-259, L.O.F.
[311] *See* ch. 2012-229, L.O.F. (compensating William Dillion for wrongful incarceration despite ineligibility for compensation under the Act).

Finally, the bill replaces the bar on civil litigation with an "offset provision" that:

- Authorizes the state to deduct the amount of a civil award recovered in a lawsuit from the state compensation owed if the claimant receives a civil award first;
- Requires a claimant to reimburse the state for any difference between state compensation and a civil award if the claimant receives statutory compensation prior to a civil award; and
- Requires a claimant to notify the DLA upon filing a civil action and the DLA to file a notice of payment of monetary compensation in such action to recover any amount owed for state compensation already awarded.

As mentioned above, the bill repeals s. 961.04, F.S., which prohibited compensation based on unrelated violent felony convictions. The bill deletes the terms "eligible for compensation" and "violent felony" and modifies the term "entitled to compensation" from s. 961.02, F.S., to conform this change. The bill makes additional confirming changes throughout the Act.

These provisions of the bill are effective July 1, 2020.

Incarceration Counting Toward Tuition Residency Requirements (Sections 18, 23, and 29)

Residency Status for Tuition Purposes

Florida law defines "tuition" to mean the basic fee charged to a student for instruction provided by a public postsecondary educational institution in the state.[312] Residency designations are used for assessing tuition in postsecondary educational programs offered by charter technical career centers or career centers operated by school districts, in Florida College System institutions, and in state universities.[313] Students who are not classified as "residents for tuition purposes"[314] are required to pay the full cost of instruction at a public postsecondary institution. A person is able to meet the definition of a "legal resident" if the person has maintained his or her residence in Florida for the preceding year, has purchased a home which is occupied by him or her as his or her residence, or has established a domicile in this state.[315]

Specifically, to qualify as a resident for tuition purposes:

- A person or, if that person is a dependent child, his or her parent or parents must have established legal residence in Florida and must have maintained legal residence for at least 12 consecutive months immediately prior to his or her initial enrollment in an institution of higher education.
- Every applicant for admission to an institution of higher education is required to make a statement as to his or her length of residence and establish that his or her presence or, if the applicant is a dependent child, the presence of his or her parent or parents in Florida currently is, and during the requisite 12-month qualifying period was, for the purpose of maintaining a bona fide domicile.[316]

[312] Section 1009.01(1), F.S.
[313] Section 1009.21, F.S.
[314] Section 1009.21(1)(g), F.S.
[315] Section 1009.21(1)(d), F.S.
[316] Section 1009.21(2)(a), F.S.

A person must show certain proof that he or she should be classified as a resident for tuition purposes and may not receive the in-state tuition rate until clear and convincing evidence related to legal residence and its duration has been provided. Each institution of higher education must make a residency determination that is documented by the submission of written or electronic verification that includes two or more specified documents that:

- Must include at least one of the following:
  - A Florida voter's registration card.
  - A Florida driver license.
  - A State of Florida identification card.
  - A Florida vehicle registration.
  - Proof of a permanent home in Florida which is occupied as a primary residence by the individual or by the individual's parent if the individual is a dependent child.
  - Proof of a homestead exemption in Florida.
  - Transcripts from a Florida high school for multiple years if the Florida high school diploma or high school equivalency diploma was earned within the last 12 months.
  - Proof of permanent full-time employment in Florida for at least 30 hours per week for a 12-month period.
- May include one or more of the following:
  - A declaration of domicile in Florida.
  - A Florida professional or occupational license.
  - Florida incorporation.
  - A document evidencing family ties in Florida.
  - Proof of membership in a Florida-based charitable or professional organization.
  - Any other documentation that supports the student's request for resident status, including, but not limited to, utility bills and proof of 12 consecutive months of payments; a lease agreement and proof of 12 consecutive months of payments; or an official state, federal, or court document evidencing legal ties to Florida.[317]

Florida law is silent as to whether time incarcerated in a Florida prison or county detention facility may count toward the 12-month legal residency requirements.

The DOC reports that it and Florida Gateway College partnered to offer the Second Chance Pell Program at Columbia Correctional Institution Annex, which is a pilot program operating under the Second Chance Pell Experimental Sites Initiative through the U.S. Department of Education and the Department of Justice. The program at Columbia Correctional Institution Annex commenced on January 24, 2017, and has recently been renewed for another three-years. The DOC reports that this pilot program allows eligible inmates to access Pell Grant funds for post-secondary education. Such funds accessed through the grant must be used to cover the costs of tuition, fees, books, and supplies. The DOC is currently attempting to expand post-secondary opportunities for inmates in collaboration with several Florida colleges and universities.[318]

[317] Section 1009.21(3), F.S.
[318] The DOC, *Agency Analysis for SB 1308*, February 3, 2020, p. 4 (on file with the Appropriations Subcommittee on Senate Criminal and Civil Justice Committee) (hereinafter cited as "The DOC SB 1308 Analysis").

Requirement to Provide Certain Information to Persons Upon Release From Imprisonment

Entities that imprison persons convicted of offenses in violation of Florida law are required in certain circumstances to provide specified information to such persons upon release. For example, s. 944.705(6), F.S., requires the DOC to notify every inmate upon release, in no less than 18-point type in the inmate's release documents, that the inmate may be sentenced pursuant to s. 775.082(9), F.S., as a prison releasee reoffender as discussed below if the inmate commits any enumerated felony offense within 3 years after the inmate's release. Additionally, the notice must be prefaced by the word "WARNING" in boldfaced type.[319]

Further, specified entities are required to provide inmates with certain information related to all outstanding terms of sentence in accordance with CS/SB 7066 (2019), related to voting rights restoration.[320] For example, ss. 944.705 and 948.041, F.S., require the DOC to notify an inmate or offender in writing of all outstanding terms of sentence at the time of release or termination of probation or community control.

Such entities are not currently required to provide inmates being released from their facilities information related to dates of his or her admission to and release from the custody of the facility, including the total length of the term of imprisonment from which he or she is being released.

Effect of the Bill

The bill amends s. 1009.21(2), F.S., authorizing time spent incarcerated in a county detention facility or state correctional facility to apply towards the requirement to reside in Florida through an authorized manner for 12 consecutive months immediately before enrollment for the designation as a resident for tuition purposes. The bill also amends s. 1009.21(3), F.S., requiring time spent incarcerated in a county detention facility[321] or state correctional facility[322] to be credited toward the residency requirement, with any combination of documented time living in Florida before or after incarceration.

Further, the bill amends s. 944.705, F.S., and creates s. 951.30, F.S., requiring the DOC and administrators of county detention facilities, respectively, to provide written documentation to inmates upon release specifying the dates of the inmate's admission to and release from the custody of the facility. This notification must include the total length of the term of imprisonment from which he or she is being released.

This documentation will assist inmates with providing the proper evidence to satisfy residency requirements for tuition purposes pursuant to s. 1009.21(3), F.S.

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

[320] *See* ch. 2019-162, L.O.F.

[321] Section 951.23(1)(a), F.S., defines "county detention facility" to mean a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor.

[322] Section 944.02(8), F.S., defines "state correctional institution" to mean any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the DOC.

Office of Program Policy and Governmental Accountability (OPPAGA) Study on Collateral Consequences (Section 30)

The bill requires the OPPAGA to conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment. The bill provides that the study's scope must include, but need not be limited to:

- Any barriers to such opportunities;
- The collateral consequences that are present, if applicable, for persons who are released from incarceration into the community; and
- Methods for reducing the collateral consequences identified.

The bill requires the OPPAGA to submit a report to the Governor, the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives by November 1, 2020, on its findings.

This provision of the bill is effective July 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:

Driving With a License Suspended or Revoked (DWLSR) Amendments (Sections 1 and 15)

Retroactive DWLSR Sentencing Provisions

The Criminal Justice Impact Conference (CJIC) heard CS/SB 1504, the identical provisions of which are included herein on February 10, 2020. The CJIC found that the retroactive sentencing provisions of CS/SB 1504 will have a negative significant prison bed impact (i.e. decrease of more than 25 beds).[323]

The bill also allows for people to be sentenced to misdemeanor penalties, rather than to prison for such offenses. To the extent that the bill results in persons being sentenced to non-state sanctions or resentenced and released from imprisonment with the DOC, the bill will have an indeterminate negative prison bed impact (i.e. an unquantifiable decrease).[324]

According to the DOC, there are currently 2,086 inmates in custody for the offense of DWLSR who were sentenced under former s. 332.34, F.S., which would need to be reviewed for eligibility under the bill. Further, the DOC states that the bill would result in a significant, but temporary fiscal impact on the DOC. Therefore, the DOC will need one full-time non-recurring, Correctional Services Assistant Consultant at a cost of $65,395, to conduct the review for eligibility of certain offenders. DOC also estimates there will be a minimal technology impact of $3,480, based on a possible request for expungement of cases.[325]

Expunction Provisions

The CJIC also found that the expunction provisions of CS/SB 1504 will have a positive insignificant prison bed impact (i.e. an increase of 10 or fewer prison beds).[326]

The bill allows for certain persons to have any specified criminal history records related to a DWLSR conviction expunged. This will result in a negative fiscal impact on the FDLE' workload. To accommodate this increased workload, the FDLE estimates it will need an additional 16 positions totaling $1,039,809 ($1,029,867 recurring),[327] which may

[323] The Office of Economic and Demographic Research, CJIC Narrative Analyses of Adopted Impacts, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm (last visited February 12, 2020). *See also* the CJIC, *CS/SB 1504 Adopted Impact*, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB1504.pdf (last visited February 12, 2020) (hereinafter cited as "The CJIC CS/SB 1504 Impact Results").
[324] February 10, 2020 Conference Results, Criminal Justice Impact Conference, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm (last visited February 14, 2020).
[325] The DOC, *Agency Analysis for SB 1504*, January 31, 2020, p. 3-7 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).
[326] The CJIC, CS/SB 1504 Impact Results.
[327] The 2020 FDLE Legislative Bill Analysis for SB 1504 C1, February 10, 2020, p 5 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).

be offset in part by the $75 fee collected for each application for COE associated with this additional category of expunction records.

Mandatory Minimum Sentences (Sections 2-5, 7, and 8)

The bill amends ss. 379.407, 403.4154, 456.065, 624.401, and 817.234, F.S., to remove various mandatory minimum penalties. To the extent that persons convicted for these various offenses that currently require the imposition of a minimum mandatory term of imprisonment are sentenced to lesser sentences of imprisonment than are currently required, the bill is expected to have a negative prison bed impact.

Drug Trafficking Safety Valve (Section 8)

The CJIC heard SB 468, which is identical to this provision in the bill, on January 27, 2020, and determined that this provision will result in a negative indeterminate prison bed impact (i.e. an unquantifiable decrease in prison beds) due to the discretion given to the court to depart from such mandatory sentences.[328]

Prison Releasee Reoffenders (Section 6)

The CJIC heard CS/SB 1716, which is identical to these provisions of the bill, on February 10, 2020, and determined that the bill will have a negative significant prison bed impact (i.e. decrease of more than 25 prison beds).[329]

The DOC states that since it will be required to provide notice to the inmate of his or her eligibility to request a sentence review hearing, there will be a need in the Bureau of Admissions and Release for a full time, temporary position, funded for up to one year to handle the work load increase required to complete notifications for the 7,400 inmates that this bill will effect.[330]

Probation Violations (Section 22)

The bill clarifies that all of the enumerated conditions must be satisfied for a court to be required to continue or modify a person on probation subsequent to certain violations of probation. To the extent that this results in less people being continued or modified on probation, the bill may result in more people having their probation revoked and sentenced to prison or jail. According the State Court Administrator, this bill is not likely to have a significant effect on judicial workload and not fiscal impact.[331]

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[328] The CJIC, *SB 468 Adopted Impact*, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/SB468.pdf (last visited February 12, 2020).
[329] The DOC, *Agency Analysis for SB 1716*, February 20, 2020, p. 3-7 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).
[330] Id.
[331] The State Courts Administrator, 2020 Judicial Impact Statement for SB 7064, February 23, 2020, p. 1 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).

Sentence Review Hearings (Sections 10-12)

The CJIC, reviewed CS/SB 1308, the provisions of which are included herein, on February 10, 2020 and estimates the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds). The EDR provided the following information relevant to its estimate:[332]

Further, the bill modifies the ability of certain juvenile offenders from being eligible for a sentence review hearing in addition to creating a new sentence review hearing process for young adult offenders sentenced for committing specified offenses before attaining the age of 25 years. To the extent that the bill results in juvenile or young adult offenders being released from prison earlier than otherwise may occur as a result of such sentence review hearings, the bill may result in a negative indeterminate prison bed impact (i.e. an unquantifiable decrease in prison beds).[333]

The DOC reports that there are 37 inmates eligible for review based on the changes made to s. 921.1402, F.S., and the retroactive application of such changes. Additionally, the DOC states that there are 5,312 potentially eligible young adult offenders that will require eligibility notification under the newly-created s. 921.1403, F.S. As stated above, to the extent that the bill results in juvenile or young adult offenders being released from prison earlier than otherwise may occur as a result of such sentence review hearings, the DOC provides that the bill may result in a negative indeterminate prison bed impact (i.e. an unquantifiable decrease in prison beds) and an indeterminate positive impact on the supervision population managed by the DOC.[334]

Additionally, the bill may have an impact on the court system to the extent that resentencing hearings for such offenders affected by the bill will require more time and resources. However, any fiscal impact cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial and court staff workload.[335]

The Public Defender Association states that they currently represent a large majority of the juvenile offenders who are seeking to be resentenced, but the bill adds adult offenders who committed their offenses between the ages of 18-25. Therefore, it is anticipated that this bill will create more workload for public defender staff for the next several fiscal years.[336]

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[332] February 10, 2020 Conference Results, Criminal Justice Impact Conference, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm (last visited February 14, 2020).
[333] Id.
[334] The DOC SB 1308 Analysis, p. 5, 6, and 8.
[335] The State Courts Administrator, 2020 Judicial Impact Statement for SB 7064, February 23, 2020, p. 1 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).
[336] Florida Public Defender Association, Inc., Fiscal Analysis for SB 1308, (January 13, 2020) (on file with Senate Appropriations Subcommittee on Criminal and Civil Justice).

Postconviction Forensic Analysis (Sections 13, 14, 16, and 17)

The CJIC heard HB 7077, which is identical to the provisions contained herein, on February 10, 2020, and found that the bill will have a negative indeterminate prison bed impact (i.e. an unquantifiable decrease in prison beds).[337] The bill may increase the amount of postsentencing forensic analysis the FDLE is ordered to perform, but the bill also authorizes third-party laboratories to conduct such analysis as well. To the extent that the bill increases analysis that is conducted by the FDLE, these provisions will likely increase the FDLE laboratories' workload. Additionally, if indigent defendants are successful in petitioning for postsentencing forensic analysis, the state may be responsible for increased testing costs. However, since the bill authorizes private laboratory testing, at the petitioner's expense, the degree to which state laboratories' workload and testing costs will increase is unknown.[338]

Conditional Release for Certain Inmates (In part, Sections 19- 21)

Conditional Medical Release (CMR)

The CJIC reviewed CS/CS/SB 556, which is identical to the provisions in this bill, on January 27, 2020. The CJIC determined that theses sections will likely result in a negative significant prison bed impact (i.e. a decrease of more than 25 prison beds).[339] Additionally, these sections 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.[340]

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 with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The DOC's Fiscal Year 2017-2018 average per diem for community supervision was $5.47.[341]

[337] The CJIC, *HB 7077 Adopted Impact*, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB7077.pdf (last visited February 24, 2020).
[338] The Florida House of Representatives, HB 7077 staff analysis, p. 9 (February 24, 2020.
[339] 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).
[340] The FCOR, CS/SB 556 Agency Bill Analysis, p. 5 (October 24, 2019).
[341] The DOC SB 574 Analysis, p. 5.

According to the DOC, the department will need 9 additional staff in the Bureau of Classification Management to oversee, provide guidance, and coordinate the implementation and administration of the CMR program, as follows.[342]

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[343]	**$659,447 (recurring)**	**$64,911(non-recurring)**

Conditional Aging Inmate Release (CAIR)

The CJIC reviewed CS/CS/SB 574, which is identical to the sections in this bill, on January 27, 2020. The CJIC determined that these sections will likely result in a negative insignificant prison bed impact (i.e. a decrease of 10 or fewer prison beds).[344]

The DOC reports that the overall fiscal impact of these sections is indeterminate because release will be at the discretion of the DOC.[345] 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 reports that an additional 291 inmates were projected to become eligible based on the 70 years of age threshold over the next five years.[346] This data was provided based on the age threshold contained in CS/SB 574. However, PCS/CS/SB 574, which is identical to the section in this bill, 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, this bill may expand the pool of inmates who are eligible for consideration of CAIR release.

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[342] The DOC spreadsheet (January 30, 2020) (on file with the Committee on Criminal and Civil Justice Appropriations).
[343] DOC Spreadsheet (January 30, 2019), (on file with the committee on Criminal and Civil Justice Appropriations).
[344] 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).
[345] 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"].
[346] 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"].

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 with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The DOC's Fiscal Year 2017-2018 average per diem for community supervision was $5.47.[347]

According to the DOC, the department will need 9 additional staff in the Bureau of Classification Management to oversee, provide guidance, and coordinate the implementation and administration of the CAIR program, as follows. [348]

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[349]	**$659,447 (recurring)**	**$64,911(non-recurring)**

Compensation for Wrongful Incarceration (Sections 24-28)

More persons are potentially eligible for compensation for wrongful incarceration under these sections of the bill. A person who is entitled to compensation based on wrongful incarceration would be paid at the rate of $50,000 per year of wrongful incarceration up to a limit of $2 million. Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. The Victims of Wrongful Incarceration Compensation Act is funded through a continuing appropriation pursuant to s. 961.07, F.S.

Although statutory limits on compensation under the Act are clear, the fiscal impact of the bill is unquantifiable. The possibility that a person would be compensated for wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently exist or might exist in the future. Four successful claims since the Act became effective total $4,276,901.

[347] The DOC SB 574 Analysis, p. 5.
[348] The DOC spreadsheet (January 30, 2020) (on file with the Committee on Criminal and Civil Justice Appropriations).
[349] DOC Spreadsheet (January 30, 2019), (on file with the committee on Criminal and Civil Justice Appropriations).

Notification of Certain Release Information (Sections 18, 23, and 29)

The bill requires the DOC and county detention facilities to provide inmates certain information related to the length of incarceration. The DOC states that inmates in its custody often have multiple sentences with various admission dates, release dates, and terms imposed. Further, each sentence length is calculated individually based on a number of factors and therefore an inmate may have multiple endpoints of their various sentences. According to the DOC, these sections of the bill will require significant programming changes, but such necessary changes are not specified by the DOC.[350]

Residency for Tuition Purposes (Sections 29)

The bill allows time incarcerated in a Florida facility to count towards the 12-month residency requirement for tuition purposes and requires the DOC and county detention facilities to provide certain information to inmates upon release from such facilities. To the extent that the requirement to provide such notification increases the workload of the DOC and county detention facilities, the bill may result in an indeterminate fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.1935, 379.407, 403.4154, 456.065, 624.401, 775.082, 775.084, 775.087, 782.051, 784.07, 790.235, 794.0115, 817.234, 817.568, 893.03, 893.13, 893.135, 893.20, 910.035, 921.002, 921.0022, 921.0023, 921.0024, 921.0025, 921.0026, 921.0027, 924.06, 924.07, 921.1402, 925.11, 925.12, 943.325, 943.3251, 944.17, 944.605, 944.70, 944.705, 947.13, 947.141, 948.01, 948.015, 948.06, 948.20, 948.51, 958.04, 961.02, 961.03, 961.05, 961.06, 985.465, and 1009.21.

This bill creates the following sections of the Florida Statutes: 322.3401, 921.14021, 921.1403, 943.0587, 945.0911, 945.0912 and 951.30.

The bill repeals the following sections of the Florida Statutes: 947.149 and 961.04.

[350] The DOC SB 1308 Analysis, p. 6.

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 February 25, 2020:
The proposed committee substitute:

- Providing for the retroactive application of the changes made by CS/HB 7125 (2019) to s. 322.34, F.S., related to the offense of driving while license suspended or revoked (DWLSR).
- Requiring offenders convicted of DWLSR who have not been sentenced as of October 1, 2020, to be sentenced in accordance with the new penalties outlined in CS/HB 7125 (2019).
- Authorizing offenders convicted of DWLSR who have been sentenced and are still serving such sentence to be resentenced in accordance with the penalties in CS/HB 7125 (2019).
- Providing procedures for the resentencing of eligible persons previously convicted of DWLSR and requires the court of original jurisdiction, upon receiving an application for sentence review from the eligible person, to hold a sentence review hearing to determine if the eligible person meets the criteria for resentencing.
- Providing that a person is eligible to expunge a criminal history record of a conviction that resulted from former s. 322.34, F.S., in specified circumstances.
- Renaming of the Criminal Punishment Code to the "Public Safety Code" and changing the primary purpose from punishing the offender to public safety.
- Removing various mandatory minimum terms of imprisonment for specified offenses.
- Reducing the mandatory minimum penalties imposed upon a prison releasee reoffender (PRR), a category of repeat offenders, under s. 775.082(9), F.S., and expressly applying such changes retroactively.
- Providing a process for resentencing certain prison releasee reoffenders and removing a provision of law that prohibits a prison releasee reoffender from any form of early release.
- Authorizing a court to depart from the imposition of a mandatory minimum sentence in drug trafficking cases if certain circumstances are met.
- Clarifying that a court is only required to modify or continue an offender's probationary term if all of the enumerated specified factors apply.
- Expanding the types of forensic analysis available to a petitioner beyond DNA testing.
- Requiring a petitioner to show that forensic analysis may result in evidence material to the identity of the perpetrator of, or an accomplice to, the crime that resulted in the person's conviction, rather than having to show the evidence would exonerate the person or mitigate his or her sentence.
- Authorizing a private laboratory to perform forensic analysis under specified circumstances at the petitioner's expense.

- Requiring the Florida Department of Law Enforcement (FDLE) to conduct a search of the statewide DNA database and request the National DNA Index System (NDIS) to search the federal database if forensic analysis produces a DNA profile.
- Authorizing a court to order a governmental entity that is in possession of physical evidence claimed to be lost or destroyed to search for the physical evidence and produce a report to the court, the petitioner, and the prosecuting authority regarding such lost evidence.
- Repealing s. 947.149, F.S., which establishes the conditional medical release (CMR) program within the Florida Commission on Offender Review (FCOR) and creates s. 945.0911, F.S., to establish a CMR program within the Department of Corrections (DOC).
- Providing definitions and eligibility criteria for the CMR program.
- Providing a process for the referral, determination of release, and revocation of release for the CMR program.
- Establishing a conditional aging inmate release (CAIR) program within the DOC.
- Providing eligibility criteria for the CAIR program.
- Providing a process for the referral, determination of release, and revocation of release for the CAIR program.
- Deleting and modifying terms related to the "Victims of Wrongful Incarceration Compensation Act."
- Eliminating specified factors barring from consideration for certain persons from compensation for wrongful incarceration.
- Extending the time for a person who was wrongfully incarcerated to file a petition with the court to determine eligibility for compensation from 90 days to two years.
- Authorizing certain persons who were previously barred from filing a petition for wrongful compensation to file a petition with the court by July 1, 2021.
- Requiring the Department of Corrections (DOC and county detention facilities to provide documentation to inmates upon release specifying the total length of the term of imprisonment at the time of release.
- Allowing the time spent incarcerated in a county detention facility or state correctional facility to apply towards satisfaction of residing for a specified amount of time in Florida for designation as a resident for tuition purposes.
- Requiring the time spent incarcerated in a county detention facility or state correctional facility to be credited toward the residency requirement, with any combination of documented time living in Florida before or after incarceration.
- Requiring the Office of Program Policy and Governmental Accountability (OPPAGA) to conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment and submit a report by November 1, 2020.

CS by Criminal Justice on February 4, 2020:
The committee substitute:

- Fixes incorrect citations in the provision that allowed juvenile offenders and young adult offenders sentenced with the PRR enhancement to be released if the court deems appropriate;

- Adds legislative findings language to the section created to retroactively apply the changes made to the juvenile offenders who are eligible for a sentence review;
- Corrects language in the provision limiting review of certain juvenile offenders related to the two criminal episodes to ensure the correct application of limiting such reviews; and
- Ensures the provisions that limit certain offenders from having a review are the same between the juvenile offender and young adult offender statutes.

B. Amendments:

None.


291996

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/25/2020	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice (Brandes) recommended the following:

Senate Amendment to Amendment (139324)

Delete lines 997 - 1002
and insert:
as a life felony and he or she is sentenced to a term of more than 20 years under s. 775.082(3)(a)1., 2., 3., 4., or 6., is entitled to a review of his or her sentence after 20 years.

2. This paragraph does not apply to a person who is eligible for sentencing under s. 775.082(3)(a)5. or s. 775.082(3)(c).

OFFICE OF THE STATE COURTS ADMINISTRATOR
2020 JUDICIAL IMPACT STATEMENT

BILL NUMBER: SB 1308 DATE: February 2, 2020

SPONSOR(S): Senator Brandes

STATUTE(S) AFFECTED: Amends ss. 775.082, 921.1402, 944.705, and 1009.21, F.S. Creates ss. 921.14021, 921.1403, and 951.30, F.S.

COMPANION BILL(S): HB 1131 (compare)

AGENCY CONTACT: Sean M. Burnfin

TELEPHONE: (850) 922-0358

ASSIGNED OSCA STAFF: BNS

I. SUMMARY: The bill allows for certain juvenile or young adult offenders (defined as a person who committed a crime before he or she was 25 years old and was sentenced to prison) who were subject to prison releasee reoffender (PRR) sentencing to be resentenced. The bill also revises the circumstances under which a juvenile offender is not entitled to a review of his or her sentence after a specified timeframe. These new provisions would operate retroactively so that a juvenile who previously was not eligible for a sentence review would be entitled to such a review after 25 years. Also, certain "young adult offenders" would be entitled to sentence reviews after specified time periods (which depend on the severity of the crime). If a judge determines at the sentence review that the defendant has been rehabilitated, the judge may modify the sentence and impose a term of probation for a specified length depending on the severity of the crime. If a judge determines that the defendant is not rehabilitated, the judge must issue a written order explaining why the sentence is not being modified. These young adult offender provisions would apply retroactively. The bill provides an effective date of July 1, 2020.

II. EFFECT OF PROPOSED CHANGES: Under current law and with limited exceptions, a person sentenced as a PRR must serve a mandatory minimum sentence that is equal to the statutory maximum for the crime, and there is no sentence review. Also, under current law, there is no classification known as "young adult offender" and no sentence review for persons who were adults and under age 25 when they committed their crimes. Finally, juveniles who had previously been convicted of murder, manslaughter, sex battery, armed burglary, armed robbery, armed carjacking, home invasion robbery, kidnapping, and certain types of false imprisonment and human trafficking or conspiracy to commit those crimes were not eligible for a sentence review for a murder. Under the bill, the only prior crime that would make a juvenile murderer ineligible for a sentence review would be another murder.

III. ANTICIPATED JUDICIAL OR COURT WORKLOAD IMPACT: The bill will increase judicial workload because there will be more re-sentencings. The amount of the increase is unclear.

IV. IMPACT TO COURT RULES/JURY INSTRUCTIONS: The bill may warrant rules for applicable re-sentencings.

V. **ESTIMATED FISCAL IMPACTS ON THE JUDICIARY:**

A. Revenues: None

B. Expenditures: The fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial workload resulting from resentencing cases, as discussed in Section III, above.

Florida Public Defender Association, Inc.

FISCAL ANALYSIS OF SB 1308

Bill Analysis: SB 1308 is The Second Look Act; it allows resentencing for juvenile and young adult offenders sentenced under the Prison Releasee Act and allows more individuals who committed crimes under the age of 18 the opportunity to be resentenced.

Public Defenders strongly support this bill.

Fiscal Analysis- We already represent a large majority of the juvenile offenders who are seeking to be resentenced, but the bill would add adult offenders who committed their offenses between the ages of 18-25. Since the bill states that it is retroactive, it would apply to already-sentenced offenders who are currently serving life sentences. Just as it has been for the juvenile offenders who have been eligible for resentencing since 2014, there would be a significant time period requiring intense investigation, preparation, and advocacy for a large number of eligible offenders. Therefore, this bill would create more workload for public defender staff for the next several fiscal years.

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2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

BILL INFORMATION	
BILL NUMBER:	SB 1308
BILL TITLE:	Criminal Justice
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	July 1, 2020

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

CURRENT COMMITTEE

SIMILAR BILLS	
BILL NUMBER:	
SPONSOR:	

PREVIOUS LEGISLATION	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	February 3, 2020
LEAD AGENCY ANALYST:	Michelle Palmer
ADDITIONAL ANALYST(S):	Angela Fryar, Jennifer Rechichi, Lisa Kinard, Sibyle Walker
LEGAL ANALYST:	Dan Burke
FISCAL ANALYST:	Sharon McNeal

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Creates a short title, "The Second Look Act,"; authorizes the resentencing and release of certain persons who are eligible for sentence review under specific revisions; reenacts and amends s. 921.1402, F.S. (Sentencing Review); revising the circumstances under which a juvenile offender is not entitled to a review of his or her sentence after a specified timeframe; creating s. 921.14021, F.S.; providing for retroactive application of a specified provision relating to review of sentence for juvenile offenders convicted of murder; providing for immediate review of certain sentences; creating s. 921.1403; F.S.; defining the term "young adult offender" precluding eligibility for a sentence review for young adult offenders who previously committed, or conspired to commit, specified offenses; providing timeframes within which young adult offenders who commit specified crimes are entitled to a review of their sentences; providing applicability; requiring the Florida Department of Corrections (FDC or Department) to notify young adult offenders in writing of their eligibility for sentence review within certain timeframes; requiring a young adult offender seeking a sentence review or a subsequent sentence review to submit an application to the original sentence court and request a hearing; providing for legal representation of eligible young adult offenders; providing for one subsequent review hearing for the young adult offender after a certain timeframe if the inmate is not resentenced at the initial sentence review hearing; requires the original sentencing court to hold a sentence review hearing upon receiving an application from an eligible young adult offender; requiring the court to consider certain factors in determining whether to modify the inmate's sentence if the court makes certain determinations; requiring the court to issue a written order stating certain information in specified circumstances; providing for retroactive application; amending s. 944.705, F.S., requiring the Department to provide inmates with certain information upon their release; creating s. 951.30, F.S.; requiring that administrators of county detention facilities provide inmates with certain information upon their release; amending s.1009.21, F.S.; providing that a specified period of time spent in a county detention facility or state correctional facility counts toward the 12-month residency requirement for tuition purposes; requiring OPAAGA to conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment; providing study requirements; requiring OPPAGA to submit a report to the Governor and the Legislature by a specified date; providing an effective date.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Release Reoffender:

Effective May 30, 1997, the Re-offender Act, s.775.082(9), provides for enhanced punishment for offenders who commit certain crimes within 3 years after release from prison, or who commit a crime enumerated within the statute while serving a prison sentence or while on escape status from a prison. The law requires the court to impose at a minimum a sentence equal to the statutory maximum for the offense as follows:

Life Felony – Life without parole
1st Degree - 30 years
2nd Degree – 15 years
3rd Degree – 5 years

A person sentenced as a prison release re-offender (PRR) must serve 100% of the minimum service requirement. Whether to file a notice of enhanced penalty is within the sole discretion of the state attorney; however, for every case in which the defendant meets the criteria for prison release reoffender and does not receive the minimum prison sentence, the state must explain the deviation in writing and place in the state attorney's case file.

It should be noted, the court-imposed sentence can exceed the statutory maximum based on the felony degree (e.g. sentencing under s.775.084 habitual offender). The habitual designation authorizes the court to exceed the normal statutory maximum and impose a greater sentence. For example, the inmate may be sentenced to 30 years as a habitual offender for a second-degree felony which typically carries a statutory maximum of 15 years and also receive a 15-year minimum as a release reoffender as part of that same sentence.

The courts have clarified the interaction of the re-offender act with other sentencing provisions. As such, the prohibition of gain time under the re-offender provision applies only to that portion of the sentence designated as a re-offender sentence. When an inmate receives a sentence that is greater than the minimum under the release reoffender provision, the inmate is eligible to earn gain time as long as the release date is greater than the minimum service requirement date.

In Grant v State, 770 So.2d 655 (Fla. 2000), the Florida Supreme Court rejected the 4th DCA's interpretation of the gain time implications of the re-offender act as set forth in Adams v State, 750 So.2d 659 (Fla. 4th DCA 1999). The

4th district had interpreted the re-offender act to function like a firearm mandatory, under which an inmate could not earn gain time at all until the minimum had been served. The court held that by sentencing the defendant "to the first fifteen years as a PRR, for which no gain time is credited, appellant would only accumulate the gain time in the last fifteen years of his concurrent 30 year habitual felony offender sentence, and would serve 12.75 additional years, or 27.75 years minimum, which would deprive him of allowable gain time under the habitual felony offender statute."

The Supreme Court in Grant clarified the meaning of a re-offender act sentence imposed with a habitual offender sentence as follows:

"Where a defendant is convicted of a single offense which qualifies for a sentence longer than an applicable mandatory minimum established by the Legislature, and the Legislature has authorized imposition of such longer sentence in the act creating the mandatory minimum, gain time would still accrue with respect to the non-PRR sentence during the overlapping time that both the mandatory minimum sentence and a portion of the longer sentence are being served; however, such gain time would obviously apply only to the longer sentence, and not to the mandatory minimum."

The re-offender act requires imposition and service of the statutory maximum penalty based on the felony degree of the crime for which sentence is being imposed. In cases where the sentencing orders reflect the defendant is a release re-offender but does not specify a minimum term in the sentencing order, the Department records the minimum term based on the felony degree per statute. For example, if the inmate has been sentenced to 5 years for a third degree and designated a release re-offender, but the court does not specify a minimum term, a five-year minimum, which is the statutory maximum for a third-degree felony, will be applied. This entry requires service of the entire 5 years without gain time. In this example, the inmate will serve 100% of the sentence imposed without gain-time.

If an inmate has been sentenced to a term longer than the normal statutory maximum by virtue of another enhancement provision such as habitual offender, gain time may accrue to reduce the longer overall term as long as the inmate serves at least the re-offender act minimum. For example, the statutory maximum for a second-degree felony is 15 years; however, an inmate sentenced as habitual offender for a second-degree felony may receive 30 years. If also sentenced as a re-offender, the sentence can be 30 years with 15 years minimum as a re-offender. In this scenario, the inmate would have a 15-year release reoffender provision, allowing gain time to apply to the entire 30-year sentence. The inmate would only be prevented from being released prior to serving the 15 years as a re-offender, he/she would not be prevented from earning gain time for the entire 30 years. The result in this example is that the re-offender provision has no effect on the release date since 85% of the 30-year sentence is far more than the 15 years required to be served under the re-offender provision. The inmate is NOT required to serve 100% of the 30-year habitual offender sentence, as a prison release re-offender.

Juvenile Sentencing/Reviews:

S. 921.1402, F.S., provides that a juvenile offender sentenced under s. 775.082, F.S., is entitled to review of his or her sentence after 25 years, 20 years, 15 years. A juvenile being defined as a person under the age of 18 at the time of the offense. The time of review after original sentencing is as follows:

- Homicide (under s. 782.04, F.S.,)
  - Intent to Kill - 25-year review
  - No intent to kill - 15-year review
- All other Non-homicides
  - 20-year review

For all inmates with offense dates prior to July 1, 2014, the court must first resentence the inmate under the new juvenile sentencing laws that went into effect on July 1, 2014, and (for Homicides) enter a written finding as to whether or not the inmate intended to kill the victim should be made and the court should order a resentencing review accordingly based on the finding. For all offenses committed on or after July 1, 2014, the court must sentence a person who was a juvenile at the time the offenses were committed in accordance with s.921.1401.

A juvenile offender is not entitled to review if he or she has a prior conviction for murder, manslaughter, sexual battery, armed burglary, armed robbery, armed carjacking, home invasion robbery, human trafficking for commercial sexual activity with a child under 18 years of age, false imprisonment under s. 787.02(3)(a), F.S., or kidnapping.

The Department currently provides notice of eligibility for judicial review to inmates who have been sentenced or resentenced pursuant to s. 921.1401, F.S., and who have served enough of that sentence to qualify for judicial review under s. 921.1402, F.S.

A juvenile offender seeking sentence review pursuant to subsection (2) must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The juvenile offender must submit a new application to the court of original jurisdiction to request subsequent sentence review hearings pursuant to paragraph (2)(d). The sentencing court shall retain original jurisdiction for the duration of the sentence for this purpose.

A juvenile offender who is eligible for a sentence review hearing is entitled to be represented by counsel, and the court shall appoint a public defender to represent the juvenile offender if the juvenile offender cannot afford an attorney.

Upon receiving an application from an eligible juvenile offender, the court of original sentencing jurisdiction shall hold a sentence review hearing to determine whether the juvenile offender's sentence should be modified. When determining if it is appropriate to modify the juvenile offender's sentence, the court shall consider multiple factors it deems appropriate.

If the court determines at a sentence review hearing that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society, the court shall modify the sentence and impose a term of probation of at least 5 years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court shall issue a written order stating the reasons why the sentence is not being modified.

Subsequent to enactment of s. 921.1402, F.S., multiple court decisions have ruled that s. 921.1401, F.S., and s. 921.1402, F.S., must be applied retroactively to inmates who were juveniles at the time of the offense.

For persons who commit an offense after they reach the age of 18, there is currently no mechanism in place, other than routine post-conviction relief motions, to have the court re-address the term imposed. Absent any post-conviction action by the court, they are required to serve the term originally imposed by the court.

Release:

Pursuant to s. 944.705, F.S., the department notifies every inmate of the following in their release documents:

- All outstanding terms of the inmate's sentence as defined in s. 98.0751, F.S.
- A "Warning" notice, notifying each inmate that they may be sentenced pursuant to s. 775.082(9), F.S., if the inmate commits any felony offense described in s.775.082(9) within 3 years after the inmate's release

In addition, the Department presently provides every inmate, without exception, a discharge certificate that reflect their release date from incarceration.

Education:

The Department currently participates in the Second Chance Pell Experimental Sites Initiative which is a pilot program launched by the U.S. Department of Education and the Department of Justice that includes experimental sites that were selected through a competitive process. The grant allows eligible inmates to access Pell Grant funds for post-secondary education. Funds can only be used by the student to cover the costs of tuition, fees, books, and supplies.

The Department and Florida Gateway College partnered to offer the Second Chance Pell Program at Columbia C.I. Annex which commenced on January 24, 2017. Of the 67 colleges and 120 institutions selected nationwide, this is, currently, the only experimental program site in Florida and has been extended for another three-year period.

In May 2019, the Department graduated 47 students from this highly successful first cohort. Florida Gateway College will confer 26 Associate of Science degrees that include five (5) Magna Cum Laude honor graduates who have an average grade point average (GPA) of 3.6, and 21 Suma Cum Laude honor graduates who have an average GPA of 3.95. Florida Gateway College will confer 22 Associate of Arts degrees that include one Magna Cum Laude honor graduate with a GPA of 3.70, and 21 Suma Cum Laude honor graduates who have an average GPA of 3.97. The second cohort of students were recruited in August 2019, and the two program tracks currently offered are an Associate of Science in Business Management and an Associate of Science in Agribusiness Management. The program is due to expand to offer a Bachelor of Applied Science (B.A.S.) degree in Water Resources Management that will launch in Summer 2020.

The Florida Second Chance Pell Pilot Program is unique in that statewide recruitment is conducted to allow eligible inmates to transfer to Columbia C.I. Annex for program participation. All inmate-students live in the same dorm as a learning community; however, the program has limited capacity of 65 students.

While the Department is currently attempting to expand post-secondary opportunities for inmates, and is collaborating with several Florida colleges/universities with their applications to participate in the expansion of the Second Chance Pell Experimental Sites Initiative, statewide recruiting efforts to qualify students for admission and enrollment meet with enormous challenges with the current prohibition that the period of incarceration may not be considered in establishing Florida residency.

OPPAGA presently is not required to conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment.

2. EFFECT OF THE BILL:

The bill creates a short titled called the “Second look Act”.

The bill amends s. 775.082, F.S., providing for exception to persons sentenced under s. 775.082(9)(a), F.S., as a prison release reoffender by creating a new subsection that allows for resentencing for certain juveniles and young adult offenders. Although the language provides for an exception to include “young adult offenders”, the language only provides for resentencing under s. 921.1401, F.S., and s. 921.1402, F.S., and does not include the newly added language s. 921.1403, F.S., thus, not providing resentencing for the “young adult offender” that has been sentenced with a prison release reoffender provision. Without this language, only offender who were juveniles at the time of the offense and currently have a prison release reoffender provision would be entitled to resentencing. There are approximately 15 inmates that would fit this category. If the young adult offender were to be added, it appears this number would increase to approximately 110 inmates that would be entitled to review.

The proposed legislation indicates juveniles and young adult offenders who meet criteria for judicial review of their sentences may be entitled to resentencing and release. As indicated above, the enhanced penalty is within the sole discretion of the state attorney; however, for every case in which the defendant meets the criteria for prison release reoffender and does not received the minimum prison sentence, the state must explain the deviation in writing and place in the state attorney’s case file. It is unknown if the state would be amenable to removing this enhancement. The release reoffender statute mandates a minimum mandatory per felony degree. There may be a need for the enhancement to be removed at the time of resentencing to ensure the Department is not required to record the minimum sentencing provision.

Juvenile Sentencing Review:

The bill amends s. 921.1402, F.S., providing for a judicial sentencing review for inmates convicted of capital offenses with the exemption for a prior conviction for murder or conspiracy to commit murder, thereby removing the exclusions for prior convictions for manslaughter, sexual battery, armed burglary armed robbery, armed car-jacking, home invasion robbery, human trafficking for commercial sexual activity with a child under the age of 18, false imprisonment under s. 787.02(3)(a), F.S., or kidnapping. Inmates who were previously ineligible for review and resentencing will now be eligible.

There are approximately 28 inmates who would meet the criteria for sentencing review.

The proposed legislation creates s. 921.14021, F.S., allowing for retroactive application of the changes made to s. 921.1402(2)(a), F.S., to allow for review and resentencing for persons previously excluded. If 25 years have passed, those impacted would be entitled to a review immediately.

Of the current prison population, there would be approximately 9 inmates eligible for immediate review.

Young Adult Sentencing Review:

The bill creates s. 921.1403, F.S., allowing a new category of inmates that would be eligible for sentence review: “ young adult offenders”—a person who committed an offense before age 25 resulting in a prison sentence term of years with the exception of murder related offenses and sentences pursuant to s. 775.082(3), F.S., excluding s. 775.082(3)(a)5, F.S., to include life felonies and a first degree felonies under s. 775.082(3)(b)1, F.S., that are punishable for a term of 30 year up to life in prison. The bill does not provide for resentencing for a young adult offenders convicted of a capital felony.

The bill does provide for judicial review for certain felony convictions as follows:

- Life and 1st degree punishable by life – review after 20 years for sentences greater than 20 years
- 1st degree felony – review after 15 years for sentences greater than 15 years

S. 921.1403, F.S., may have possible impact for approximately 4,259 currently incarcerated inmates. Some inmates within this eligibility pool have multiple offenses that fall with the different notification requirement periods. The total potentially sentence eligibility that will require notification is 5,312.

Notification:

The bill requires the Department notify the young adult offender in writing of their entitlement to a sentencing review hearing. An inmate meeting specified requirements as a young adult offender will have to submit an application to the court requesting the sentence review hearing.

Based on the number of inmates that would require notification or resentencing, the Department would need one Correctional Services Consultant to perform these duties. If these inmates are resentenced, this will increase the work load for the Victim Services to provide victim notification upon release.

The original sentencing court retains jurisdiction for the duration of the sentence, and entitlement to be represented by an attorney. If the initial sentence review is denied, the offender will be eligible for a subsequent review hearing 5 years after the initial hearing. The bill outlines criteria the court must take into consideration if it deems appropriate. If the court determines an offender has been rehabilitated, the court may modify the sentence and impose a term of probation of at least 5 years or 3 years based on if they were seeking sentencing review under paragraph (3)(a) or (3)(b). If the court determines the offender has not demonstrated rehabilitation or is not fit to reenter society, it must enter a written order stating the reasons why the sentence is not being modified.

There will be a possible increase to supervision case load; however, as the number of inmates being resentenced is indeterminate, the impact is unknown.

Release Information:

The bill amends s. 944.705, F.S., that requires the Department to provide every inmate in their release documents the admission date and release date from the Department's custody including the length of the term served.

Inmates often have multiple sentences with various admission dates, release dates and terms imposed. Sentences are calculated individually, taking into consideration the imposition date, credit awarded, term imposed and gain time earned. As an inmate may have multiple endpoints of their various sentences, this would require significant programming changes to generate this information.

County Release Information:

The bill creates s. 951.30, F.S., to require the administrator of a county detention facility to provide each inmate upon release from custody of the facility the admission and release date from the custody of the facility including the total length of the term of imprisonment from which he or she is being released.

Time Served/Residential Requirements:

The proposed legislation will greatly benefit the Department in its expansion efforts to offer post-secondary programming to its population. By assisting potential inmate students to declare Florida residency by allowing the 12 months of incarceration in a county detention facility or a state correctional facility to count toward the residency requirement, this will not only benefit the Florida Colleges and Universities system with an extended demographic of potential students, but will also assist potential students to alleviate undue fiscal burdens of cost generated by out-of-state tuition and fees, costs that cannot be realistically met through state financial aid programs and/or personal means.

The effectiveness of such programming is corroborated by the United States Department of Education's decision to expand the initial Experimental Sites Initiative, and the proposed legislation provides an achievable and equitable opportunity for students to off-set post-secondary educational costs incurred as declared Florida resident by accessing state and federal aid, as opposed to costs that are insurmountable, even with financial assistance, due to the application of additional out-of-state tuition and fees.

OPAAGA:

The proposed legislation mandates that the Office of Program Policy and Governmental Accountability (OPPAGA) conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment. It outlines the scope of the study to include, but does not limit to, any barriers to such opportunities; the collateral consequences that are present; and methods for reducing collateral consequences identified. The report is to be submitted to the Governor, President of the Senate, the Minority Leader of the Senate, and Speaker of the House of Representatives by November 1, 2020.

Legislation will take effect July 1, 2020. The department requests the effective date be changed to October 1, 2020 to allow for programming.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☐ N☒

If yes, explain:	
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	

4. **WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☒ N☐

If yes, provide a description:	The bill requires OPAAGA conduct a study to evaluate the various opportunities available to persons returning to the community form imprisonment.
Date Due:	November 1, 2020
Bill Section Number(s):	Section 9

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☐

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☐

Revenues:	Unknown
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	No.
If yes, does the legislation provide for a local	

referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☐ N☐

Revenues:	Indeterminate
Expenditures:	If this bill is passed, the overall fiscal impact to inmate and community supervision population is indeterminate. However, when inmate population is impacted in small increments statewide, the inmate variable per diem of $21.70 is the most appropriate to use. This per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The Department's FY 18-19 average per diem for community supervision was $5.62. In addition, it is anticipated that the Department will need one position to notify the young adult offender in writing of their entitlement to a sentencing review hearing and technology impact due the changes that will need to be made to CPC and the sentencing screens in OBIS due to minimum mandatory sentencing changes, estimated costs are as follows:

Class Title	Class Code	Salary & Benefits	FTE #	Year 1 Annual Costs
Correctional Services Consultant	8058	68,931	1	68,931
Total salaries & benefits			**1**	**68,931**
Recurring expense - Prof light travel		$ 3,378		3,378
Non-recurring expense - Prof light travel		4,429		4,429
Total expenses				**7,807**
Human Resource Services		$ 329		329
Office of Information Technology				17,400
Total			**1**	**$ 94,467**

Summary of Costs

Recurring	$ 72,638
Non-recurring	21,829
Total	$ 94,467

Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☐ N☐

Revenues:	Unknown
Expenditures:	Unknown
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☐

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y☒ N☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	Although the analysis received states indeterminate impact, there will be significant technology impact due the changes that will need to be made to CPC and the sentencing screens in OBIS due to minimum mandatory sentencing changes. Cost estimate estimated hours 200 estimated cost per hour $87.00 total estimated cost $17, 400

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	

ADDITIONAL COMMENTS

N/A.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	N/A.

Cox, Ryan

From: Yarger, Alexander <alecyarger@fcor.state.fl.us>
Sent: Friday, December 15, 2017 10:25 AM
To: Cox, Ryan
Subject: RE: Conditional Medical Release
Attachments: CMR info.pdf; Analysis-of-US-Compassionate-and-Geriatric-Release-Laws.pdf

Good morning,

Here is the information you requested. I have also attached a packet with some data on CMR.

FY14/15: 14 inmates released
FY15/16: 27 inmates released
FY16/17: 14 inmates released

Thanks,

Alec Yarger
Director of Legislative Affairs
Florida Commission on Offender Review
Office: (850) 921-2804
Cell: (850) 728-3548

From: Cox, Ryan [mailto:Cox.Ryan@flsenate.gov]
Sent: Friday, December 15, 2017 9:37 AM
To: Yarger, Alexander <alecyarger@fcor.state.fl.us>
Subject: Conditional Medical Release

Good morning, Alex:

Can you send me data for the last three fiscal years on the number of inmates that have been released on CMR and the number of inmates, if any, that were recommitted to the department due to a change in medical status? Thank you.

Sincerely,
Ryan C. Cox
Senior Attorney
Committee on Criminal Justice
(850) 487-5192

Cox, Ryan

From: Yarger, Alexander <alecyarger@fcor.state.fl.us>
Sent: Friday, November 1, 2019 2:08 PM
To: Cox, Ryan
Subject: Re: Updated Conditional Medical Release numbers

Good afternoon

In FY1819, the Department of Corrections referred 76 inmates for CMR and FCOR granted release to 38.

Get Outlook for Android

From: Cox, Ryan
Sent: Friday, November 1, 1:55 PM
Subject: Updated Conditional Medical Release numbers
To: Yarger, Alexander

Good afternoon, Alex:

Can you please send me the numbers for FY 2018-19 of how many people were recommended for CMR and how many were granted release by the FCOR? Thank you!

Sincerely,

Ryan C. Cox
Senior Attorney
Senate Committee on Criminal Justice
(850) 487-5192

FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

CONDITIONAL MEDICAL RELEASE: EXECUTIVE SUMMARY

What is CMR? Conditional Medical Release is a form of release granted to inmates who are recommended to the Florida Commission on Offender Review (FCOR) for release by the Florida Department of Corrections (FDC) due to the inmate being permanently incapacitated or terminally ill. (Florida Statute 947.149 and Administrative Rule 23-24.040)

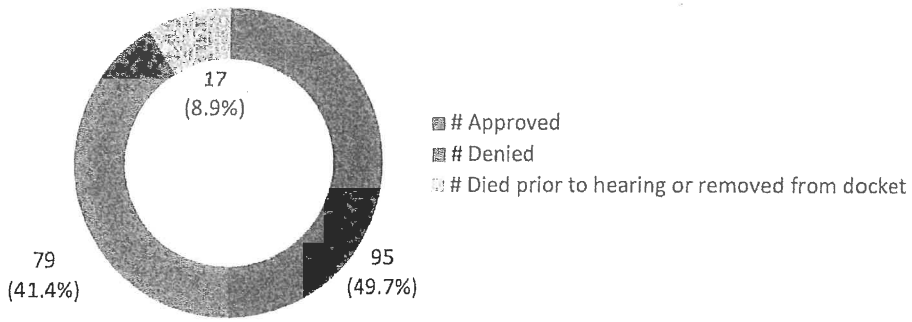
Characteristics of those granted CMR over the last seven years: Over a seven-year period (FY0708-FY1314), a total of 191 inmates were considered for conditional medical release (CMR), some more than once. Almost half (95 or 49.7%) were granted CMR, 79 or 41.4% were denied, and 17 or 8.9% died or were removed from consideration prior to the docket date. Of the inmates who were granted CMR, most are male (80.0%) and white (65.3%), which is somewhat reflective of the entire prison population, which was 92.9% male and 47.8% white as of June 30, 2014. The largest age range of offenders granted CMR status is from ages 45-54 (37.9%). More than a third (34 or 35.8%) of all the granted cases came from Broward, Hillsborough, Miami-Dade and Pinellas counties, which is again reflective of the prison population in general. Almost one third (29.5%) of all granted CMR cases during the seven-year period were serving time for drug offenses, followed by property/theft/fraud (15.8%) and burglary (15.8%). Only one sex offender was granted CMR in the seven years studied. Four of the 95 cases were serving life sentences; the remaining 91 cases had an average of slightly more than five years left on their sentences to serve upon release. Most of the inmates recommended for CMR were diagnosed with some form of cancer.

Average number of approved and denied cases: During the seven-year period, an average of 13.6 of the 95 CMR cases were approved each year, an average of 11.3 of 79 cases were denied each year and an average of 2.4 of 17 cases involved inmates who died prior to docket each year. An average of 27.3 CMR cases were considered each year by the Commission during this period. The highest percentage of cases approved occurred in FY1011 (56.7%) while the lowest percentage of cases approved was in FY1314 (40.0%); the highest percentage of cases denied was also in FY1314 (50.0%), while the lowest percentage of cases denied was in FY0708 (34.6%)

Average timeframes over the seven-year period from docket to death: Using the averages from the seven-year period, the Department would submit a request for CMR consideration for an inmate and it would be placed on the docket within 14 days. He would be released from prison within five days and would be deceased within five or six months (154 days). The average number of days from when FCOR receives the initial request for CMR to getting it put on the docket is 14, or two weeks. The average number of days from request received to death is 154 or slightly more than five months during the seven-year period. The average number of days from CMR request granted to the inmate being released to home or a facility is five; and the average number of days from release to home (or facility) to death is 133 or slightly more than four months. This number continues to decline, to the point that in FY1314, the average number of days from release from prison to death is 30.8 days.

Outcomes of those released to CMR: Most of those approved for CMR were released and subsequently died (68.4%) at home or at a facility within four or five months of release. Almost ten percent completed their sentences after they were released, but may have subsequently died. Five died in the short span of time between being approved for release and being released, and three others EOS'd (expired their sentences) before release to CMR. Eight violated the conditions of their CMR, and either were revoked and returned to prison, were reinstated to CMR or completed their sentences (EOS'd) before the revocation process was complete. Two had their health improve and were returned to prison. One who EOS'd after release reoffended and is back in prison.

Total CMR Cases FY 07/08-13/14



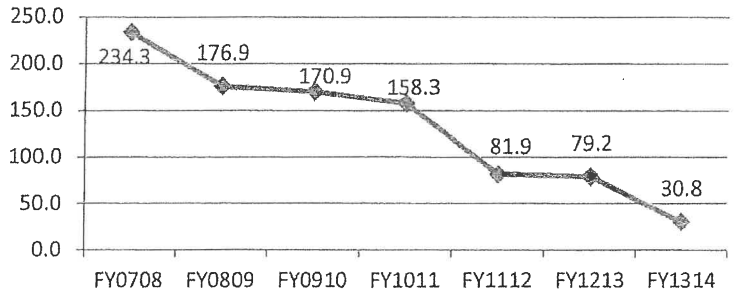
Over a seven-year period (FY0708-FY1314), a total of 191 inmates were considered for conditional medical release (CMR), some more than once. Almost half (95 or 49.7%) were granted CMR, 79 or 41.4% were denied, and 17 or 8.9% died or were removed from consideration prior to the docket date.

CMR Case Outcomes FY 07/08-13/14

FY	# Approved	Percent of FY Total Approved	# Denied	Percent of FY Total Denied	# Died prior to hearing or removed from docket	Percent of FY Total Removed from Docket	FY cases	Total Percent for FY
FY0708	13	50.0%	9	34.6%	4	15.4%	26	100.0%
FY0809	20	55.6%	14	38.9%	2	5.6%	36	100.0%
FY0910	9	42.9%	9	42.9%	3	14.3%	21	100.0%
FY1011	17	56.7%	12	40.0%	1	3.3%	30	100.0%
FY1112	16	45.7%	17	48.6%	2	5.7%	35	100.0%
FY1213	12	52.2%	8	34.8%	3	13.0%	23	100.0%
FY1314	8	40.0%	10	50.0%	2	10.0%	20	100.0%
Total over 7 years	**95**	**49.7%**	**79**	**41.4%**	**17**	**8.9%**	**191**	**100.0%**
Averages	13.6		11.3		2.4		27.3	

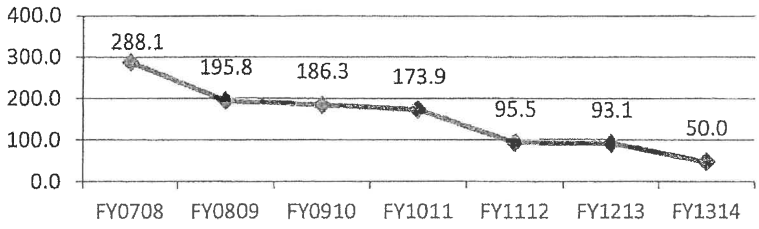
During the seven years covered, the "average" conditional medical release (CMR) gets put on the docket within two weeks (14.1 days) of requesting CMR, and is approved (49.7%). After approval, they wait an average of 5.1 days before they are released. After release, they live an average of 133.2 days, though during the last three years that average has dropped to 64 days. Only one of the 95 approved was serving time for a sex offense. The majority of diagnoses were for some form of terminal cancer, and the life expectancy was generally estimated at six months or fewer. During the seven-year period, the average number of CMR cases approved each year was 13.6, the average number denied was 11.3 and the average number who died prior to docket was 2.4. An average of 27.3 CMR cases were considered each year by the Commission during this period. The highest percentage of cases approved occurred in FY1011 (56.7%) while the lowest percentage of cases approved was in FY1314 (40.0%); the highest percentage of cases denied was also in FY1314 (50.0%), while the lowest percentage of cases denied was in FY0708 (34.6%)

Average # of Days from Release Date to Death



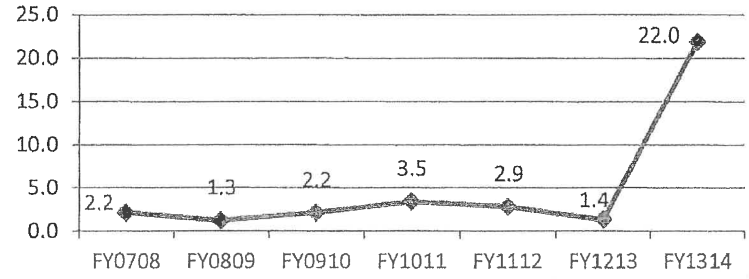
There has been a steady decline in the number of days inmates are living after release from prison on CMR, from a high of 234.3 days in FY0708, to a low of 30.8 days in FY1314. The overall average during the seven year period is 133.2 days from release from prison to death. With the change in eligibility standards from within six months of death to within 12 months, the number of days from release to death is expected to increase.

Average # of Days from Release Request to Death



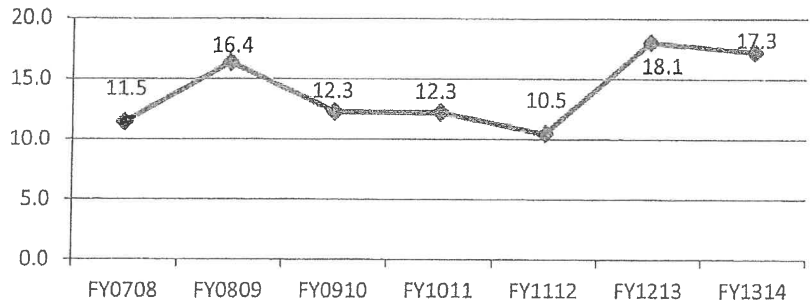
As would be expected based on the previous chart, the average number of days from when the request for CMR is received to when the inmate dies also continues to decline, from a high of 288.1 in FY0708 to a low of 50 days in FY1314. The overall average number of days from CMR request received to death is 154.6.

Average # of Days from Granted Date to Release Date



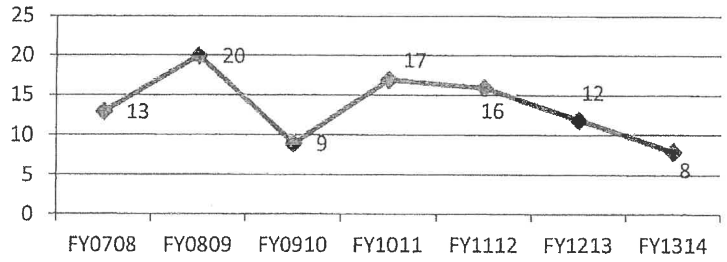
While the average is five days from grant to release, that number is skewed due to one unusual case in FY1314 that took 132 days. This case required that the inmate be accepted into a secure nursing home before release, delaying his release until a bed was available. Excluding that case, the average number of days from granted to release over the other six years is 2.3.

Average # of Days from Request Recieved to Docket



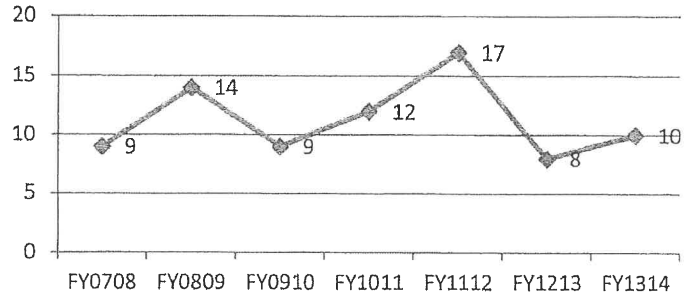
By the same token, FCOR does an excellent job of moving the request along once it's received to get it on the docket quickly, particularly considering there might not be a docket every week. The average has risen slightly over the past seven years, from 11 days to 17, with an average for the seven years of 14.1 days, or two weeks. While it is FCOR's practice to put these cases on the docket immediately, if the Commission is not voting that week it results in a delay to the following week's docket.

Total CMR Cases Approved



The number of FCOR CMR cases that have been approved over the last seven years has dropped, along with the number submitted. About half (49.7%) of all submitted cases are approved, on average.

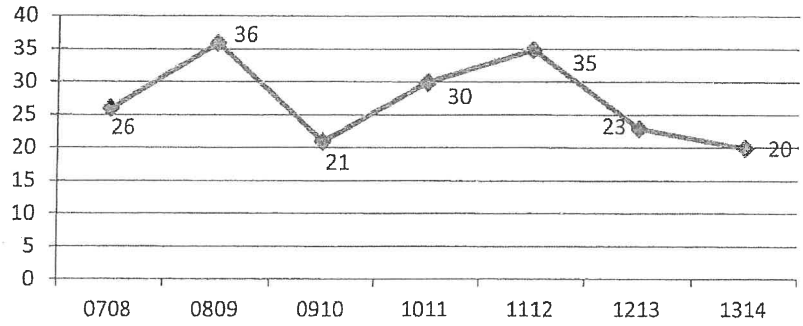
CMR Cases Denied



**Note these include both docketed and non-docketed cases.*

An average of 41.4% of CMR cases are denied each year, and another 8.9% expire prior to their case being heard and are removed from the docket.

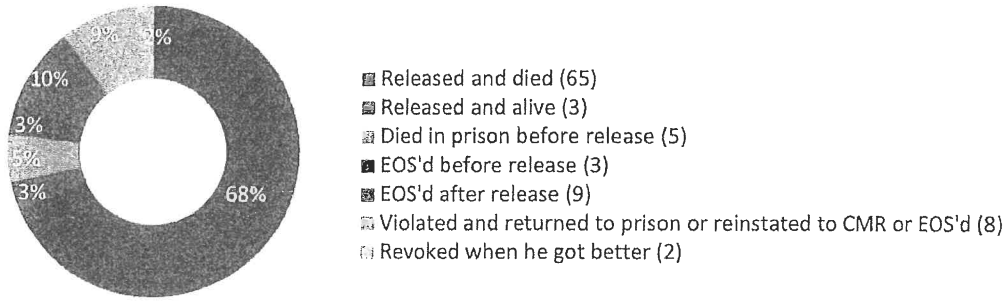
CMR Cases Referred to FCOR by FDC



The number of CMR requests submitted to FCOR from FDC each year has declined over the seven-year period, from 26 in FY0708 to 20 in FY1314 (including cases removed from docket during each of those years), even as the prison population has increased from 98,192 on June 30, 2008 to 100,942 on June 30, 2014*.

**FDC attributes the drop off to the transition of FDC's health services from a public to private enterprise.*

Outcomes for Approved CMR Cases FY 07/08-13/14 (as of April 2015)



Approval Outcomes	FY1314	FY1213	FY1112	FY1011	FY0910	FY0809	FY0708	Total	Percent
Released and died	4	6	13	14	5	15	8	**65**	68.4%
Released and alive	2	1	0	0	0	0	0	**3**	3.2%
Died in prison before release	0	2	0	0	1	0	2	**5**	5.3%
EOS'd before release	0	1	0	0	0	1	1	**3**	3.2%
EOS'd after release*	1	1	2	2	1	1	1	**9**	9.5%
Violated and returned to prison or reinstated to CMR or EOS'd	0	1	1	1	2	2	1	**8**	8.4%
Revoked when he got better	1	0	0	0	0	1	0	**2**	2.1%
Total	**8**	**12**	**16**	**17**	9	**20**	**13**	**95**	100.0%

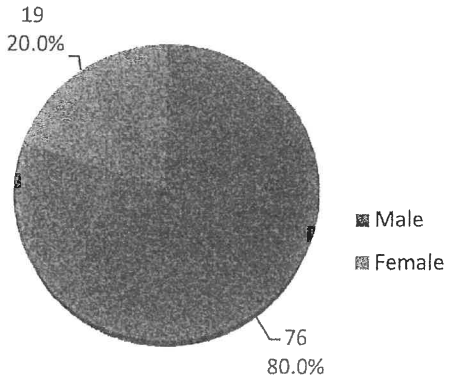
*FY1112 recidivated

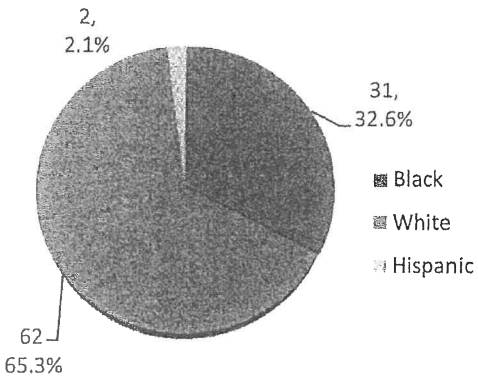
Most of those approved for CMR were released and subsequently died (68.4%) at home or at a facility within four or five months of release. Almost ten percent completed their sentences after they were released, but may have subsequently died. Five died in the short span of time between being approved for release and being released, and three others EOS'd (expired their sentences) before release to CMR. Eight violated, and either were revoked and returned to prison, were reinstated to CMR or completed their sentences (EOS'd) before the revocation process was complete. Two had their health improve and were returned to prison. One who EOS'd after release reoffended and is back in prison.

CONDITIONAL MEDICAL RELEASE: DEMOGRAPHICS

Who are the offenders being released to CMR? They are male (80.0%) and white (65.3%), which is somewhat reflective of the entire prison population, which was 92.9% male and 47.8% white as of June 30, 2014. Some of the black and white offenders may also be Hispanic, but did not identify themselves as such when asked their race. The largest age range of offenders granted CMR status is from ages 45-54 (37.9%). More than a third (34 or 35.8%) of all the granted cases came from Broward, Hillsborough, Miami-Dade and Pinellas (the most with 11 offenders or 11.6%) counties. The most common offense committed by those who were granted CMR was drug-related. Almost one third (29.5%) of all granted CMR cases during the seven-year period were serving time for drug offenses, followed by property/theft/fraud (15.8%) and burglary (15.8%). Only one sex offender was granted CMR in the seven years studied. Four of the 95 cases were serving life sentences; the remaining 91 cases were serving an average of slightly more than five years.

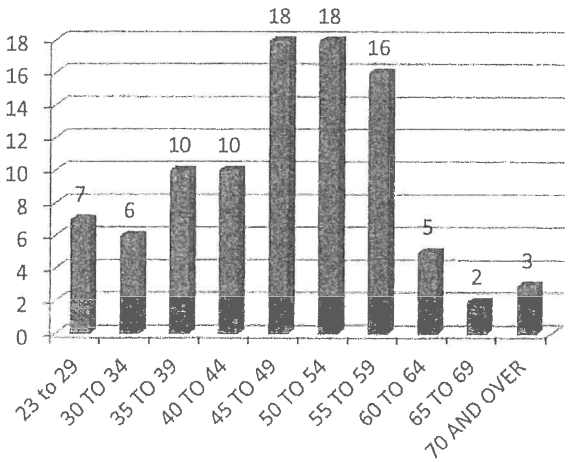
Gender, Race and Age of Inmates Granted CMR





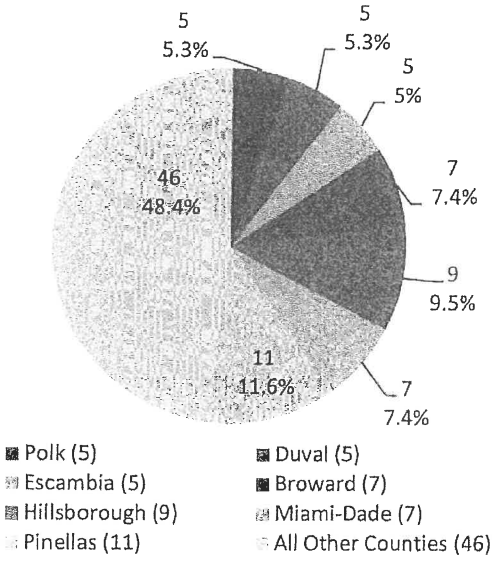
CMR inmates are consistently older than the general population. More than half (54.7%) of all CMR cases granted over the last seven years were ages 45-59, while only a quarter (25.4%) of the inmate population on June 30, 2014 fell into that category. More than a third (35.7%) of the CMR granted cases were age 50-59, compared to the general population on June 30, 2014 at 14.9%.

Age Ranges of Granted Cases	Number	Percent
23 to 29	7	7.4%
30 TO 34	6	6.3%
35 TO 39	10	10.5%
40 TO 44	10	10.5%
45 TO 49	18	18.9%
50 TO 54	18	18.9%
55 TO 59	16	16.8%
60 TO 64	5	5.3%
65 TO 69	2	2.1%
70 AND OVER	3	3.2%
TOTAL	95	100.0%



County of Offense of Inmates Granted CMR

The four counties with the highest number of CMR cases (Pinellas, Hillsborough, Miami-Dade and Broward) are also in the top five counties for the number of inmates sentenced from those counties as of June 30, 2014. The number of CMR cases from these top four counties comprise more than a third of all the cases over seven years (35.8%). Adding the next three highest counties with approved CMR cases, Polk, Duval and Escambia, brings the total in just those seven counties to 51.6% of all the cases approved over seven years.



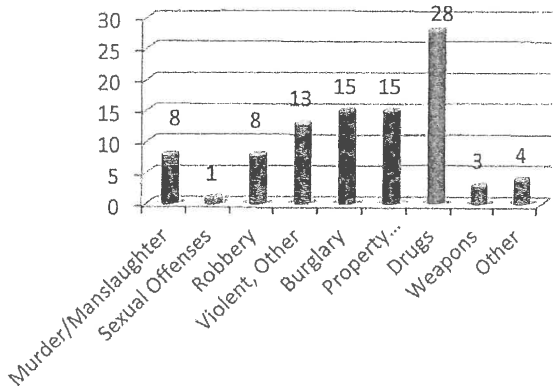
County of Offense	Number	Percen
ALACHUA	1	1.:
BAKER	1	1.:
BAY	1	1.:
BREVARD	4	4.:
BROWARD	7	7.4
CALHOUN	1	1.:
CHARLOTTE	1	1.:
CITRUS	2	2.:
CLAY	1	1.:
COLLIER	2	2.:
COLUMBIA	2	2.:
DIXIE	1	1.:
DUVAL	5	5.:
ESCAMBIA	5	5.:
GADSDEN	1	1.:
HERNANDO	1	1.:
HILLSBOROUGH	9	9.:
INDIAN RIVER	1	1.:
LEE	4	4.:

LEON	1	1.1%
MADISON	1	1.1%
MANATEE	1	1.1%
MARION	1	1.1%
MIAMI-DADE	7	7.4%
NASSAU	1	1.1%
OKALOOSA	1	1.1%
ORANGE	3	3.2%
PALM BEACH	2	2.1%
PASCO	1	1.1%
PINELLAS	11	11.6%
POLK	5	5.3%
PUTNAM	1	1.1%
SARASOTA	1	1.1%
SEMINOLE	2	2.1%
SUWANNEE	2	2.1%
UNION	1	1.1%
VOLUSIA	1	1.1%
WALTON	2	2.1%
Total	95	100.0%

Type of Offense by Inmates Granted CMR

Almost one third (29.5%) of all granted CMR cases during the seven-year period were serving time for drug offenses, followed by property/theft/fraud (15.8%) and burglary (15.8%). Only one sex offender has been granted CMR in the last seven years.

Granted CMR Cases by Type of Offense	Number	Percent
Murder/Manslaughter	8	8.4%
Sexual Offenses	1	1.1%
Robbery	8	8.4%
Violent, Other	13	13.7%
Burglary	15	15.8%
Property theft/damage/fraud	15	15.8%
Drugs	28	29.5%
Weapons	3	3.2%
Other	4	4.2%
TOTAL	95	100.0%



CONDITIONAL MEDICAL RELEASE: STATUTES AND RULES

Florida Statute 947.149 Conditional medical release.—

(1) The commission shall, in conjunction with the department, establish the conditional medical release program. 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 within one of the following designations:

(a) "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 others.

(b) "Terminally ill 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 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.

(2) Notwithstanding any provision to the contrary, any person determined eligible under this section and sentenced to the custody of the department may, upon referral by the department, be considered for conditional medical release by the commission, in addition to any parole consideration for which the inmate may be considered, except that conditional medical release is not authorized for an inmate who is under sentence of death. No inmate has a right to conditional medical release or to a medical evaluation to determine eligibility for such release.

(3) The authority and whether or not to grant conditional medical release and establish additional conditions of conditional medical release rests solely within the discretion of the commission, in accordance with the provisions of this section, together with the authority to approve the release plan to include necessary medical care and attention. The department shall identify inmates who may be eligible for conditional medical release based upon available medical information and shall refer them to the commission for consideration. In considering an inmate for conditional medical release, the commission may require that additional medical evidence be produced or that additional medical examinations be conducted, and may require such other investigations to be made as may be warranted.

(4) The conditional medical release term of an inmate released on conditional medical release is for the remainder of the inmate's sentence, without diminution of sentence for good behavior. Supervision of the medical releasee must include periodic medical evaluations at intervals determined by the commission at the time of release.

(5)(a) If it is discovered during the conditional medical 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 conditional medical release under this section, the commission may order that the releasee be returned to the custody of the department for a conditional medical release revocation hearing, in accordance with s. 947.141. If conditional medical release is revoked due to improvement in the medical or physical condition of the releasee, she or he shall serve the balance of her or his sentence with credit for the time served on conditional medical release and without forfeiture of any gain-time accrued prior to conditional medical release. If the person whose conditional medical release 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.

(b) In addition to revocation of conditional medical release pursuant to paragraph (a), conditional medical release may also be revoked for violation of any condition of the release established by the commission, in accordance with s. 947.141, and the releasee's gain-time may be forfeited pursuant to s. 944.28(1).

Administrative Rule: 23-24.040 Conditional Medical Release Postponement and Rescission

(1) Should any person who has been voted a conditional medical release become the subject of inmate disciplinary or classification proceedings, or become the subject of criminal arrest, information or indictment, or should the release plan prove unsatisfactory prior to actual physical release from the institution of confinement then, any Commissioner can postpone the release date.

(2) The inmate's release date can be postponed for sixty (60) days. On or before the sixty-first (61) day, the Commission shall either release the inmate on conditional medical release or order a Commission investigator to conduct a rescission hearing on the matter of the infraction(s), new information, acts or unsatisfactory release plan as charged.

(3) At a rescission hearing, the inmate shall be afforded all due process safeguards required by law and shall be properly notified not less than seven (7) days prior to the hearing.

(4) The rescission hearing shall be scheduled within fourteen (14) days of the date the Order for a Rescission Hearing is signed by the Commission.

(5) The hearing may be continued or postponed due to the inability of any party or witness to attend or for other good cause (for example, new disciplinary reports, state of emergency, prison lock-down, etc.).

(6) New disciplinary reports received after the Order of Postponement, but prior to the date of the hearing shall be considered at the recission hearing, after re-noticing the inmate. (7) The investigator is not required to find the inmate guilty or not guilty at the rescission hearing, but to determine if any circumstances exist beyond the documentation which provided the basis of the Commission's decision to postpone the release. (8) If the release has been postponed due to an unsatisfactory release plan, the investigator should receive testimony from the inmate and any witnesses as to if an alternate plan exists which may be presented to the Commission for consideration. (9) Following the rescission hearing, the Commission shall determine whether good cause has been established to rescind conditional medical release. The Commission shall then either order the release of the inmate on the same conditions or rescind the release. (10) If the Commission receives information from the Department of Corrections that the inmate no longer qualifies for conditional medical release based on an improvement in the medical condition, a rescission hearing is not required. However, the Commission shall provide written notice to the inmate that release has been rescinded due to a failure to qualify pursuant to Florida Statute, Section 947.149.

Rulemaking Authority 947.07, 947.149 FS. Law Implemented 947.149 FS. History–New 1-5-94, Amended 2-12-13, 7-30-14.

Conditional Medical Releases

CONDITIONAL MEDICAL RELEASE FOR THE LAST 10 FISCAL YEARS					
Fiscal Year	CMR Docket Cases (Code 48)*	Individuals Referred by FDC (docket dupes removed)	Commission Action Granted (Code 49)	Total Released	Release Comments
FY0708	28	24	14	10	Total 14, two died before release, one EOS, 1TBD
FY0809	42	36	20	19	Total 20, one EOS
FY0910	20	19	9	8	Total 9, one died before
FY1011	38	30	16	16	Total 16
FY1112	39	34	16	16	Total 16
FY1213	28	21	12	7	Total 12, two died before release, two EOS, one TBD
FY1314	22	21	8	6	Total 8, two still in prison as of end of FY1314
FY1415	38	35	15	14	Total 14 released during FY; one died before
FY1516	55	51	29	27	Total 27 released - One to EOS; two others not
FY1617	37	34	16**	14	Total 14 released - one died before release; one

*Every docketed case (code 48) is counted, even if it's the same inmate more than once.

** One inmate was granted CMR twice.

16 Conditional Medical Releases Granted in FY1617

A total of 37 inmates were docketed for CMR this FY (three were docketed twice), and 16 or about 43% were granted conditional release. Of those 16, 14 were released during FY1617, and one died before

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Analysis of US Compassionate and Geriatric Release Laws: Applying a Human Rights Framework to Global Prison Health

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Abstract The purpose of this paper was to analyze the compassionate and geriatric release laws in the USA and the role of advanced age and/or illness. In order to identify existing state and federal laws, a search of the LexisNexis legal database was conducted. Keyword search terms were used: compassionate release, medical parole, geriatric prison release, elderly (or seriously ill), and prison. A content analysis of 47 identified federal and state laws was conducted using inductive and deductive analysis strategies. Of the possible 52 federal and state corrections systems (50 states, Washington D.C, and Federal Corrections), 47 laws for incarcerated people, or their families, to petition for early release based on advanced age or health were found. Six major categories of these laws were identified: (1) physical/mental health, (2) age, (3) pathway to release decision, (4) post-release support, (5) nature of the crime (personal and criminal justice history), and (6) stage of review. Recommendations are offered, for increasing social work policy and practice expertise, and advancing the rights and needs of this population in the context of promoting human rights, aging, health, and criminal justice reform.

Keywords Older adults · Criminal justice · Compassionate and geriatric release laws · Content analysis · Human rights · Social work · Forensic social work

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Introduction

Correctional systems across the globe are struggling with managing the rapidly growing aging and seriously ill population. In the USA, approximately 200,000 adults aged 55 and above are behind bars, many of which have a complex array of health, social service, and legal needs that all too often go unaddressed prior to and after their release from prison (Human Rights Watch [HRW] 2012). The large number of older people in prison is partially attributed to the passage of stricter sentencing laws, such as "Three Strikes You're Out" and the subsequent mandatory longer prison terms (American Civil Liberties Union [ACLU] 2012). These restrictive policies have created a human-made disaster in which many sentenced to long-term prison sentences will reach old age while in prison or shortly after their release. Social work, interdisciplinary scholars, and human rights advocates view the current crisis as a human rights issue that impact the rights and needs of the aging and seriously ill population (Byock 2002; HRW 2012).

Compassionate and Geriatric Release Laws

Beginning in the 1970s, there has been a growing awareness among lawmakers and other professionals, especially in the USA, of the need for compassionate and geriatric policies to address the growing aging and health crisis in prisons. Currently, medical parole and compassionate release laws, and programs for mostly nonviolent, terminally ill incarcerated people have been implemented in an effort to transition aging and/or serious or terminally ill incarcerated people to community-based care (Chiu 2010; Williams et al. 2011). Most of the social work and interdisciplinary scholarly literature in law and medicine in the USA has focused on compassionate release laws (Ferri 2013; Jefferson-Bullock 2015; Green 2014; Williams et al. 2011). The authors of these

journal articles describe the legal/ethical practice and financial dilemmas posed when incarcerating older and seriously ill people. These authors acknowledge that, in theory, the release of persons with serious and/or terminal illness from prison to the community is cost-effective. However, there are difficulties noted in their implementation including bureaucratic red tape and negative public attitudes toward more compassionate approaches to criminal justice (Coleman 2003; Ferri 2013; Jefferson-Bullock 2015; Kinsella 2004; Green 2014; Williams et al. 2011).

To date, there has not been comprehensive human rights-based analysis of both the compassionate and geriatric release laws in the USA. The USA is a compelling case study because it has the largest population of adults aged 50 and older (N= 200,000; ACLU 2012) behind bars. Additionally, the USA has 50 states in which laws vary by provisions based on a variety of eligibility factors including age, physical and mental health, and legal status. Therefore, the purpose of this content analysis of the US compassionate and geriatric release laws was to compare the provisions of current laws and to evaluate the extent to which these were consistent with human rights guidelines. This review was guided by the following research questions: (1) What are the characteristics of compassionate and geriatric release laws in the USA? And (2) to what extent are existing compassionate and geriatric release laws consistent with core principles of a human rights framework? As detailed in the discussion section, the results of this review have implications for social work and human rights for improving social work and interdisciplinary and intersectoral responses to the treatment of criminal justice involved aging and serious and terminally ill people (Anno et al. 2004).

Applying a Human Rights Framework

Applying a human rights framework to the laws, policies, and practices with aging and seriously ill people in prison can be used to assess the extent to which these laws meet basic human rights principles. In particular, the principles of a human rights framework can provide assessment guidelines for developing or evaluating existing public health and criminal justice laws or policies, such as USA compassionate and geriatric release laws. The underlying values/principles of a human rights framework include dignity and respect for all persons, and the indivisible and interlocking holistic relationship of all human rights in civil, political, economic, social, and cultural domains (UN 1948). Additional principles include participation (especially with key stakeholder input on legal decision-making), nondiscrimination (i.e., laws and practices in which individuals are not discriminated against based on differences, such as age, race, gender, and legal history), transparency, and accountability (especially for government transparency and accountability with their citizens; Maschi 2016).

The Universal Declaration of Human Rights (UDHR) also is an instrument that provides assistance with determining the most salient human rights issues affected. Ratified in 1948 as a response to the atrocities of World War II, the UDHR was voted in favor of by 48 countries, including the USA (UN 1948). It provides the philosophical underpinnings and relevant articles to guide policy and practice responses to the aging and serious and terminally ill in prison. The UDHR preamble underscores the norm of "respect for the inherent dignity and equal and inalienable rights" of all human beings. This is of fundamental importance to crafting the treatment and release of aging and seriously ill persons in prison.

There are several UDHR articles that are important to consider when providing a rationale and response to the aging and seriously ill population in prison. For example, Article 3 states, "Everyone has the right to life, liberty, and the security of person." Article 5 states, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 6 states, "Everyone has the right to recognition everywhere as a person before the law." Article 8 states "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law," and Article 25 states, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food and clothing" (UN 1948, p. 3–7).

The United Nations Office on Drugs and Crime (UNDOC 2009) Special Needs Handbook also offers additional guidelines to assess policy and practice responses to the aging and/or seriously and terminally ill in prison. According to the UNODC (2009), older prisoners, including those with mental and physical disabilities, and terminal illnesses are a special needs population and as such are to be given special health, social, and economic practice and policy considerations (UNODC 2009). The handbook also addresses the issue of age in corrections. It is of note that the age at which individuals are defined as "older" or "elderly" in the community often differs from the definition of elderly applied in corrections. Globally, many social welfare systems, including the USA's, commonly view adults as older when they reach the age of 65 because that is when most individuals are eligible to receive full pension or social security benefits. However, although it varies among states, incarcerated persons in the USA may be classified as "older adult" or "elderly" as young as age 50 (HRW 2012; UNODC 2009).

Study Significance

The results of this review also have important implications for global social service, health and correctional systems, and policymaking bodies. While these findings may not generalize globally, conducting a comparative analysis of the regional laws of one country, such as the USA, may be useful for

developing or refining existing laws internationally. This information also can be used by social workers to collaborate with correctional and community service providers. In particular, forensic social workers, especially those who are trained in case management, can play an important role in facilitating the release process and smooth care transitions of aging and seriously ill people released from prison (Office of the Inspector General, 2016). Local and global policy makers, including social workers, also can use these findings to craft more human rights responsive laws and policies that affect this vulnerable population.

Methods

In order to identify all of the compassionate and geriatric release laws in the USA, the research team conducted a comprehensive search of the LexisNexis legal database. The following key word search terms were used: compassionate release, medical parole, geriatric prison release, elderly (or seriously ill), and prison. Identified laws were included in the sample if they met the following criteria: (1) identified aging or seriously ill people in prison and (2) were a law or policy regarding early release from prison based on age or health status. Two trained research assistants reviewed the laws and coded the data. The team met weekly for a 6-month period with the lead researcher until 100 % consensus was reached for all categories of data extracted. The search located 52 federal and state corrections systems (50 states, Washington DC, and Federal Corrections). Of the 52, 47 were found to have a law for incarcerated people or a family member (or surrogate) to petition for early release based on advanced age or health. There was no evidence of any applicable law or provision found in five states (i.e., Illinois, Massachusetts, South Carolina, South Dakota, and Utah).

Data Analysis Methods

Interpretive content analysis strategies as outlined by Drisko and Maschi (2016) were used to analyze the compassionate and geriatric release laws from the USA. Interpretive content analysis is a systematic procedure that codes and analyzes qualitative data, such as the content of published articles or legal laws. A combination of deductive and inductive approaches can be used, and this strategy was used in the current review. Deductive analysis strategies were used to extract the data by constructing preexisting categories for the criteria commonly found in compassionate and geriatric release laws (e.g., age, physical and mental health status, nature of crime). For each category, counts of state and federal laws were then calculated for frequencies and percentages of each category (e.g., 13 states had laws with age provisions).

Inductive analysis strategies were used to analyze any emerging or new categories that could not be classified in existing categories. Tutty and colleagues' (1996) four-step qualitative data analysis strategies were utilized to analyze this data. Step 1 involved identifying "meaning units" (or in-vivo codes) from the data. For example, the assignment of meaning units included the assigning codes. In step 2, second-level coding and first-level meaning units were sorted and placed in their emergent categories. Meaning unit codes were arranged by clustering similar codes into a category and separating dissimilar codes into separate categories. The data were then analyzed for relationships, themes, and patterns. In step 3, the categories were examined for meaning and interpretation. In step 4, conceptually clustered matrices, or tables, were constructed to illustrate the patterns and themes found in the data, including characteristics of the principles of a human rights framework (Miles and Huberman 1994).

Summary of Findings

Out of 50 states plus Washington, DC, and a Federal Law (totaling 52 jurisdictions), 47 jurisdictions including Washington, DC, and the Federal Government were found to have compassionate or geriatric release laws. Five states did not have any publicly available records of compassionate or geriatric release laws (i.e., IL, MA, SC, SD, and UT). After review of the laws from these 47 legal systems in the USA (45 separate US States and D.C., as well as one federal law), basic structural consistencies were found that impacted the determination for early release or furlough from prisons based on physical or mental incapacity or advanced age. Six categories of compassionate and geriatric release laws identified were (1) physical/mental health status, (2) age, (3) nature of crime (i.e., personal and criminal justice history or risk level), (4) pathway to release decision, (5) post-release support, and (6) stage of review (i.e., initial ground-level investigation for a release petition).

Physical and Mental Health Status and Life Limits

Conditions for release in some US laws were based on physical and mental health status, including life limits. These early release or parole and furlough laws have some definition or measurement in which they can determine if an incarcerated person may be eligible for release. This included level of medical infirmity, age, and/or psychological or mental facility (see Tables 1 and 2). Some US states or federal laws used vague language about what conditions were viable for parole or furlough. In comparison, other laws were very specific about conditions for release. For example, some laws considered the potential threat to society or level of public safety risk of

Table 1 Characteristics of laws that specify the conditions that warrant release

	Illness is terminal or incapacitating		Mental health consideration	Age±disability
	With a lifespan time limit	Without a lifespan time limit		
Number of states	17	19	17	14
Abbreviations	AK, AR, DC, HI, KS, KY, MO, MT, NC, NJ, NM, NV, PA, RI, TN, US FED, WY	AL, CT, FL, GA, ID, IN, KS, LA, MD, MN, NE, NH, NY, OH, OK, OR, TX, VT, WI	AK, AL, AR, DE, KS, MD, MI, MS, NH, NJ, RI, TN, TX, US FED, WI, WV, WY	AL, CT, DC, LA, MO, NC, NM, OR, TX, US FED, VA, WA, WI, WY

the incarcerated person. Other laws focused on the high cost of treatment or considered a combination of age, health, and risk factors that influenced release. There was little consistency, or even clarity, among these 47 laws about the well-being of the incarcerated people and their families, and/or victims and their families included across these US laws.

When determining if the incarcerated person's medical health warrants potential early parole or furlough, 36 laws used terminal illness as the consideration. Of those, 17 included a maximum anticipated survival period or time limit for life expectancy. For example, the US federal law includes a time limit of 18 months for the patient to survive in order to be considered for parole. In contrast, the state laws most often included a limit for life expectancy of 6 or 12 months to live. However, in one state, Kansas, the period is only 30-day life expectancy. In the 19 cases where states do not specify the time period for life expectancy, terminal illness is included as a potential factor for early release, as are terms such as "imminent peril of death" or "illness from which the inmate will not recover," or simply, "terminal illness."

The US laws also had provisions for mental or psychological health as a consideration for early release. Seventeen states included mental health capacity as a factor to consider for early parole or furlough. These 17 laws refer to any mental or psychological infirmity that results in incapacity to care for oneself or renders the person bedridden and/or incapable of caring for his or her activities of daily living (ADL). All of these laws required evaluation by both medical and mental health care professionals to make the determination of functional capacity. Only one state, Texas, mentioned "mental retardation" as a potential consideration for parole. Only the US federal prison system is quite specific in defining cognitive impairment associated with either brain injury or disease, such as Alzheimer's.

When reviewing general health conditions that may be factors for early release or furlough, many laws (27) used language that indicated that the incarcerated person was incapacitated in such a way that he/she was incapable of performing activities of daily living, or was incapacitated in general. Fifteen of the laws stated that precondition for early release was that the incarcerated person must be incapacitated either due to age, mental health, or illness, and be a low level risk to society. In some laws, assessing level of public safety risk was the only factor that the medical staff must evaluate before making an application to the parole board or judiciary. In some state laws, the healthcare costs to the prison system are a consideration for early release of an individual.

Several laws that identified criteria for early release simply used terms such as "serious medical syndrome" or "needing medical attention." Many of the states that included vague language around what constellation of factors amount to the likelihood of early release seemed to have fewer transparent processes, leaving the decision to the parole board's discretion on a case-by-case basis.

Table 2 Legal considerations for release

	Considerations for early release for incapacitated or terminally ill patients included in legal language			
	No threat to society	Incapacitated so cannot care for self	Cost to treat is too high	General healthcare to be qualitatively assessed
Number of States	15	27	4	16
Abbreviations	CT, DC, LA, MD, MN, MT, NM, NC, NV, OK, TN, TX, US FED, VT, WY	AK, AL, AR, CA, CT, DC, GA, ID, KS, KY, MI, MN, MO, NC, NE, NJ, NM, NV, NY, OR, TN, TX, US FED, VT, WA, WI, WY	AK, GA, RI, WA	AL, AR, CO, DE, FL, HI, IN, MI, MN, MS, ND, NH, NJ, OH, PA, WV

Age as a Consideration

Some states used age as a factor for considering early release. As illustrated in Table 3, of the 47 laws, only 13 had laws with provisions that considered age (ranging from 45 to 65 or older) as a determining factor for potential early parole (12) or furlough (1). In each law, age itself was not the sole determinant for release, but age in association with some degree of being unable to care for oneself, or an indication of some lack of capability in terms of performing activities of daily living. Most states did not define elderly. If age was defined, it mostly was delineated as 65 and older. Three states and the Federal Government limited how long an incarcerated elder must have served prior to considering advanced age as a factor for early release.

Interestingly, Oregon was the only state whose law recited language on the humane treatment of the aging population and stated that without the release of the prisoner at the advanced age/infirmity, their incarceration may be considered cruel or inhumane. All other states required that an incarcerated person of advanced age, as defined by each, had some incapacity that either was permanent and costly or rendered the incarcerated person unable to physically harm society in any way.

In several US laws, the age of the applicant was almost always considered a determining factor only in conjunction with a medical or cognitive condition. That is, age as a sole factor did not only justify release but also included the presence of a chronic and/or serious health issue. The few exceptions in state laws included Alabama and Louisiana, which considered age only as a reason to release an incarcerated person without incapacity. However, the incarcerated person's level of risk based on offense history and crimes was weighted heavily when determining release based on age without the presence of a notable serious or chronic health condition.

Pathway to Release Decision

As shown in Table 4, similar to mental and physical health considerations, the pathways to release decisions varied from state to state. Only 18 of the states had very specific and strictly defined pathways to follow for compassionate release and early parole eligibility. The more specific rules included the mechanism, such as the individual or committee that made the final determination for release or furlough. Eleven states had very clearly written rules governing physician documentation, how many or which physicians would be considered for review, and what factors must be included in their medical letter.

In these US laws, early release applications were subject to official parole board review. The series of steps in order to reach the parole board and the supporting documentation varied across laws. Of the 17 states noted above that had clearly written review procedures, most required the deputy warden, in conjunction with the prison medical director, review all documentation prior to making a submission to the parole board. Often, the laws specified that the incarcerated person or his/her family or legal advocate petitions the parole board directly. The medical director could also petition for early release if the incarcerated person could not do so themselves. The 29 states that had less clearly defined provisions often specified that parole review boards consider all information prior to rendering a final decision. At least three states had requirements that the parole board must review the request for early parole within a certain number of days (e.g., 30 days). Other laws seemed to assume that the case would be heard in a

Table 3 States including language around age as a factor for early release

States including language around age as a factor for early release	
State:	Age specification:
Alabama	55+
Connecticut	65 or "advanced"
Louisiana	45+ and serving at least 20 years of a 30+ sentence
Missouri	"Advanced"
North Carolina	65+
New Mexico	65+
Oregon	No specification
Texas	No Specification
Virginia	60+
Washington	No specification
Wisconsin	No specification
Wyoming	65+
US Federal Law	65+ and dependent on % of time served

Table 4 The pathway and process for determination of release

	Process for determination of release		
	More malleable decision-process for release	Clearly defined process and rules for release	Clearly written rules around physician documentation
Number of States	28*	17	11
Abbreviations	AK, AZ, CO, CT, DE, FL, GA, HI, IN, KY, LA, MD, MI, MN, ND, NE, NH, NM, OH, OK, OR, PA, US FED, VA, VT, WA, WV, WY	AL, AR, CA, DC, ID, KS, MO, MS, MT, NC, NJ, NV, NY, RI, TN, TX, WI	AK, AL, AZ, CA, MO, NC, NJ, NY, TX, WI, WY
	*IA and ME have precedent for early parole but no law in place		

timely manner or be reviewed by the next meeting of the parole board.

Some laws specified that a request for early release would be in the form of an application or petition to the parole board. Additionally, a submission of a post-release plan was also customary. Some laws addressed where the incarcerated person would receive post-release medical care or hospice services (Table 5). In some laws, these placements were to be vetted by the medical staff of the prison. Social workers or case managers were designated to provide other services, such as family supports, discharge planning, and care coordination.

Eighteen of the laws noted that the medical hospital or hospice, or family home with healthcare professionals, must be vetted prior to release to ensure both safety and proper healthcare. In addition, 11 of the laws mentioned that the incarcerated person must have financial resources to cover healthcare, such as Medicaid, in place prior to early release. Five of the laws mentioned a holistic style of care, including emotional support for the incarcerated person and family, as well as reintegration support. Of the states that allowed for the patient to live in the home with medical care, nine states cited "family conditions" or "support for the family as caregivers" as factors. Some laws mentioned that victim notification and participation as a condition must be met as part of the release petition.

Interestingly, many states, including the federal system, also required that the released person be closely monitored by a parole or medical officer to ensure that the released person's physical health did not improve. If the incarcerated person's condition should improve to the point they could function to perform activities of daily living or are no longer terminally ill, the incarcerated person must be returned to prison to complete their full sentence.

Assessing Level of Risk: Nature of Crime (Criminal Offense History)

As shown in Table 6, most US states/Federal prisons excluded some incarcerated people—regardless of their overall health—from potential early release. Most laws stipulated that eligibility for early parole or furlough, the incarcerated person must be convicted of an offense with potential for parole (n = 25). Some jurisdictions also specified that the incarcerated person may not have been convicted of murder, either first or second degree (n = 7). However, most exclusions were focused upon the incarcerated person who has committed a Class A (e.g., murder or treason), B (e.g., homicide, drug trafficking, or violent assault), or C felony (e.g., some types of assault, fraud, theft, robbery, larceny, drug distribution).

In addition, 11 of the states/Federal laws and regulations excluded incarcerated persons convicted of offenses of a sexual nature. For those incarcerated persons with serious offense histories, a psychologist or psychiatrist must also investigate and determine their level of risk for potential harm to society and recidivism. Nine state laws (KS, KY, MD, MT, NC, NV, NY, TN, and WI) included provisions that victims or their families must be notified of an upcoming case for parole or furlough, and may participate in the hearing (if there is one) or submit a letter or an opinion concerning the potential release of the prisoner.

Table 5 Post-release support in place for release

	Post-release support in place			
	Medical facilities vetted	Financial coverage	Holistic support system	Family or support conditions
Number of States	18	11	5	9
Abbreviations	AK, DC, ID, IN, KS, MD, MN, MO, NC, NE, NJ, NM, NY, TN, TX, US FED, VT, WY	AK, AL, CO, ID, KS, MO, MT, NY, TN, US FED, WY	ID, MN, NC, NJ, NY	ID, LA, MD, MN, MT, NC, NJ, NY, US FED

Style of Review

Forty-seven US laws differed in their style of review which ranged from strictly regulated to very discretionary release determinants. In addition to factors, such as age, physical and mental health status, and level of risk, other determinants included a state's ability to grant medical release. For example, if the governor or Deputy Warden "deemed it beneficial," either for reasons of cost or overcrowding, early release could be granted.

Table 6 Type of crime considered for early release

	Type of crime considered for early release			
	Ability for parole and/or without sentence of death	Excluding murder	Consider % of time served	Excluding sexually oriented crimes
Number of States	25	7	8	11
Abbreviations	AK, CA, CT, DC, FL, ID, KY, LA, MD, MO, MS, MT, NC, NE, NH, NJ, OR, RI, TN, TX, US FED, VA, WA, WI, WY	AL, DC, LA, NJ, NM, NY, OR	CT, DE, IN, MO, MS, NC, NY, OH	AK, AL, AR, CO, ID, KY, MS, NC, NJ, TX, WI

Discussion

Implications for a Human Rights Approach to Social Work

The purpose of this content analysis was to describe and analyze the compassionate and geriatric release laws in the USA. As noted in the findings section, we found that these laws had one or more provisions that fell within one of these six major categories. These categories were (1) physical/mental health status, (2) age, (3) nature of the crime (e.g., offense history), (4) pathway to release decision, (5) post-release support, and (6) stage of review. These finding have important implications for social workers and other key stakeholders who want to advance the human rights of justice involved vulnerable populations of older persons and persons with physical or mental disabilities or terminal illnesses, especially those in prison. The 2015 release of the Council on Social Work Education's Educational Policy (CSWE 2015) states the "purpose of the social work profession is to promote human and community well-being" (CSWE 2015, p. 1). This purpose is inclusive of all individuals regardless of their backgrounds, including criminal justice histories. Two particularly relevant skills for social workers, who want to respond to the crisis of the aging and dying in prison, are to engage in human rights and social and economic justice and to understand laws and regulations that may impact practice at the micro, mezzo, and macro levels (CSWE 2015).

The US laws governing compassionate and geriatric release are an example of an intersectional human rights issue that bridges aging, health, and criminal justice practice and policy arenas. An often unrecognized human rights area of the social work profession is the specialization of forensic social work ((Maschi and Leibowitz 2017)). Forensic social workers, who are often referred to as practicing at intersection of social work and the law, are trained in micro (e.g., clinical) and/or macro (e.g., intersectoral collaboration and policy level) interventions. In particular, geriatric forensic social workers are well positioned to prevent or intervene with the aging and dying in prison issue because of combined generalist and specialized practice knowledge and skills. Given this current crisis, a two-pronged approach to clinical and policy practice in diverse settings, such as prisons, and with diverse populations, such as incarcerated older people is necessary (Maschi et al. 2013). For example, in many of the research, practice, and policy recommendations noted in the Office of the Inspector General's report (2015), social workers can play a role in addressing all of them. These recommendations are:

1. Consider the feasibility of placing additional social workers in more institutions, particularly those with larger populations of aging inmates.
2. Provide all staff training to identify signs of aging and assist in communicating with aging inmates.
3. Reexamine the accessibility and the physical infrastructure of all of its institutions to accommodate the large number of aging inmates with mobility needs.
4. Study the feasibility of creating units, institutions, or other structures specifically for aging inmates in those institutions with high concentrations of aging inmates.
5. Systematically identify programming needs of aging inmates and develop programs and activities to meet those needs.
6. Develop sections in release preparation courses that address the post-incarceration medical care and retirement needs of aging inmates.
7. Consider revising its compassionate release policy to facilitate the release of appropriate aging inmates, including by lowering the age requirement and eliminating the minimum 10 years served requirement (Office of Inspector General, United States Department of Justice. 2015, p. 3–4).

Applying a Human Rights Approach to Justice Policy Reform

Most relevant to this paper, a human rights approach can be applied to assess the laws, policies, and practices to the extent to provisions of existing compassionate and geriatric release laws meet basic human rights principles. As described in the introduction, the principles of the human rights framework are dignity and worth of the person, the five domains of human rights (i.e., political, civil, social, economic, and cultural), participation, nondiscrimination, and transparency and accountability (UN 1948). Developed by the first author, the Compassionate and Geriatric Release Checklist (CGR-C, Maschi 2016) was created for social workers, policymakers, advocates, and other key stakeholders to use as an assessment tool to develop or amend existing compassionate or geriatric release laws (please contact the authors for a copy of the checklist). This tool also can be used by social workers to prepare expert testimony for local, state, or federal hearings or as an educational or professional training exercise. Applying a human rights framework, the checklist consists of six assessment categories for compassionate and geriatric release laws: dignity and respect of the person, promotes political, civil, economic, social, and cultural rights, nondiscrimination, participation, transparency, accountability, and special populations served.

A human rights-based analysis using the framework as highlighted in the checklist suggests that most of the provisions of each US compassionate and geriatric release often fall short of meeting the basic human rights principles that speak

to the dignity and worth of the incarcerated person, family and victim rights and supports, and accountability and transparency on the part of the judicial and correctional systems to grant release. Additionally, the majority of the US compassionate and geriatric release laws fell short of inconclusive nondiscrimination provisions. This is especially true when assessing level of risk of incarcerated people with histories of sex or violent offenses. Based on available research, this type of provision is overly restrictive. For example, research shows that older adults with diverse offense histories have low recidivism rates (1–5 %) compared to their younger counterparts and person (ACLU 2012; Jhi and Joo 2009). For example, in a study investigating whether risk factors for recidivism remained stable across age groups (N=1303), the findings showed that rates decreased in older age groups (ages 55 and older (Fazel et al. 2006). These findings are consistent with recidivism rates in studies with international samples of older sexual offenders, including research conducted in the UK, the USA, and Canada. Given these findings about older age and the reduced risk for recidivism, it is important to underscore that incarcerated individuals with violent offense histories (despite their failing health status) or elderly in US federal and state prisons are often nevertheless excluded from compassionate or geriatric release provisions (HRW 2012).

Applying a Multitiered Practice Model for All Levels of Prevention and Intervention

The 2012 Report of the United Nations High Commissioner for Human Rights (UN 2012) urges that specialized treatment be given to older adults and seriously ill people in prison and post-release. The need for specialized treatment is because many incarcerated elders experienced histories of accumulated disadvantages and currently are experiencing grave human rights conditions in prison. Therefore, when crafting a human rights-based social work, a multitiered prevention and intervention response to the current crisis and the process that led to it is needed. One helpful human rights-based practice model is Wronka's (2007) Advanced Generalist/Public Health (AGPH) Model. The AGPH model conceptualizes four interventions levels designed to prevent or alleviate social problems, such as the crisis and the process leading to the aging and seriously ill people in prison. These coincide with macro, mezzo, micro, meta-micro, and meta-macro, and research levels of intervention. Although research has its own level, it also informs all intervention levels (Wronka 2007). These levels of intervention are described and then applied to how social workers can address the aging and dying crisis below.

Macro and meta-macro levels In the AGPH model, the macro level is a target of primary intervention strategies. The macro level targets a whole national population, such as the USA, to prevent a problem, such as the crisis of aging and dying people in prison. The purpose of primary intervention strategies is to prevent individuals, families, and community from experiencing health and justice disparities (Maschi and Youdin 2012; Wronka 2007). An example of a primary intervention strategy is the development and implementation of a national campaign for criminal justice reform, especially with regard to peeling back the punitive and strict long-term sentencing policies that emerged in the 1980s. These policy advocacy strategies are an area where social worker are involved and/or could be more actively involved in crafting a more compassionate response to the aging and seriously ill in prison.

In an even larger meta-macro level, the focus is international. An example of a global prevention initiative is a social media campaign that promotes the importance of universal health and justice and fairness for all persons. Given that the criminal justice system disproportionately consists of historically underrepresented and underserved groups, such as older people, racial/ethnic minorities, and persons with physical or mental disabilities, a campaign that would promote prevention would reduce the societal oppression to prison pipeline, such as ending mass incarceration, is a potential strategy. Social workers, especially forensic social workers, can and do assume a pivotal role in these prevention efforts that advance human rights that reduce health and justice disparities for individuals of all ages and families and communities most affected by the USA's current state of hyper-incarceration (Wronka 2007).

Mezzo levels The mezzo level targets secondary intervention strategies among groups at risk, such as individuals that come to the attention of the law (Wronka 2007). These strategies may be interventions in high-risk environments, such as police stations and/or the courts. For example, a social worker can develop an alternative to incarceration/diversion program and monitor effectiveness on outcomes, such as reduced rates of imprisonment. Another example for an at-risk group is in prison settings. A social worker can develop or administer and evidence-based practice on health literacy or the management of chronic health problems that reduces the risk of rapid health decline while residing in the often unhealthy conditions of prison.

Micro and meta-micro levels The micro level is the target of tertiary intervention strategies and symptomatic populations, such as the older or serious or terminally ill population in prison. Tertiary level interventions commonly entail clinical intervention on an individual or family level, such as medical or palliative care social work interventions. For example, a social worker employed at a prison hospice may design and implement a grief therapy group for inmate peer supports or family members and monitor its effectiveness on the coping and well-being of the participants (Wronka 2007).

The meta-micro level consisting of informal supports also is the target of tertiary intervention strategies. Although clinical interventions help with problems, everyday life social connections, such as family, friends, and others, can have therapeutic benefits. For example, a social worker in a prison can be instrumental in arranging family, volunteers, or community service provider visits to a prison or connect with families, peers, or professionals to prepare them for the release of an ill person in prison (Wronka 2007).

Research and evaluation level In the AGPH model, research and evaluation are the method of quaternary (fourth level) intervention strategies. Findings from research and evaluation studies provide informed knowledge for prevention and intervention strategies across the other intervention levels. In turn, the primary, secondary, and tertiary levels influence the research questions to be asked and the types of research methods used (Wronka 2007). For example, research is needed to provide data-driven development of policies impacting this aging and dying in population or to monitor the implementation of existing compassionate and geriatric release laws. Quantitative and qualitative methods can be used to gather data from key stakeholders.

An example of an important area of research is the reliability and validity of risk assessment (Andrews et al. 2006; Lansing 2012), especially for those with violent sex offense histories. Based on age factors, risk assessment should be attentive to the level of risk based on age (younger versus older offenders). As indicated above, recidivism rates are lower in older age groups. In a study of older sex offenders, they were found to score lower on the Static-99, a widely used actuarial measure (Hansen, 2006), and research on repeat offending (sexual and violent offenses) among an older prison population showed that recidivism decreased in the older age group (55+ years; Fazel et al. 2006). Therefore, more research is needed to accurately assess risk that accounts for age (Andrews and Dowden 2012).

Limitations of the Current Review

These findings have methodological limitations that warrant discussion. First, although a comprehensive search of the Lexis Nexus database was conducted, the extent to which all of the subject laws and possible amendments were available is unknown. Second, although multiple coders were used to select a sample of laws, classify them, and analyze their findings, it is entirely possible that other research teams may obtain different results. Third, the content analyses of categories and themes were developed deductively and inductively by the research team, and it goes without saying that a content analysis with a different set of categories and frequency counts would yield a different outcome. Yet, despite these limitations, this comprehensive analysis of the compassionate and geriatric release laws in the USA offers insight into the next steps for research and evaluation to improve conditions for the elderly and seriously and terminally ill persons in prison and for their families and communities.

Conclusion

From a human rights perspective, human beings—even individuals who have committed crimes—should receive adequate physical and psychological care in the prison system and have access to supports post-release. If incarcerated individuals are unable to receive adequate care inside prisons, it is incumbent upon social workers, advocates, and researchers to compel further investigation into the barriers to care. Potential barriers may include the potential cost of care for aging and terminally ill patients, public perception of release, expediency of the process of consideration, and level of access of timely evidence-based treatment. Supports for family members, surrogates and/or guardians, and survivors of crimes should be part of compassionate or geriatric release legislation. Social workers also should promote a compassionate care as opposed to the use of tactics that are punitive and forms of cruel and unusual punishment within the prison system and community post-release. If the standard of care available in-prison remains suboptimal to a basic standard of community care, it is social work's role to advocate for more humane prison conditions or prison release policies that result in improved care quality. It is our view that social workers grounded in human rights are the missing piece of compassion and care in our current punitive criminal justice system. Perhaps it is time to embrace our criminal justice roots for the "just" cause of promoting human rights for the aging and dying in prison.

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2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Commission on Offender Review

BILL INFORMATION	
BILL NUMBER:	SB 556
BILL TITLE:	Inmate Conditional Release
BILL SPONSOR:	Brandes
EFFECTIVE DATE:	10/01/2020

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE
Click or tap here to enter text.

SIMILAR BILLS	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

PREVIOUS LEGISLATION	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

IDENTICAL BILLS	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	10/24/19
LEAD AGENCY ANALYST:	Alec Yarger, Legislative Affairs Director
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
LEGAL ANALYST:	Click or tap here to enter text.
FISCAL ANALYST:	Gina Giacomo, Director of Administration

POLICY ANALYSIS

EXECUTIVE SUMMARY

SB 556 removes the Conditional Medical Release Program from FCOR by repealing s. 947.149, F.S., and reestablishes it within the Department of Corrections in a newly created s. 945.0911, F.S.

The bill also creates a new designation for CMR called "inmate with a debilitating illness", defined as "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."

The bill amends the definition for "terminally ill" to specify "death is expected within 12" months as the standard.

SUBSTANTIVE BILL ANALYSIS

PRESENT SITUATION:

Conditional Medical Release is a discretionary early release program authorized by s. 947.149, F.S., for inmates with an existing medical or physical condition rendering them permanently incapacitated or terminally ill. The Florida Commission on Offender Review (FCOR) is authorized to release inmates on supervision who are "terminally ill" or "permanently incapacitated," and who are not a danger to themselves or others. The Department of Corrections is responsible for referring potential conditional medical release cases to FCOR for consideration.

Currently, the two designations which make an inmate eligible for consideration are defined as:

- "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 others; or
- "Terminally ill 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 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.

The Department of Corrections supervises inmates who are granted conditional medical release. The supervision term of an inmate released on conditional medical release is for the remainder of the inmate's sentence.

FCOR monitors the offender's progress through periodic medical reviews and conducts revocation hearings when alleged violations are reported. The supervision can be revoked, and the offender returned to prison, if FCOR determines that a willful and substantial violation has occurred. FCOR may also return the offender to custody if his or her medical or physical condition improves.

The Department of Corrections has recommended 149 inmates for release in the last three fiscal years. FCOR granted release to 75 (just over 50%) of those recommended by the Department of Corrections. In FY 2018-19, FCOR granted release to 38 of the 76 inmates recommended for conditional medical release, or 50%.

EFFECT OF THE BILL:

Section 1:

The bill creates s. 945.0911, F.S., to establish the Conditional Medical Release Program within the Department of Corrections.

The bill directs the Secretary of Corrections to appoint three people to a panel to determine the appropriateness of conditional medical release and conduct revocation hearings for conditional medical releasees.

The bill defines three designations that would make an inmate eligible for conditional medical release:

- "Inmate with a debilitating illness" is a new designation that does not currently make an inmate eligible for conditional medical release. It is defined as "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" is identical to the designation of the same name currently in statute. It is defined as "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" is very similar to the definition that is currently in statute. The definition provided by the bill specifies that "death is expected within 12 months" is the standard for "terminally ill." It is defined as "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 places the authority to grant conditional medical release solely with the Department of Corrections. It also provides that an inmate does not have a right to conditional medical release nor an evaluation to determine eligibility for such release.

The bill requires the Department of Corrections to refer potentially eligible inmates to the panel of three appointees for review and determination of conditional medical release.

In the event that the crime that resulted in the inmate's incarceration involved a victim, the bill requires the Department of Corrections to notify the victim and provide them the right to be heard regarding the release of the inmate.

The bill requires the panel of appointees to conduct a hearing within 45 days of receiving the referral of a potentially eligible inmate. The Director of Inmate Health is required to review any relevant information before the hearing and provide a recommendation to the panel. A majority of the panel members must agree that conditional medical release is appropriate for the inmate in order to grant release.

The bill provides that an inmate who is denied conditional medical release may have the decision reviewed by the Department of Corrections General Counsel and Chief Medical Officer, who then make a recommendation to the Secretary of Corrections. In these instances, the Secretary has the final decision on whether or not to grant conditional medical release and this decision is not subject to appeal.

The bill also establishes that inmates granted conditional medical release will be released for an amount of time equal to the time remaining on their sentence when released. During this time, the releasee must comply with all conditions of release set by the Department of Corrections. Those conditions must include:

- Periodic medical evaluations;
- Supervision by a trained officer;
- Active electronic monitoring; and
- Any conditions required by community control (948.101, F.S.).

The bill also allows the Department of Corrections to include any other conditions deemed appropriate on a case by case basis.

The bill provides that a conditional medical releasee remains eligible to earn or lose gain-time.

The bill provides for a revocation process if the medical or physical condition of the releasee improves to the extent that they are no longer eligible for conditional medical release. Upon discovering that the releasee's condition has improved, the Department of Corrections may order that they be returned to custody for a revocation hearing conducted by the panel of three appointees.

The bill provides that if a conditional medical releasee elects to proceed with the revocation hearing, they must be informed orally and in writing of the following:

- The alleged violation with which the releasee is charged;
- The right to be represented by counsel (although not a right to publicly funded counsel);
- The right to be heard in person;
- The right to secure, present, and compel the attendance of witnesses relevant to the hearing;
- The right to produce documents on his or her own behalf;
- The right to access of all evidence used against the releasee and to confront and cross-examine witnesses; and
- The right to waive the hearing.

The Director of Inmate Health must review evidence and make a recommendation regarding the releasee's improved medical condition to the panel. A majority of the panel members must agree to revoke the releasee's conditional medical release.

The bill provides that an inmate who has their conditional medical release revoked due to an improvement in medical or physical condition may have the decision reviewed by the Department of Corrections General Counsel and Chief Medical Officer, who then make a recommendation to the Secretary of Corrections. In these instances, the Secretary has the final decision on whether or not to revoke conditional medical release and this decision is not subject to appeal.

The bill also provides for a revocation process for any violation of the conditional medical release conditions established by the Department of Corrections or new violation of law. Upon discovering a violation, the Department of Corrections must order that the releasee be returned to custody for a revocation hearing conducted by the panel of three appointees. A majority of the panel members must agree to revoke the releasee's conditional medical release.

The bill provides that an inmate who has their conditional medical release revoked due to a violation of the established conditions or new violation of law may have the decision reviewed by the Department of Corrections General Counsel, who then makes a recommendation to the Secretary of Corrections. In these instances, the Secretary has the final decision on whether or not to revoke conditional medical release and this decision is not subject to appeal.

The bill provides rulemaking authority to the Department of Corrections to adopt rules to implement this section (Section 1) of the bill.

Section 2:

The bill repeals section s. 947.149, F.S., deleting the existing Conditional Release Program within the Florida Commission on Offender Review.

Sections 3-14:

The bill amends ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141, F.S., to conform cross-references to changes made by the bill.

Section 15:

The bill provides that the act will be effective on October 1, 2020.

DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? **Y☒ N☐**

If yes, explain:	The bill removes 947.149(6), F.S., a statute that requires FCOR to adopt rules to implement the conditional medical release program.
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	Chapter 23-24 Conditional Medical Release Program

WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? **Y☐ N☒**

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? **Y☐ N☒**

Board:	N/A
Board Purpose:	N/A

Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☒

Revenues:	N/A
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	Click or tap here to enter text.

DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☒ N☐

Revenues:	N/A
Expenditures:	This bill would have a minimal, but negative fiscal impact to the Commission on Offender Review (FCOR) by reducing the number of discretionary release determinations. In FY1819, FCOR calculated that the per unit cost for a discretionary release determination was $696.98. In FY1819, FCOR made 84 Conditional Medical Release (CMR) determinations. During this time, 804 hours were spent on the investigation/determination, 64 hours were spent on victim assistance, and 433 hours were spent on revocations for CMR. This adds up to a total of 1301 hours (less than 1 FTE). There is no position at FCOR that deals exclusively with Conditional Medical Release. The process for CMR is similar enough to other releases that the individuals who process parole cases process CMR cases as well.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☐ N☒

Revenues:	N/A
Expenditures:	N/A
Other:	N/A

DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☒

If yes, explain impact.	Click or tap here to enter text.
Bill Section Number:	Click or tap here to enter text.

TECHNOLOGY IMPACT

DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y☐ N☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	Click or tap here to enter text.

FEDERAL IMPACT

DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	Click or tap here to enter text.

ADDITIONAL COMMENTS

Click or tap here to enter text.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	Click or tap here to enter text.

STATE OF FLORIDA CORRECTIONAL MEDICAL AUTHORITY

2017-2018 Annual Report and Update on the Status of Elderly Offenders in Florida's Prisons

STATE OF FLORIDA CORRECTIONAL MEDICAL AUTHORITY

Section 945.602, Florida Statutes, creates the Correctional Medical Authority (CMA).

The CMA's governing board is composed of the following seven people appointed by the Governor and subject to confirmation by the Senate:

Peter C. Debelius-Enemark, MD, Chair
Representative
Physician

Katherine E. Langston, MD
Representative
Florida Medical Association

Ryan D. Beaty
Representative
Florida Hospital Association

Kris-Tena Albers, APRN, MN
Representative
Nursing

Lee B. Chaykin
Representative
Healthcare Administration

Richard Huot, DDS
Representative
Dentistry

Leigh-Ann Cuddy, MS
Representative
Mental Health

STATE OF FLORIDA
CORRECTIONAL MEDICAL AUTHORITY

December 27, 2018

The Honorable Rick Scott
Governor of Florida

The Honorable Bill Galvano, President
The Florida Senate

The Honorable Jose R. Oliva, Speaker
Florida House of Representatives

Dear Governor Scott, Mr. President, and Mr. Speaker:

In accordance with § 945.6031, Florida Statutes (F.S.), I am pleased to submit the Correctional Medical Authority's (CMA) 2017-18 Annual Report. This report summarizes the CMA's activities during the fiscal year and details the work of the CMA's governing board, staff, and Quality Management Committee fulfilling the agency's statutory responsibility to assure adequate standards of physical and mental health care are maintained in Florida's correctional institutions.

This report also summarizes the findings of CMA institutional surveys. During Fiscal Year (FY) 2017-18, the CMA conducted on-site physical and mental health surveys of 17 major correctional institutions, which included two reception centers and five institutions with annexes or separate units. Additionally, CMA staff conducted 50 corrective action plan (CAP) assessments based on findings from this and the previous year's surveys.

Pursuant to § 944.8041, F.S., section two of this report includes the CMA's statutorily mandated report on the status and treatment of elderly offenders in Florida's prison system. The Update on the Status of Elderly Offenders in Florida's Prisons report describes the elderly population admitted to Florida's prisons in FY 2017-18 and the elderly population housed in Florida Department of Corrections (FDC) institutions on June 30, 2018. The report also contains information related to the use of health care services by inmates age 50 and older and housing options available for elderly offenders.

The CMA continues to support the State of Florida in its efforts to assure the provision of adequate health care to inmates. Thank you for recognizing the important public health mission at the core of correctional health care and your continued support of the CMA. Please contact me if you have any questions or would like additional information about our work.

Sincerely,

Jane Holmes-Cain, LCSW
Executive Director

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SECTION ONE

2017-2018 Correctional Medical Authority Annual Report

INTRODUCTION

ABOUT THE CORRECTIONAL MEDICAL AUTHORITY

The Correctional Medical Authority (CMA) was created in July 1986 while Florida's prison health care system was under the jurisdiction of the federal court as a result of litigation that began in 1972. Costello v. Wainwright (430 U.S. 57 (1977)) was a class-action lawsuit brought by inmates alleging that their constitutional rights had been violated by inadequate medical care, insufficient staffing, overcrowding, and poor sanitation. The Florida Legislature enacted legislation that created the CMA based on recommendations of a Special Master and Court Monitor, appointed by the federal courts to ensure that an "independent medical authority, designed to perform the oversight and monitoring functions that the court had exercised" be established. [1]

The CMA was created as part of the settlement of the Costello case and continues to serve as an independent monitoring body to provide oversight over the systems in place that provide health care to inmates in Florida Department of Corrections (FDC) institutions. In the final order closing the Costello case, Judge Susan Black noted that the creation of the CMA made it possible for the Federal court to relinquish prison monitoring and oversight functions it had performed for the prior 20 years. The court found that the CMA was capable of "performing an oversight and monitoring function over the Department to assure continued compliance with the orders entered in this case." Judge Black went on to write that, "the CMA, with its independent board and professional staff, is a unique state effort to remedy the very difficult issues relating to correctional healthcare."[2]

From 1986, the CMA carried out its mission to monitor and promote the delivery of cost-effective health care that meets accepted community standards for Florida's inmates until losing its funding on July 1, 2011. During the 2011 legislative session, two bills designed to repeal statutes related to the CMA and eliminate funding for the agency passed through the Florida House and Senate and were sent to the Governor for approval. The Governor vetoed a conforming bill, which would have eliminated the CMA from statute, and requested that the agency's funding be restored. The Legislature restored the agency's funding effective July 1, 2012. The CMA was reestablished and is now housed within the administrative structure of the Executive Office of the Governor as an independent state agency.

[1] Celestineo V. Singletary. United States District Court. 30 Mar. 1993. Print.
[2] Ibid.

CMA STRUCTURE AND RESPONSIBILITIES

The CMA is composed of a seven-member, volunteer board whose members are appointed by the Governor and confirmed by the Florida Senate for a term of four years. The board is comprised of health care professionals from various administrative and clinical disciplines. The board directs the activities of the CMA's staff. The CMA has a staff of six full-time employees and utilizes independent contractors to complete triennial health care surveys at each of Florida's correctional institutions.

As an independent agency, the CMA's primary role is to provide oversight and monitoring of FDC's health care delivery system to ensure adequate standards of physical and mental health care are maintained in Florida's correctional institutions. Since 2012, FDC has relied on contracted health services providers to provide comprehensive health care services. FDC currently contracts with Centurion of Florida, LLC to provide health care services statewide. Seven private correctional facilities are managed by the Department of Management Services (DMS), and health care is provided in these facilities by providers contracted by DMS.

The CMA advises the Governor and Legislature on the status of FDC's health care delivery system. It is important to note that the CMA and all functions set forth by the Legislature resulted from federal court findings that Florida's correctional system provided inadequate health care and that an oversight agency with board review powers was needed. Therefore, the CMA's activities serve as an important risk management function for the State of Florida by ensuring constitutionally adequate health care is provided in FDC institutions.

Specific responsibilities and authority related to the statutory requirements of the CMA are described in § 945.601–945.6035, Florida Statutes (F.S.), and include the following activities:

- Reviewing and advising the Secretary of Corrections on FDC's health services plan, including standards of care, quality management programs, cost containment measures, continuing education of health care personnel, budget and contract recommendations, and projected medical needs of inmates.
- Reporting to the Governor and Legislature on the status of FDC's health care delivery system, including cost containment measures and performance and financial audits.
- Conducting surveys of the physical and mental health services at each correctional institution every three years and reporting findings to the Secretary of Corrections.
- Reporting serious or life-threatening deficiencies to the Secretary of Corrections for immediate action.
- Monitoring corrective actions taken to address survey findings.
- Providing oversight for FDC's quality management program to ensure coordination with the CMA.
- Reviewing amendments to the health care delivery system submitted by FDC prior to implementation.

2017-2018 ANNUAL REPORT

The CMA is required by § 945.6031, F.S., to provide an annual report detailing the current status of FDC's health care delivery system. This report details CMA's activities during fiscal year (FY) 2017-18, summarizes findings of institutional surveys, provides an update regarding CMA's corrective action plan process, and provides CMA's overall assessment and recommendations regarding FDC's health care delivery system.

KEY CMA ACTIVITIES IN FISCAL YEAR 2017-2018

CMA activities during FY 2017-18 focused on meeting the agency's statutorily required responsibilities. Key agency activities are summarized below.

CMA BOARD MEETINGS

The governing board of the CMA is composed of seven citizen volunteers appointed by the Governor and approved by the Senate. The Board is comprised of health care professionals from various administrative and clinical disciplines including nurses, hospital administrators, dentists, and mental and physical health care experts. At the end of the fiscal year, all board seats were filled.

The CMA Board held five public meetings during FY 2017-18. One meeting was hosted by FDC Office of Health Services (OHS) staff and the staff of Reception and Medical Center (RMC) in Lake Butler, FL. In addition to conducting regular business, board members were provided a tour of RMC, which included an in-depth overview of the reception process and health care services provided at the institution.

During the board meetings, members received updates regarding institutional surveys and corrective action plan (CAP) assessments, and reports from FDC's Office of Health Services (OHS) staff and FDC contracted providers regarding health services. CMA board meetings provided an opportunity for members to voice concerns related to FDC's health care delivery system and/or offer recommendations.

HEALTH CARE STANDARDS REVIEW

According to § 945.6034, F.S., the CMA is required to review FDC policies pertinent to health care and to provide qualified professional advice regarding that care. During the fiscal year, the CMA reviewed and made recommendations, when necessary, for 28 FDC policies and procedures.

INMATE CORRESPONDENCE

Monitoring inmate correspondence is an important risk management function for the CMA. As part of the CMA's mission of ensuring adequate standards of physical and mental health care are maintained at all correctional institutions, CMA staff reviews, triages, and responds to inmate correspondence. The CMA is not authorized to direct staff in FDC institutions, nor does it require that specific actions be taken by the Department; therefore, inmate letters are forwarded to OHS for investigation and response. In cases relating to security or other issues, letters are referred to the Department's Inspector General or General Counsel. CMA staff tracks the outcome of these letters and subsequently reviews health care issues identified in inmate letters during on-site surveys.

There was an increase in the number of inmate letters received by the CMA in FY 2017-18. The CMA responded to 104 inmate letters regarding inmates at 22 correctional institutions, compared to 69 letters in FY 2016-17. Many of these letters were related to complaints of inadequate medical care.

QUALITY MANAGEMENT COMMITTEE

Through its Quality Management Committee (QMC), the CMA operates as an oversight body of FDC's quality management program. The QMC is comprised of a licensed physician committee chair and three volunteer health care professionals, including a representative from the CMA board. The QMC's mission is to provide feedback to the Department regarding its quality management process and ensure that corrective actions and policy changes identified throughout the process are effective. FDC's quality management program is designed to detect statewide trends in health care treatment and track issues that require corrective action.

During FY 2017-18, the QMC primarily focused their efforts on evaluating the effectiveness of FDC's mortality review process. All in-custody deaths, except executions, require a mortality review. Contracted health care providers conduct self-reviews of inmate mortalities to determine the appropriateness of care. The review is submitted to OHS, which determines if there were any quality of care issues not identified by the contractor. The QMC then evaluates this review of mortality cases to facilitate improvements in inmate health care.

QMC mortality reviews assessed whether the mortality review process effectively identified deficiencies in health care that may have contributed to death, and determined whether appropriate action was taken to prevent deficiencies from happening in the future. The QMC's review of mortality cases is based on a non-random sample, and the intent of the review is not to generalize review findings to mortality cases as a whole. The review process is intended to function as an educational tool when areas of deficiency are identified, whether they are clinical or administrative in nature. Education may be limited to the health care professional that provided the care or extended to a group of health care professionals where a systems deficiency existed or the deficiency can potentially happen across institutions. The purpose of mortality review is to improve the quality of service across FDC's system of care, while providing professional growth and development.

The QMC met three times during the fiscal year and reviewed 12 mortality cases. One meeting was hosted by FDC OHS staff and the staff of RMC in Lake Butler, FL. During this meeting, QMC members received a presentation related to Utilization Management. QMC members requested the presentation following a review of mortality cases where delayed consultations were noted as a mortality review finding. Committee members wanted to have a better understanding of how the consultation process worked. After the presentation, QMC members commented that the presentation was informative and provided them with a better understanding of the consultation process.

EXECUTIVE OFFICE OF THE GOVERNOR, CHIEF INSPECTOR GENERAL AUDIT

During FY 2017-18, the CMA was audited by the Executive Office of the Governor (EOG), Chief Inspector General (CIG). The CMA was included in the CIG's 2017-18 audit plan, and the audit was conducted in accordance to Florida Statutes 14.32. The audit examined whether the CMA met its statutory responsibilities as detailed in § 945.601, F.S., through 945.6036, F.S., and § 944.8041, F.S. CIG auditors reviewed the CMA's internal controls and accountability for statutory activities conducted in FY 2016-17.

The CIG's final audit report indicated that "the CMA generally complied with § 945.601, F.S., through 945.6036, F.S., and fulfilled its statutory responsibilities to monitor and promote the maintenance of adequate standards of physical and mental health in Florida's correctional facilities."[3] The requirement of § 944.8041, F.S., was also met. Only one area of non-compliance, related to § 945.6031(2), was noted. The CIG found that the CMA did not conduct surveys of all correctional institutions triennially.

CIG staff reviewed CMA survey schedules for FY 2016-17 and FY 2017-18 and determined:

> "During fiscal year 2016-17, the CMA conducted on-site surveys of the physical and mental health care systems at 17 correctional institutions; however, seven correctional institutions that were surveyed during fiscal year 2013-2014 were not surveyed again within the required triennial period. For fiscal year 2017-2018, the CMA has scheduled 17 correctional institutions for on-site surveys of their physical and mental health care systems; thirteen correctional institutions that were surveyed during fiscal year 2014-2015 were not included in this schedule and were not scheduled to be surveyed again within the required triennial period."[4]

Budgetary constraints and reduced staffing was cited as contributing factors for triennial survey non-compliance. The CIG indicated that:

> "Since 1995, the CMA's funding has been reduced from $1,399,031 to $735,729 and staffing has been reduced from 15 to 6 full-time employees. However, since 1995, the number of correctional institutions has not significantly changed, and the resources required to conduct surveys of correctional institutions has increased. These reductions in resources have had a substantial impact on the CMA's ability to conduct surveys of the correctional institutions on a triennial cycle."[5]

Based on the audit findings, the CIG auditors recommended that the CMA's executive director seek assistance with policy and budget issues that impacted the agency's ability to conduct surveys on a triennial cycle. Specifically, CIG auditors recommended:

> "The Executive Director of the CMA request additional funding and staff to conduct surveys and/or assistance in effecting change to the statutory language in section 945.6031(2), F.S., that would adjust the cycle for conducting surveys to a period longer than three years, to better accommodate the CMA's funding and staffing levels."[6]

The CMA concurred with the finding of the audit. In response to the CIG auditor's recommendations, the CMA's executive director met with EOG Administration leadership staff to discuss audit findings and identify steps to be taken to address audit findings. CMA staff will continue to work with incoming EOG staff as well as legislative staff during the next legislative session to address CIG audit findings.

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[3] Office of the Chief Inspector General. (2018). *Audit of the Correctional Medical Authority* (Audit Report Number A-17/18-001), pp. 1.

[4] Ibid., 4.

[5] Ibid.,4.

[6] Ibid., 5.

DISABILITY RIGHTS FLORIDA SETTLEMENT AGREEMENT

On January 31, 2018, FDC and Disability Rights Florida, Inc. (DRF), signed and submitted to the courts a settlement agreement regarding the provision of mental health services in FDC inpatient mental health units. Included in the agreement was a provision for compliance monitoring by the CMA. The CMA's monitoring of the agreement will include the processes and authority of the CMA as provided in § 945.601, F.S. The CMA monitoring team will evaluate the level of compliance for each relevant provision of the agreement beginning February 2019 and conduct two rounds of monitoring.

INSTITUTIONAL SURVEYS

The CMA is required, per § 945.6031(2), F.S., to conduct triennial surveys of the physical and mental health care systems at each correctional institution and report survey findings to the Secretary of Corrections. The process is designed to assess whether inmates in FDC's correctional institutions can access medical, dental, and mental health care and to evaluate the clinical adequacy of the resulting care. To determine the adequacy of care, the CMA conducts clinical records reviews that assess the timeliness and appropriateness of both routine and emergency physical and mental health services. Additionally, administrative processes, institutional systems for informing inmates of their ability to request and receive timely care, and operational aspects of health care services are examined. The CMA contracts with a variety of licensed community and public health care practitioners including physicians, psychiatrists, dentists, nurses, psychologists, and other licensed mental health professionals to conduct surveys.

In FY 2017-18, 17 institutions were surveyed. This included 13 institutions previously surveyed as a result of the CMA's triennial survey schedule. Seven institutions (Hernando CI, Homestead CI, Taylor CI, Florida State Prison (FSP), Gadsden CF, Central Florida Reception Center (CFRC), and Cross City CI) were surveyed in FY 2013-14 and six institutions (Marion CI, Sumter CI, Tomoka CI, Wakulla CI, North West Florida Reception Center (NWFRC), and Lake CI) were surveyed in FY 2014-15; two reception centers (NWFRC and CFRC); five institutions with main and annex units (FSP, Taylor CI, Wakulla CI, CFRC, and NWFRC), with each unit being surveyed separately; and one institution with inpatient mental health units (Lake CI). Two surveyed institutions (Gadsden CF and Lake CF) were private facilities managed by DMS.

A total of 612 institutional survey findings were identified, which represents a 24 percent increase in findings from FY 2016-17. Of reportable findings, 332 (54 percent) were physical health findings and 280 (46 percent) were mental health findings. The results of CMA surveys were formally reported to the Secretary of Corrections. Detailed reports for each institutional survey can be accessed on the CMA website at http://www.flgov.com/correctional-medical-authority-cma. A summary of medical and mental health grades[7],

[7] Medical grades reflect the level of care inmates require. Grades range from M1, requiring the least level of medical care, to M5, requiring the highest level of care. Pregnant offenders are assigned to grade M9. Medical grades are as follows: M1, inmate requires routine care; M2, inmate is followed in a chronic illness clinic (CIC) but is stable and requires care every six to twelve months; M3, inmate is followed in a CIC every three months; M4, inmate is followed in a CIC every three months and requires on-going visits to the physician more often than every three months; M5, inmate requires long-term care (longer than 30 days) in inpatient, infirmary, or other designated housing. Mental health grades reflect the level of psychological treatment inmates require. Grades range from S1, requiring the least level of psychological treatment, to S6, requiring the highest level of treatment. Mental health grades are as follows: S1, inmate requires routine care; S2, inmate requires ongoing services of outpatient psychology (intermittent or continuous); S3, inmate requires ongoing services of outpatient psychiatry; S4, inmates are assigned to a Transitional Care Unit (TCU); S5, inmates are assigned to a Crisis Stabilization Unit (CSU); and S6, inmates are assigned to a corrections mental health treatment facility (CMHTF).

number of inmates housed, and survey findings identified are provided in Table 1 below. A detailed summary of findings from institutional surveys will be presented later in this report.

Table 1. Summary of Fiscal Year 2017-2018 Institutional Surveys

Summary of Fiscal Year 2017-2018 Institutional Surveys									
Institution	Grades Served		Maximum Capacity	Census at Time of Survey	Infirmary Care	Inpatient Mental Health	Special Housing	Findings	
	Medical	Mental Health						Physical Health	Mental Health
Hernando CI	M1-M3	S1-S3	797	722	No	No	Yes	11	10
Gadsden CF	M1-M3	S1-S3	1544	1529	Yes	No	No	12	20
Cross City CI	M1-M3	S1-S2	1734	1708	Yes	No	Yes	14	20
Lake City CF	M1-M3	S1-S3	894	875	Yes	No	Yes	5	15
Lawtey CI	M1-M3	S1-S2	879	827	Yes	No	No	9	0
Florida State Prison	M1-M4	S1-S3	1460	1259	No	No	Yes	12	5
Florida State Prison-West	M1-M4	S1-S2	802	813	Yes	No	Yes	20	12
Taylor CI-Main	M1-M5	S1-S2	1198	932	Yes	No	Yes	19	14
Taylor CI-Annex	M1-M4	S1-S2	1027	847	No	No	Yes	17	15
Sumter CI	M1-M3	S1-S2	2380	2551	Yes	No	Yes	29	29
Marion CI	M1-M4	S1-S3	1161	1764	Yes	No	Yes	12	16
Baker Re-Entry Center	M1-M3	S1-S2	432	391	No	No	No	3	0
Tomoka CI	M1-M4	S1-S3	1812	1726	Yes	No	Yes	17	6
Gadsden Re-Entry Center	M1-M2	S1-S2	432	429	No	No	No	3	0
Lake CI	M1-M5	S1-S6	1093	1078	Yes	Yes	Yes	30	31
Homestead CI	M1-M5	S1-S3	929	874	Yes	No	Yes	7	4
Wakulla CI-Main	M1-M5	S1-S2	1280	1442	Yes	No	Yes	27	6
Wakulla CI-Annex	M1-M3	S1-S3	756	560	No	No	Yes	13	20
Central Florida Reception Center-Main	M1-M5	S1-S3	1473	927	Yes	No	Yes	18	17
Central Florida Reception Center-East	M1-M3	S1-S2	1407	894	Yes	No	Yes	15	2
Central Florida Reception Center-South	M1-M5	S1-S3	140	86	Yes	No	No	6	8
Northwest Florida Reception Center-Main	M1-M5	S1-S3	1303	940	Yes	No	Yes	23	16
Northwest Florida Reception Center-Annex	M1-M5	S1-S3	1615	1135	Yes	No	Yes	10	14
								332	280

CORRECTIVE ACTION PLAN ASSESSMENTS

Within 30 days of receiving the final copy of the CMA's survey report, institutional staff must develop and submit a CAP that addresses the deficiencies outlined in the report. The CAP is submitted to OHS for approval before it is reviewed and approved by CMA staff. Once approved, institutional staff implement and monitor the CAP. Usually four to five months after a CAP is implemented (but no less than three months) CMA staff evaluates the effectiveness of the corrective actions taken. Findings deemed corrected are closed and monitoring is no longer required. Conversely, findings not corrected remain open. Institutional staff continue to monitor the open findings until the next assessment is conducted, typically within three to four months. This process continues until all findings are closed.

CMA staff completed 50 CAP assessments in FY 2017-18. This included three CAP assessments for institutions surveyed in FY 2014-15, 18 CAP assessments for institutions surveyed in FY 2015-16, 20 CAP assessments for institutions surveyed in FY 2016-17, and nine CAP assessments for institutions surveyed in FY 2017-18.

At the end of the fiscal year, all CAPs from FY 2012-13 were closed, 12 of 13 CAPs from FY 2013-14 were closed, 14 of 16 CAPs from FY 2014-15 were closed, 10 of 15 CAPs from FY 2015-16 were closed, 8 of 13 CAPs from FY 2016-17, and 2 of 18 CAPs from FY 2017-18 were closed. The results of CAP assessments for the last five years are summarized below in Tables 2a-2d.

Table 2a. Fiscal Year 2014-2015 Surveyed Institutions CAP Assessment Summary

Fiscal Year 2014-2015 Surveyed Institutions						
Institution	Total Number of Physical Health Findings	Total Number of Mental Health Findings	Total Number of Open Physical Health CAP Findings	Total Number of Open Mental Health CAP Findings	Number of CAP Assessments	Open or Closed
Lake CI*	24	48	0	3	8	Open
Lowell CI-Annex*	54	32	1	0	9	Open

Table 2b. Fiscal Year 2015-2016 Surveyed Institutions CAP Assessment Summary

Fiscal Year 2015-2016 Surveyed Institutions						
Institution	Total Number of Physical Health Findings	Total Number of Mental Health Findings	Total Number of Open Physical Health CAP Findings	Total Number of Open Mental Health CAP Findings	Number of CAP Assessments	Open or Closed
Columbia CI-Annex*	25	29	0	1	6	Open
FWRC*	52	59	0	0	8	Closed 10/30/18
RMC-Main*	19	47	0	0	7	Closed 2/22/18
Dade CI*	15	21	0	5	6	Open
Everglades CI**	9	4	0	0	0	Closed 8/24/18
Apalachee CI-East**	19	23	0	0	0	Closed 10/17/18

Table 2c. Fiscal Year 2016-2017 Surveyed Institutions CAP Assessment Summary

Fiscal Year 2016-2017 Surveyed Institutions						
Institution	Total Number of Physical Health Findings	Total Number of Mental Health Findings	Total Number of Open Physical Health CAP Findings	Total Number of Open Mental Health CAP Findings	Number of CAP Assessments	Open or Closed
Martin CI	7	19	0	0	4	Closed 2/6/18
Desoto Annex	9	7	0	0	3	Closed 2/19/18
Santa Rosa CI-Main	8	28	0	6	4	Open
Santa Rosa CI-Annex	13	24	0	2	4	Open
Jefferson CI**	12	13	0	0	5	Closed 8/14/18
Union CI	19	48	0	0	2	Closed 2/19/18
Suwannee CI-Main	20	39	1	6	3	Open
Suwannee CI-Annex	17	9	1	1	3	Open
Mayo CI	16	11	0	0	3	Closed
SFRC-Main	19	20	0	2	3	Open
SFRC-South Unit	17	0	0	0	2	Closed 3/29/18
Putnam CI	2	2	0	0	1	Closed 12/8/17
Lancaster CI	12	3	0	1	3	Open
Zephyrhills CI	17	26	7	3	2	Open

Table 2d. Fiscal Year 2017-2018 Surveyed Institutions CAP Assessment Summary

Fiscal Year 2017-2018 Surveyed Institutions						
Institution	Total Number of Physical Health Findings	Total Number of Mental Health Findings	Total Number of Open Physical Health CAP Findings	Total Number of Open Mental Health CAP Findings	Number of CAP Assessments	Open or Closed
Hernando CI	11	10	0	0	2	Closed 5/17/18
Gadsden CF	12	20	0	2	2	Open
Cross City CI**	14	20	0	0	2	Closed 9/25/18
Lake City CF	5	15	0	5	2	Open
Lawtey CI**	9	0	0	0	2	Closed 8/15/18
Florida State Prison**	12	5	0	0	2	Closed 11/21/18
Florida State Prison-West **	20	12	0	0	2	Closed 11/21/18
Taylor CI-Main	19	14	7	9	1	Open
Taylor CI-Annex	17	15	2	10	1	Open
Sumter CI	29	29	15	23	1	Open
Marion CI	12	16	12	16	1	Open
Baker Re-Entry Center	3	0	0	0	1	Closed 4/26/18
Tomoka CI	17	6	3	1	1	Open
Gadsden Re-Entry Center**	3	0	0	0	1	Closed 9/17/18
Lake CI	30	31	6	11	1	Open
Homestead CI**	7	4	0	0	1	Closed 10/19/18
Wakulla CI-Main	27	6	27	6	0	Open
Wakulla CI-Annex	13	20	13	20	0	Open
Central Florida Reception Center-Main	18	17	18	17	0	Open
Central Florida Reception Center-East	15	2	15	2	0	Open
Central Florida Reception Center-South	6	8	6	8	0	Open
Northwest Florida Reception Center-Main	23	16	23	16	0	Open
Northwest Florida Reception Center-Annex	10	14	10	14	0	Open

Institutions will be re-surveyed in FY 2018-19.

****Indicates institutions with CAP assessments completed after June 30, 2018.***

Summary of Fiscal Year 2017-2018 Institutional Survey Findings

The institutional survey process evaluates the quality of physical and mental health services provided by contracted health services providers, identifies significant deficiencies in care and treatment, and assesses institutional compliance with FDC's policies and procedures. The survey process also provides a performance snapshot of FDC's overall health care delivery system. Analyzing and comparing the results of institutional surveys has assisted the CMA in identifying system-wide trends and determining if FDC's health care standards and required practices are followed across institutions.

Institutional survey reports provide detailed information that include descriptions of findings and discussion points. In contrast to individual reports, the information presented in this section does not attempt to provide a detailed summary of all identified survey findings, nor does it attempt to compare institutions based on individual performance. The information presented summarizes overall performance and identifies significant findings from each service delivery area evaluated during physical and mental health surveys. These findings required corrective action and include only findings noted at three or more institutions, except for findings for inpatient mental health services and reception because only one inpatient unit and two reception centers were surveyed during the fiscal year.

PHYSICAL HEALTH SURVEY FINDINGS

The physical health survey process is used to evaluate inmates' access to care and the provision and adequacy of episodic, chronic disease, dental care, and medical administrative processes and procedures. The following areas are evaluated during the physical health portion of surveys: chronic illness clinics (CIC), consultation requests, dental systems and care, emergency care, infection control, infirmary care, inmate requests, institutional tour, intra-system transfers, medication administration, periodic screenings, pharmacy, pill line administration, and sick call.

In FY 2017-18, there were 332 physical health findings, which represented 54 percent of total survey findings. When compared to FY 2016-17, there was a 47 percent increase in the number of physical health findings. Table 3 provides a description of each physical health assessment area, the total number of findings by area, and the total number of institutions with findings in each area. Table 4 provides a summary of findings by institution.

Table 3. Description of Physical Health Survey Assessment Areas

Assessment Area	Description of Assessment Area	Total Findings	Institutions with Findings
Chronic Illness Clinics	Assesses care provided to inmates with specific chronic care issues. Clinical records reviews are completed for the following chronic illness clinics: cardiovascular, endocrine, gastrointestinal, immunity, miscellaneous, neurology, oncology, respiratory, and tuberculosis	111 (33%)	22 (96%)
Consultation Requests	Assesses processes for approving, denying, scheduling services, and follow-up for specialty care services	29 (9%)	19 (83%)
Dental Care	Assesses the provision of dental care	19 (6%)	10 (50%)*
Dental Systems	Assesses compliance with FDC's policies and procedures for dental services	20 (6%)	13 (65%)*
Emergency Care	Assesses emergency care processes for addressing urgent/emergent medical complaints	12 (4%)	10 (43%)
Infection Control	Assesses compliance with infection control policies and procedures	1 (0.30%)	1 (4%)
Infirmary Care	Assesses the provision of skilled nursing services in infirmary settings	33 (10%)	12 (75%)***
Institutional Tour	Tour of medical, dental, and housing facilities	40 (12%)	20 (87%)
Intra-System Transfers	Assesses systems and processes for ensuring continuity of care for inmates transferred between institutions	12 (4%)	10 (43%)
Medical Inmate Requests	Assesses systems and processes for reviewing, approving, and/or denying physical health related inmate requests	9 (3%)	7 (30%)
Medication Administration	Assesses the administration of medication and clinical documentation related to medication practices	11 (3%)	7 (30%)
Periodic Screenings	Assesses the provision of periodic physical examinations and health screenings	11 (3%)	8 (35%)
Pharmacy Services	Assesses compliance with FDC's policies and procedures for medication storage, inventory, and disposal	5 (2%)	3 (13%)
Pill Line Administration	Assesses medication dispensing practices to ensure proper nursing practices and policies are followed	5 (2%)	2 (9%)
Reception Process	Assesses compliance with FDC's policies and procedures for physical health screenings of new inmates	1 (0.30%)	1 (50%)****
Sick Call	Assesses sick call processes to address acute and non-emergency medical complaints and inmate access to sick call	10 (3%)	9 (39%)

Dental services were not provided at Baker Re-Entry and Gadsden Re-Entry.

****Infirmary services were not provided at Hernando CI, FSP, Taylor CI-Annex, Baker Re-Entry, Gadsden Re-Entry, and Wakulla CI-Annex.***

*****Reception services were provided at CFRC-Main and NWFRC-Annex.***

Table 4. Summary of Physical Health Survey Findings by Institution

Institutions	Chronic Illness Clinics	Consultation Requests	Dental Care	Dental Systems	Emergency Care	Infection Control	Infirmary Care	Institutional Tour	Intra-System Transfers	Medical Inmate Requests	Medication Administration	Periodic Screenings	Pharmacy	Pill Line Administration	Reception Process	Sick Call	Additional Administrative Issues	Total
Hernando CI	3	2	0	2	0	1	N/A	1	1	0	0	0	1	0	N/A	0	N/A	**11**
Gadsden CF	5	0	1	1	0	0	0	1	0	0	3	1	0	0	N/A	0	N/A	**12**
Cross City CI	7	4	0	1	1	0	0	0	0	1	0	0	0	0	N/A	0	N/A	**14**
Lake City CF	3	1	0	0	0	0	1	0	0	0	0	0	0	0	N/A	0	N/A	**5**
Lawtey CI	3	1	0	0	0	0	2	1	0	0	0	0	0	0	N/A	1	1	**9**
Florida State Prison	1	3	0	1	0	0	N/A	1	0	1	1	3	0	0	N/A	0	1	**12**
Florida State Prison-West	7	1	2	1	1	0	3	5	0	0	0	0	0	0	N/A	0	N/A	**20**
Taylor CI-Main	6	0	0	2	0	0	5	0	3	0	1	1	1	0	N/A	0	N/A	**19**
Taylor CI-Annex	1	2	3	2	1	0	N/A	5	0	2	1	0	0	0	N/A	0	N/A	**17**
Sumter CI	14	1	1	2	2	0	3	3	1	1	0	0	0	0	N/A	1	N/A	**29**
Marion CI	4	1	0	1	0	0	2	2	0	0	2	0	0	0	N/A	0	N/A	**12**
Baker Re-Entry Center	1	0	N/A	N/A	0	0	N/A	1	1	0	0	0	0	0	N/A	0	N/A	**3**
Tomoka CI	5	1	0	0	1	0	2	1	0	0	2	0	0	3	N/A	2	N/A	**17**
Gadsden Re-Entry Center	0	0	N/A	N/A	0	0	N/A	1	1	0	0	1	0	0	N/A	0	N/A	**3**
Lake CI	9	1	3	1	2	0	7	2	1	0	0	0	3	0	N/A	1	N/A	**30**
Homestead CI	1	1	1	1	0	0	0	1	0	0	0	0	0	2	N/A	0	N/A	**7**
Wakulla CI-Main	9	1	3	3	0	0	4	2	0	2	1	0	0	0	N/A	1	1	**27**
Wakulla CI-Annex	3	2	2	2	1	0	N/A	1	1	0	0	1	0	0	N/A	0	N/A	**13**
Central Florida Reception Center-Main	7	2	2	0	1	0	1	2	1	0	0	1	0	0	1	0	N/A	**18**
Central Florida Reception Center-East	4	1	0	0	0	0	N/A	5	1	1	0	2	0	0	N/A	1	N/A	**15**
Central Florida Reception Center-South	1	2	N/A	N/A	1	0	0	1	0	0	0	0	0	0	N/A	1	N/A	**6**
Northwest Florida Reception Center-Main	14	1	0	0	1	0	2	2	0	1	0	1	0	0	N/A	1	N/A	**23**
Northwest Florida Reception Center-Annex	3	1	1	0	0	0	1	2	1	0	0	0	0	0	0	1	N/A	**10**
	111	**29**	**19**	**20**	**12**	**1**	**33**	**40**	**12**	**9**	**11**	**11**	**5**	**5**	**1**	**10**	**2**	**332**

CHRONIC ILLNESS CLINICS

As in previous years, an analysis of aggregate survey data revealed that the majority (33 percent) of physical health survey findings were related to CICs. CIC findings were noted at 22 of 23 surveyed institutions. Table 5 summarizes CIC findings.

Table 5. Summary of Chronic Illness Clinic Findings

Chronic Illness Clinics	Total Findings	Institutions with Findings
Cardiovascular	4 (4%)	4 (17%)
Endocrine	19 (17%)	15 (65%)
Gastrointestinal	11 (10%)	8 (35%)
Immunity	9 (8%)	7 (30%)
Miscellaneous	15 (14%)	9 (39%)
Neurology	17 (15%)	13 (57%)
Oncology	8 (7%)	4 (17%)
Respiratory	8 (7%)	6 (26%)
Tuberculosis	13 (12%)	5 (22%)

In total, 111 CIC findings were identified across all 23 institutions. While CICs had findings specifically related to the delivery of care for that clinic, several common findings were identified across clinics. The most commonly reported findings across all clinics were related to: inmates not being seen at the required intervals according to M-grade status, missing vaccinations, and abnormal labs not being addressed timely.

Common CIC findings for specific clinics are detailed below:

- Endocrine Clinic: record reviews indicated that fundoscopic examinations were not completed annually and inmates with uncontrolled blood sugar levels were not seen at required intervals
- Miscellaneous Clinic: examinations were not appropriate and sufficient to assess conditions, the control of the disease was not evaluated at each clinic visit, and referrals to specialty services were not made when indicated
- Neurology Clinic: seizures were not consistently classified by type
- Respiratory Clinic: reactive airway diseases were not classified
- Tuberculosis Clinic: missing monthly nursing follow-up therapy and incorrect doses of tuberculosis medications administered

CONSULTATION REQUESTS

Consultation findings represented nine percent of physical health findings. Findings were noted for 19 (83 percent) surveys. The most common consultation findings across institutions were untimely follow-up consultation appointments or diagnostic/laboratory testing, incomplete or missing documentation of consultation appointments, and incomplete or missing documentation of new diagnoses on problem lists.

DENTAL REVIEW

Dental care findings were noted at 10 (50 percent) institutions and dental system findings were noted at 13 (65 percent) institutions. Nineteen findings were related to clinical care and 20 findings were related to dental systems. Across institutions, the most common clinical care findings were related to incomplete or inaccurate charting of dental findings, inaccurate diagnosis and inappropriate treatment plans, and incomplete and untimely referrals for higher levels of care. The most common systems findings were related to dental assistants working outside Florida Board of Dentistry (64B5-16, F.A.C.) guidelines and the disrepair, accessibility, and availability of dental equipment.

EMERGENCY CARE

Emergency care findings were noted for 10 (43 percent) surveys, with 12 (4 percent) findings. Incomplete and untimely referrals for higher levels of care were identified as the most common emergency care finding across institutions.

INFECTION CONTROL

One (0.30 percent) finding related to infection control was noted for one (four percent) survey. There were no system-wide trends.

INFIRMARY CARE

Infirmary care findings were noted at 12 (75 percent) institutions where infirmary care services were provided. Clinical records reviews resulted in 33 (10 percent) findings. The most common findings across institutions included: clinician orders not implemented or implemented incorrectly, missing outpatient discharge notes, incomplete nursing evaluations, incomplete clinician weekend telephone rounds, and incomplete clinician discharge summaries.

INSTITUTIONAL TOUR

Institutional tour findings were noted for 20 (87 percent) surveys, and resulted in 40 (12 percent) findings. No system-wide trends were identified.

INTRA-SYSTEM TRANSFERS

Twelve (4 percent) findings related to intra-system transfers were noted for 10 (43 percent) surveys. One system-wide trend was noted across institutions: incomplete clinician review of intra-system transfers documentation.

MEDICAL INMATE REQUESTS

Seven (30 percent) institutions surveyed had findings related to medical inmate requests. In total, 9 (3 percent) findings were identified. There were no system-wide trends.

MEDICATION ADMINISTRATION RECORD REVIEW AND PILL LINE OBSERVATION

Clinical record reviews related to medication administration resulted in 11 (3 percent) findings across seven (30 percent) institutions surveyed. There were five (2 percent) findings resulting from pill line observations of medication administration.

There were no system-wide issues related to pill line observation. Two system-wide trends related to medication administration were noted across institutions: missing clinician corresponding notes in the medical record and medication administration records (MAR) not matching clinician's orders.

PERIODIC SCREENINGS

Eleven (3 percent) periodic screening findings were noted at 8 (35 percent) institutions. The most common findings were untimely or incomplete diagnostic testing and incomplete and untimely referrals for higher levels of care.

PHARMACY SERVICES

There were five (2 percent) findings related to pharmacy services at three (13 percent) institutions. No system-wide trends were noted.

SICK CALL

There were 10 (3 percent) findings related to the sick call process. Nine (39 percent) institutions had reportable findings. Inadequate and untimely follow-up visits were the only system-wide issue identified across institutions.

RECEPTION PROCESS

Reception services were provided at two institutions and one (0.30 percent) finding was noted. No system-wide trends were noted.

Mental Health Survey Findings

Mental health surveys assess inmates' access to mental health services, the provision and adequacy of outpatient and inpatient mental health services, and administrative processes and procedures. The following areas are evaluated during mental health surveys: discharge planning, inpatient mental health services, inpatient psychiatric medication practices, mental health inmate requests, mental health systems, psychiatric restraints, psychological emergencies, outpatient mental health services, outpatient psychiatric medication practices, the reception process, self-injury/suicide prevention, access to care in special housing, and use of force.

It is important to note that some mental health assessment areas were not applicable for all institutions. Record reviews for self-injury/suicide prevention, psychiatric restraint, and use of force were completed for institutions that had available episodes for review. Psychiatric medication practices and discharge planning record reviews were only applicable for institutions housing inmates who had mental health grades of S3 and above. Additionally, special housing was reviewed only at institutions where confinement was provided. Reception and inpatient mental health were assessed at specific institutions that provide those services.

There were 280 mental health findings in FY 2017-18 that represented 46 percent of total survey findings. As in previous fiscal years, outpatient mental health services findings represented the majority (29 percent) of reported mental health findings. Findings in the areas of outpatient psychiatric medication practices and self-injury/suicide prevention also continued to represent a significant portion of mental health findings. There were no findings related to psychiatric restraints. There were no mental health findings at three institutions (Lawtey CI, Baker Re-entry, and Gadsden Re-entry).

Table 6 below provides a description of each mental health survey assessment area, the total number of findings by area, and the total number of institutions with findings in each area. Table 7 summarizes mental health survey findings across institutions.

Table 6. Description of Mental Health Survey Assessment Area

Assessment Area	Description of Assessment Area	Total Findings	Institutions with Findings
Discharge Planning	Assesses processes for ensuring the continuity of mental health care for inmates within 180 days of end of sentence	9 (3%)	13 (57%)*
Inpatient Mental Health Services	Assesses the provision of mental health care in inpatient settings	3 (1%)	1 (100%)**
Inpatient Psychiatric Medication Practices	Assesses medication administration and documentation of psychiatric assessment in inpatient settings	4 (1%)	1 (100%)**
Mental Health Inmate Requests	Assesses systems and processes for reviewing, approving, and/or denying mental health related inmate requests	11 (4%)	9 (41%)
Mental Health Systems Reviews	Assesses systems and processes related to mental health staff training, clinical supervision, and other administrative functions	11 (4%)	7 (30%)
Psychiatric Restraints	Assesses compliance with FDC's policies and procedures for psychiatric restraints	0 (0%)	0 (0%)***
Psychological Emergencies	Assesses the process for responding to inmate mental health emergencies	13 (5%)	8 (36%)****
Outpatient Mental Health Services	Assesses the provision of mental health services in an outpatient setting	82 (29%)	18 (78%)
Outpatient Psychiatric Medication Practices	Assesses medication administration and documentation of psychiatric assessment in outpatient settings	50 (18%)	11 (79%)*****
Reception Process	Assesses compliance with FDC's policies and procedures for mental health screenings of new inmates	3 (1%)	2 (100%)******
Self-Injury/ Suicide Prevention	Assesses compliance with FDC's policies and procedures for self-injury and suicide prevention	58 (21%)	16 (100%)*******
Special Housing	Assesses compliance with FDC's policies and procedures for providing mental health services to inmates assigned to confinement, protective management, or close management	13 (5%)	7 (39%)********
Use of Force	Assesses compliance with FDC's use of force policies and procedures following use of force episodes for inmates on the mental health caseload	23 (8%)	10 (77%)*********

Discharge Planning was provided at institutions housing inmates with grades S-3 and higher.
****Inpatient Mental Health Services and Inpatient Psychiatric Medications were provided at Lake CI.***
*****There were two institutions with Psychiatric Restraint episodes.***
******There were no Psychological Emergencies for review at CFRC-South.***
*******Outpatient Psychiatric Medication was provided at institutions housing inmates with a grade of S-3. Fourteen institutions were assessed.***
********Reception Services were only provided at CFRC-Main and NWFRC-Annex.***
*********Inmates were not housed for Self-Injury/Suicide Prevention at Hernando CI, Lawtey CI, Baker Re-entry, Gadsden Re-Entry, Wakulla CI-Annex, CFRC-East, and CFRC-South.***
**********Special housing was not provided at Lawtey CI, Baker Re-entry, Gadsden Re-entry, CFRC-East, and CFRC-South.***
***********There were 13 institutions with applicable use of force episodes.***

Table 7. Summary of Mental Health Survey Findings by Institution

Institutions	Discharge Planning	Inpatient Mental Health Services	Inpatient Psychiatric Medication Practices	Mental Health Inmate Requests	Mental Health Systems Reviews	Psychiatric Restraints	Psychological Emergency	Outpatient Mental Health Services	Outpatient Psychiatric Medication Practices	Reception Process	Self-Injury/ Suicide Prevention	Special Housing	Use of Force	Total
Hernando CI	1	N/A	N/A	0	2	N/A	0	5	1	N/A	N/A	1	N/A	10
Gadsden CF	2	N/A	N/A	1	1	N/A	1	5	5	N/A	5	0	N/A	20
Cross City CI	N/A	N/A	N/A	0	1	N/A	3	8	N/A	N/A	6	2	N/A	20
Lake City CF	2	N/A	N/A	0	1	N/A	0	0	7	N/A	3	0	2	15
Lawtey CI	N/A	N/A	N/A	0	0	N/A	0	0	0	N/A	N/A	N/A	N/A	0
Florida State Prison	0	N/A	N/A	0	0	0	1	3	0	N/A	1	0	0	5
Florida State Prison-West	N/A	N/A	N/A	0	2	N/A	0	5	N/A	N/A	5	0	N/A	12
Taylor CI-Main	N/A	N/A	N/A	0	0	N/A	2	6	N/A	N/A	4	0	2	14
Taylor CI-Annex	N/A	N/A	N/A	1	0	N/A	2	5	N/A	N/A	5	0	2	15
Sumter CI	N/A	N/A	N/A	2	3	N/A	2	8	N/A	N/A	9	3	2	29
Marion CI	0	N/A	N/A	0	0	N/A	0	9	2	N/A	3	0	2	16
Baker Re-Entry Center	N/A	N/A	N/A	0	0	N/A	0	0	N/A	N/A	N/A	N/A	N/A	0
Tomoka CI	1	N/A	N/A	0	0	N/A	1	2	1	N/A	1	0	0	6
Gadsden Re-Entry Center	N/A	N/A	N/A	0	0	N/A	0	0	N/A	N/A	N/A	N/A	N/A	0
Lake CI	2	3	4	0	1	0	1	7	6	N/A	3	2	2	31
Homestead CI	0	N/A	N/A	0	0	N/A	0	0	0	N/A	1	0	3	4
Wakulla CI-Main	N/A	N/A	N/A	1	0	N/A	0	2	N/A	N/A	3	0	N/A	6
Wakulla CI-Annex	1	N/A	N/A	1	0	N/A	0	6	7	N/A	N/A	1	4	20
Central Florida Reception Center-Main	0	N/A	N/A	1	0	N/A	0	4	2	2	4	1	3	17
Central Florida Reception Center-East	N/A	N/A	N/A	1	0	N/A	0	1	N/A	N/A	N/A	N/A	N/A	2
Central Florida Reception Center-South	0	N/A	N/A	N/A	0	N/A	N/A	1	7	N/A	N/A	N/A	N/A	8
Northwest Florida Reception Center-Main	0	N/A	N/A	2	0	N/A	0	2	8	N/A	3	0	1	16
Northwest Florida Reception Center-Annex	0	N/A	N/A	1	0	N/A	0	3	4	1	2	3	0	14
Total Findings	9	3	4	11	11	0	13	82	50	3	58	13	23	280

DISCHARGE PLANNING

Record reviews for discharge planning were completed at 13 institutions, and of those institutions, 6 (46 percent) had findings. Nine (3 percent) findings were identified and the most common findings were related to: inadequate or incomplete aftercare planning documentation and missing or incomplete consent for release of confidential information.

MENTAL HEALTH INMATE REQUESTS

Nine institutions (41 percent) had mental health inmate request findings, with 11 (4 percent) reportable findings. The most common finding was incomplete or missing follow-up for referrals/interviews.

MENTAL HEALTH SERVICES

INPATIENT MENTAL HEALTH SERVICES

Inpatient mental health services were provided at one surveyed institution. Three (1 percent) findings were noted. No system-wide trends can be determined.

OUTPATIENT MENTAL HEALTH SERVICES

Findings related to outpatient mental health services accounted for 29 percent (82) of mental health survey findings. Eighteen (78 percent) institutions had reportable findings. The most common findings were related to: untimely mental health screening evaluations, incomplete, inadequate, and/or untimely ISP documentation, incomplete problem list documentation, missing, inadequate, and/or untimely counseling and case management services.

MENTAL HEALTH SYSTEMS REVIEWS

Mental health systems findings were noted at 7 (30 percent) institutions, and 11 (4 percent) findings were identified. The lack of psychiatric restraint equipment was a common finding across institutions.

PSYCHIATRIC MEDICATION PRACTICES

INPATIENT PSYCHIATRIC MEDICATION PRACTICES

Inpatient psychiatric medication practice record reviews were completed for one institution and resulted in 4 (1 percent) findings. No system-wide trends can be determined.

OUTPATIENT PSYCHIATRIC MEDICATION PRACTICES

Eleven (79 percent) institutions had outpatient psychiatric medication practice findings and 50 (18 percent) findings were identified. Across institutions, the most common findings were related to incomplete initial laboratory testing, incomplete follow-up treatment and/or referrals for abnormal labs, incomplete follow-up labs, medications not given as ordered and/or missing documentation for medication refusals, and untimely Abnormal Involuntary Movement Scale (AIMS) assessments.

PSYCHIATRIC RESTRAINTS

During the fiscal year, psychiatric restraint episodes were available for review at two institutions and, based on those episodes, no findings were identified.

PSYCHOLOGICAL EMERGENCIES

Psychological emergency findings were noted for eight (36 percent) institutions and resulted in 13 (5 percent) findings. The most common finding across institutions was incomplete or missing follow-up in response to psychological emergencies.

RECEPTION PROCESS

Two reception centers were surveyed during the fiscal year, resulting in three (1 percent) reception process findings. Incomplete or missing intelligence testing was noted as a finding for both reception centers.

SELF-INJURY/SUICIDE PREVENTION

Self-harm observation status (SHOS) findings were identified for 16 (100 percent) surveys with SHOS episodes for review, resulting in 58 (21 percent) findings. The most commonly identified findings across institutions were related to missing and/or incomplete emergency evaluations, noncompliance with SHOS management guidelines, noncompliance with clinician orders for observation frequency, incomplete and/or missing nursing evaluations, missing daily counseling by mental health staff, and missing post-discharge follow-up.

SPECIAL HOUSING

Special housing findings were noted at seven (39 percent) surveyed institutions. There were 13 (5 percent) reportable findings. The most common findings were related to incomplete special housing health appraisals and untimely mental status exams.

USE OF FORCE

There were applicable use of force episodes for review at 13 institutions surveyed during the fiscal year. Findings were noted at 10 (77 percent) of those institutions, which resulted in 23 (8 percent) findings. The most common findings were related to incomplete post use of force examinations, incomplete referrals to mental health from nursing staff, and untimely interviews by mental health staff to determine whether a higher level of care was needed.

SUMMARY OF SYSTEM-WIDE TRENDS AND RECOMMENDATIONS

Tables 8 and 9 below summarize system-wide findings identified during FY 2017-18 physical and mental health surveys. These findings were not noted at all institutions; however, they were noted at three or more institutions.

Table 8. Physical Health Survey: System-Wide Trends

Assessment Area	Physical Health Survey System-Wide Areas of Concern
Chronic Illness Clinics	• Inmates were not seen timely according to M-grade status (Chronic Illness Clinic) • There was no evidence of vaccinations or refusals (Gastroenterology and Immunity Clinics) • There was no evidence of fundoscopic examinations (Endocrine Clinic) • There was no evidence that inmates with HgbA1c over 8.0 were seen at least every three months (Endocrine Clinic) • There was no evidence that the control of the disease was documented at each clinic visit (Miscellaneous Clinic) • There was no evidence of referrals to a specialist for more in-depth treatment, when indicated (Miscellaneous Clinic) • There was no evidence examinations were appropriate to the diagnosis and sufficient to assess patients' current status (Miscellaneous Clinic) • Seizures were not classified by nomenclature (Neurology Clinic) • Abnormal labs were not addressed in a timely manner (Neurology Clinic) • There was no evidence reactive airway diseases were classified as mild, moderate, or severe (Respiratory Clinic) • There was no evidence nursing staff provided monthly follow-up therapy in the Tuberculosis Clinic (Tuberculosis Clinic) • Inmates were not given the correct doses of tuberculosis medication (Tuberculosis Clinic)
Consultation Requests	• New diagnoses were not reflected on problem lists • There was no evidence consultant's recommendations were incorporated into treatment plans • The Consultation Appointment Log was incomplete
Dental Review	• Dental equipment was not in working order or not accessible • There was no evidence of complete and accurate charting of dental findings • There was no evidence of accurate diagnoses and appropriate treatment plans • There was no evidence that consultation or specialty services were requested in a reasonable timeframe
Emergency Care	• There was no evidence follow-up appointments with higher level clinicians were made in a timely manner
Infirmary Care	• Physician's orders were not implemented or implemented incorrectly • Discharge notes for outpatient infirmary admissions were missing • There was no evidence nursing evaluations were completed at least once every eight hours • There was no evidence of clinician weekend telephone rounds • Clinician discharge summaries were not completed within 72 hours of discharge
Intra-system Transfers	• Clinicians did not review intra-system transfer forms within seven days of arrival
Medication Administration	• There was no evidence of corresponding notes for medication orders in the medical record from an advanced level provider • MARS did not match the medication order
Periodic Screenings	• There was no evidence that all required diagnostic tests were performed prior to screening • Referrals were not made when indicated
Sick Call	• There was no evidence that follow-up visits occurred as indicated in a timely manner

Table 9. Mental Health Survey: System-Wide Trends

Assessment Area	Mental Health Survey System-Wide Areas of Concern
Discharge Planning	• Aftercare planning was not addressed on the Individualized Service Plan (ISP) within 180 days of expiration of sentence (EOS) • Consent to release information for continuity of care was missing or incomplete
Inpatient Mental Health Services	• No trends identified
Inpatient Psychiatric Medication Practices	• No trends identified
Mental Health Inmate Requests	• Interview or referral indicated in request response did not occur
Psychiatric Restraints	• No findings noted
Psychological Emergencies	• Following psychological emergency, there was no evidence of follow-up
Outpatient Mental Health Services	• Mental health screening evaluations were incomplete • Bio-psychosocial Assessments (BPSA) were not approved by all members of the multidisciplinary services team (MDST) within 30 days of initiating treatment • Mental health services were not initiated within 30 days of receiving an S2 or S3 mental health grade • ISPs did not specify the types of interventions, frequency of interventions, and/or the staff responsible for providing interventions • ISPs were not signed by all members of the MDST and/or inmate, or inmate refusal was not documented • ISPs were not reviewed or revised at the 180-day interval • Mental health problems were not recorded on the problem list • There was no evidence that inmates received mental health interventions and services described on the ISP •There was no evidence that counseling (individual or group) was offered and provided at least once every 90 days • There was no evidence that case management was provided at least every 90 days
Outpatient Psychiatric Medication Practices	• Initial laboratory tests were not ordered • Abnormal labs were not followed-up with appropriate treatment and/or referral in a timely manner • Follow-up labs were not completed • Inmates did not receive medications as prescribed and/or there was no documentation of refusal • There was no evidence nursing staff met with inmates who refused medication for two consecutive days • A "Refusal of Health Care Services" form was not signed after three consecutive medication refusals or five refusals in one month • Follow-up psychiatric contacts were not conducted at appropriate intervals • AIMS were not administered within the appropriate time frame
Reception Process	• Intelligence testing was not completed
Self-Injury/ Suicide Prevention	• Emergency evaluations were not completed by mental health or nursing staff prior to admissions • Guidelines for SHOS management were not observed • There was no evidence that inmates were observed at the frequency ordered by clinicians • "Mental Health Daily Nursing Evaluations" were not completed once per shift, as required • Daily counseling by mental health staff did not occur • There was no evidence that mental health staff provided post-discharge follow-up within seven days
Special Housing	• "Special Housing Health Appraisals" were not completed • Mental status exams were not completed within the required timeframe
Use of Force	• There was no evidence that post use of force evaluations were conducted as required • Following use of force episodes, there was no evidence of a referral to mental health from physical health staff •Untimely mental health assessments following use of force episodes

THREE-YEAR INSTITUTIONAL SURVEY COMPARISION

During FY 2017-18, 13 institutions were resurveyed as a part of the CMA's triennial survey schedule. These institutions were initially surveyed in FY 2013-14 and 2014-15. The tables below provide a comparison of survey findings from the first survey cycle and FY 2017-18.

While a side by side comparison is provided, it is important to note that new survey tools have been implemented since the first round of CMA triennial surveys beginning in 2013. The CMA routinely updates survey tools as FDC policies and procedures are written, revised, and implemented. Additionally, CMA creates or revises tools to increase efficiency and accuracy of the survey process. The number of findings related to chronic illness clinics and medical inmate requests were impacted by these changes.

PHYSICAL HEALTH FINDINGS

Table 10a. Fiscal Years 2013-2014 and 2014-2015 Surveyed Institutions Physical Health Findings

Institutions	Chronic Illness Clinics	Consultation Requests	Dental Review	Emergency Care	Infection Control	Infirmary Care	Institutional Tour	Intra-System Transfers	Medical Inmate Requests	Medication Administration	Periodic Screenings	Pharmacy	Pill Line Administration	Reception Process	Sick Call	Additional Administrative Issues	Total
Hernando CI	15	3	6	1	0	N/A	2	2	N/A	1	1	0	2	N/A	0	N/A	33
Gadsden CF	29	2	0	0	0	3	1	0	N/A	1	2	0	0	N/A	0	N/A	38
Cross City CI	6	1	0	0	0	0	0	2	N/A	2	0	0	0	N/A	0	N/A	11
Florida State Prison	10	1	1	0	0	N/A	1	1	N/A	1	0	1	0	N/A	0	N/A	16
Florida State Prison-West	21	1	0	0	0	1	2	0	N/A	0	0	0	1	N/A	0	N/A	26
Taylor CI-Main	30	2	0	0	0	4	1	1	N/A	1	5	1	0	N/A	5	N/A	50
Taylor CI-Annex	35	4	0	1	0	N/A	4	0	N/A	0	0	0	0	N/A	1	N/A	45
Sumter CI	6	1	0	0	0	5	0	0	N/A	0	0	0	1	N/A	1	N/A	14
Marion CI	21	3	1	1	0	3	1	1	N/A	0	0	0	0	N/A	0	N/A	31
Tomoka CI	14	1	2	1	0	6	1	1	N/A	0	2	0	1	N/A	1	N/A	30
Lake CI	14	1	3	0	0	2	1	0	N/A	0	3	0	0	N/A	0	N/A	24
Homestead CI	14	3	0	0	0	0	0	0	N/A	1	0	2	0	N/A	0	N/A	20
Wakulla CI-Main	22	1	1	0	0	2	1	0	N/A	0	0	0	0	N/A	0	N/A	27
Wakulla CI-Annex	19	1	1	3	0	N/A	0	1	N/A	1	2	1	0	N/A	1	N/A	30
Central Florida Reception Center-Main	5	1	2	2	0	2	2	3	N/A	1	3	1	0	4	0	N/A	26
Central Florida Reception Center-East	22	0	2	0	0	N/A	3	0	N/A	0	0	0	0	N/A	0	N/A	27
Northwest Florida Reception Center-Main	24	2	3	1	0	8	2	2	N/A	0	0	0	0	N/A	1	N/A	43
Northwest Florida Reception Center-Annex	25	6	1	0	0	0	0	0	N/A	1	0	0	0	0	1	N/A	34
	332	34	23	10	0	36	22	14	N/A	10	18	6	5	4	11	N/A	525

Table 10b. Fiscal Year 2017-2018 Surveyed Institutions Physical Health Findings

Institutions	Chronic Illness Clinics	Consultation Requests	Dental Care	Dental Systems	Emergency Care	Infection Control	Infirmary Care	Institutional Tour	Intra-System Transfers	Medical Inmate Requests	Medication Administration	Periodic Screenings	Pharmacy	Pill Line Administration	Reception Process	Sick Call	Additional Administrative Issues	Total
Hernando CI	3	2	0	2	0	1	N/A	1	1	0	0	0	1	0	N/A	0	N/A	11
Gadsden CF	5	0	1	1	0	0	0	1	0	0	3	1	0	0	N/A	0	N/A	12
Cross City CI	7	4	0	1	1	0	0	0	0	1	0	0	0	0	N/A	0	N/A	14
Florida State Prison	1	3	0	1	0	0	N/A	1	0	1	1	3	0	0	N/A	0	1	12
Florida State Prison-West	7	1	2	1	1	0	3	5	0	0	0	0	0	0	N/A	0	N/A	20
Taylor CI-Main	6	0	0	2	0	0	5	0	3	0	1	1	1	0	N/A	0	N/A	19
Taylor CI-Annex	1	2	3	2	1	0	N/A	5	0	2	1	0	0	0	N/A	0	N/A	17
Sumter CI	14	1	1	2	2	0	3	3	1	1	0	0	0	0	N/A	1	N/A	29
Marion CI	4	1	0	1	0	0	2	2	0	0	2	0	0	0	N/A	0	N/A	12
Tomoka CI	5	1	0	0	1	0	2	1	0	0	2	0	0	3	N/A	2	N/A	17
Lake CI	9	1	3	1	2	0	7	2	1	0	0	0	3	0	N/A	1	N/A	30
Homestead CI	1	1	1	1	0	0	0	1	0	0	0	0	0	2	N/A	0	N/A	7
Wakulla CI-Main	9	1	3	3	0	0	4	2	0	2	1	0	0	0	N/A	1	1	27
Wakulla CI-Annex	3	2	2	2	1	0	N/A	1	1	0	0	1	0	0	N/A	0	N/A	13
Central Florida Reception Center-Main	7	2	2	0	1	0	1	2	1	0	0	1	0	0	1	0	N/A	18
Central Florida Reception Center-East	4	1	0	0	0	0	N/A	5	1	1	0	2	0	0	N/A	1	N/A	15
Northwest Florida Reception Center-Main	14	1	0	0	1	0	2	2	0	1	0	1	0	0	N/A	1	N/A	23
Northwest Florida Reception Center-Annex	3	1	1	0	0	0	1	2	1	0	0	0	0	0	0	1	N/A	10
	103	25	19	20	11	1	30	36	10	9	11	10	5	5	1	8	2	306

MENTAL HEALTH FINDINGS

Table 10c. Fiscal Years 2013-2014 and 2014-2015 Surveyed Institutions Mental Health Findings

Institutions	Discharge Planning	Inpatient Mental Health Services	Inpatient Psychiatric Medication Practices	Mental Health Inmate Requests	Mental Health Systems Reviews	Psychiatric Restraints	Psychological Emergency	Outpatient Mental Health Services	Outpatient Psychiatric Medication Practices	Reception Process	Self-Injury/ Suicide Prevention	Special Housing	Use of Force	Total
Hernando CI	3	N/A	N/A	0	0	N/A	0	4	6	N/A	N/A	0	N/A	13
Gadsden CF	1	N/A	N/A	0	2	N/A	1	6	2	N/A	3	1	3	19
Cross City CI	N/A	N/A	N/A	0	0	N/A	0	1	N/A	N/A	4	0	0	5
Florida State Prison	0	N/A	N/A	0	2	N/A	0	1	3	N/A	2	0	0	8
Florida State Prison-West	N/A	N/A	N/A	0	2	N/A	0	1	N/A	N/A	N/A	0	N/A	3
Taylor CI-Main	N/A	N/A	N/A	1	4	N/A	2	12	N/A	N/A	5	3	0	27
Taylor CI-Annex	N/A	N/A	N/A	1	4	N/A	3	12	N/A	N/A	N/A	2	N/A	22
Sumter CI	N/A	N/A	N/A	0	0	N/A	0	0	N/A	N/A	3	0	N/A	3
Marion CI	N/A	N/A	N/A	1	1	N/A	0	1	N/A	N/A	2	0	N/A	5
Tomoka CI	0	N/A	N/A	0	1	N/A	0	5	7	N/A	5	0	2	20
Lake CI	3	9	15	1	1	5	1	1	7	N/A	3	2	0	48
Homestead CI	0	N/A	N/A	0	0	N/A	1	1	0	N/A	0	0	0	2
Wakulla CI-Main	N/A	N/A	N/A	0	0	N/A	0	4	N/A	N/A	12	N/A	N/A	16
Wakulla CI-Annex	N/A	N/A	N/A	0	0	N/A	1	5	5	N/A	N/A	0	N/A	11
Central Florida Reception Center-Main	0	N/A	N/A	2	1	N/A	0	6	7	2	3	2	2	25
Central Florida Reception Center-East	N/A	N/A	N/A	1	1	N/A	N/A	6	N/A	N/A	N/A	N/A	N/A	8
Northwest Florida Reception Center-Main	0	N/A	N/A	0	0	N/A	0	1	6	N/A	1	0	0	8
Northwest Florida Reception Center-Annex	0	N/A	N/A	1	0	N/A	0	4	7	2	1	0	0	15
Total Findings	7	9	15	8	19	5	9	71	50	4	44	10	7	258

Table 10d. Fiscal Year 2017-2018 Surveyed Institutions Mental Health Findings

Institutions	Discharge Planning	Inpatient Mental Health Services	Inpatient Psychiatric Medication Practices	Mental Health Inmate Requests	Mental Health Systems Reviews	Psychiatric Restraints	Psychological Emergency	Outpatient Mental Health Services	Outpatient Psychiatric Medication Practices	Reception Process	Self-Injury/ Suicide Prevention	Special Housing	Use of Force	Total
Hernando CI	1	N/A	N/A	0	2	N/A	0	5	1	N/A	N/A	1	N/A	10
Gadsden CF	2	N/A	N/A	1	1	N/A	1	5	5	N/A	5	0	N/A	20
Cross City CI	N/A	N/A	N/A	0	1	N/A	3	8	N/A	N/A	6	2	N/A	20
Florida State Prison	0	N/A	N/A	0	0	0	1	3	0	N/A	1	0	0	5
Florida State Prison-West	N/A	N/A	N/A	0	2	N/A	0	5	N/A	N/A	5	0	N/A	12
Taylor CI-Main	N/A	N/A	N/A	0	0	N/A	2	6	N/A	N/A	4	0	2	14
Taylor CI-Annex	N/A	N/A	N/A	1	0	N/A	2	5	N/A	N/A	5	0	2	15
Sumter CI	N/A	N/A	N/A	2	3	N/A	2	8	N/A	N/A	9	3	2	29
Marion CI	0	N/A	N/A	0	0	N/A	0	9	2	N/A	3	0	2	16
Tomoka CI	1	N/A	N/A	0	0	N/A	1	2	1	N/A	1	0	0	6
Lake CI	2	3	4	0	1	0	1	7	6	N/A	3	2	2	31
Homestead CI	0	N/A	N/A	0	0	N/A	0	0	0	N/A	1	0	3	4
Wakulla CI-Main	N/A	N/A	N/A	1	0	N/A	0	2	N/A	N/A	3	0	N/A	6
Wakulla CI-Annex	1	N/A	N/A	1	0	N/A	0	6	7	N/A	N/A	1	4	20
Central Florida Reception Center-Main	0	N/A	N/A	1	0	N/A	0	4	2	2	4	1	3	17
Central Florida Reception Center-East	N/A	N/A	N/A	1	0	N/A	0	1	N/A	N/A	N/A	N/A	N/A	2
Northwest Florida Reception Center-Main	0	N/A	N/A	2	0	N/A	0	2	8	N/A	3	0	1	16
Northwest Florida Reception Center-Annex	0	N/A	N/A	1	0	N/A	0	3	4	1	2	3	0	14
Total Findings	7	3	4	11	10	0	13	81	36	3	55	13	21	257

CMA Recommendations

As in previous years, institutional surveys for FY 2017-18 continued to reveal FDC generally has an overall adequate structure for the delivery of health care services. However, deficiencies were noted at all institutions, and a wide variability of care exists at the institutional level. This year's report reiterates concerns highlighted in previous annual reports. Detailed below are the CMA's recommendations to address areas of concern.

INSUFFICIENT AND/OR MISSING CLINICAL DOCUMENTATION

Incomplete or missing documentation continued to be a system-wide issue noted in several assessment areas. Complete and accurate clinical documentation is a critical component for the delivery of health care services. Additionally, clinical documentation ensures that continuity of care is maintained. To improve issues related to clinical documentation, the following strategies are recommended:

- Create and implement a medical record face sheet to capture pertinent clinical information such as vital signs, weights, mammograms, pap smears, etc.
- Review infirmary documentation and forms to reduce duplication and streamline clinical documentation.
- Provide routine and on-going training on medical records management practices and clinical documentation requirements to all health services staff. Training should reinforce the importance of avoiding risk management issues associated with inadequate and missing clinical documentation.
- FDC should continue to explore information technology solutions for an electronic medical record and determine the fiscal impact of implementing an electronic system. The implementation of an electronic medical record, in a system as large as FDC, could improve administrative and clinical efficiencies.
- Determine a method to guarantee problem lists are current and complete so they can be used as an ongoing guide for reviewing physical and mental status and for planning care.
- Develop a medication administration face sheet to track keep-on-person (KOP) medications to monitor when medications are ordered, received, and dispersed.

DIAGNOSTIC DELAYS

Findings related to incomplete and/or untimely initial and follow-up diagnostic testing was noted as a system-wide trend for multiple assessment areas. Diagnostic testing serves as a useful tool to identify issues early in the disease process. Failure to provide or interpret diagnostic testing can put inmates at risk for adverse health outcomes due to delayed diagnosis and treatment. To improve issues related to diagnostic delays, the following strategies are recommended:

- Provide training for clinicians regarding timely supervisory reviews of consultations, past due appointment logs, abnormal labs, and/or emergency and sick call encounters to ensure appropriate follow-up.
- Develop a standard mechanism to track abnormal pap smears and mammograms to ensure timely follow-up.

- Streamline RMC consultation process to decrease wait times and transportation problems.
- Revise the DC4-541 "Periodic Screening Encounter" form to include vaccination as a part of the periodic screening to ensure vaccinations are completed.
- Identify a system or process to provide clinicians with notification reminders to order periodic screening diagnostic tests within the required time frame.
- Create and implement a sepsis management protocol and training plan to help improve the quality of sepsis care, improve outcomes for patients with sepsis, and increase awareness of sepsis among clinical providers.
- Improve administrative systems to track the timeliness of diagnostic testing, receipt of laboratory results, and follow-up care.
- Review staffing levels for physical health staff, including physicians, mid-level practitioners, and nursing staff.

MENTAL HEALTH TREATMENT DELAYS

Without timely treatment, inmates living with mental illness can suffer from the adverse effects of delayed care. Inconsistent treatment can lead to worsening symptoms and the possibility of decreased baseline functioning. To improve issues related to delays in mental health treatment, the following strategies are recommended:

- Ensure indicated laboratory studies are ordered for inmates prescribed psychiatric medication and steps are taken to address abnormal results in a timely manner.
- Ensure inmates on the mental health caseload are evaluated in a timely manner and provided the services listed on their ISPs, including inmates housed in confinement.
- Develop and implement a standardized tracking system to document use of force episodes to ensure inmates on the mental health caseload are referred for evaluation to determine if additional mental health interventions are needed.
- Review staffing levels for psychiatry, mental health professionals, and mental health nursing.
- Revise the DC4-541 "Periodic Screening Encounter" form to include questions to assess mental health risks and suicidal ideation.

SELF-HARM OBSERVATION STATUS ASSESSMENT AND TREATMENT

SHOS findings were noted at ninety-three percent (15) of surveyed institutions. Inmates are placed in an acute care setting to prevent harm to self or others. To improve services to this vulnerable population, the following strategies are recommended:

- Provide training to medical and security staff to ensure proper procedures are followed and subsequent documentation of the psychological emergency is complete and accurate.
- Develop a tracking mechanism to ensure inmates in need of referral to a higher level of care are evaluated.

SECTION TWO

2017-2018

Update on the Status of Elderly Offenders in Florida's Prisons

PROFILE OF FLORIDA'S ELDERLY OFFENDERS

Since 2001, the CMA has reported annually on the status of elderly offenders in Florida's prisons to meet statutory requirements outlined in § 944.8041, Florida Statutes (F.S.), that requires the agency to submit, each year to the Florida Legislature, an annual report on the status of elderly offenders. Utilizing data from FDC's Bureau of Research and Data Analysis, a comprehensive profile of Florida's elderly offenders will be detailed in this report. This update for FY 2017-18 will include demographic, sentencing, health utilization, and housing information for elderly offenders. Also included are the CMA's recommendations related to Florida's elderly population.

DEFINING ELDERLY OFFENDERS

Correctional experts share a common view that many incarcerated persons experience accelerated aging because of poor health, lifestyle risk factors, and limited health care access prior to incarceration. Many inmates have early-onset chronic medical conditions, untreated mental health issues, and unmet psychosocial needs that make them more medically and socially vulnerable to experience chronic illness and disability approximately 10-15 years earlier than the rest of the population. [8]

Outside of correctional settings, age 65 is generally considered to be the age at which persons are classified as elderly. However, at least 20 state department of corrections and the National Commission on Correctional Health Care have set the age cutoff for elderly offenders at 50 or 55.[9] In Florida, elderly offenders are defined as "prisoners age 50 or older in a state correctional institution or facility operated by the Department of Corrections."[10] Therefore, elderly offenders are defined in this report as inmates age 50 and older.

Elderly offenders can be categorized into one of three groups of offenders. The first group are those offenders incarcerated after the age of 50, often for the first time. These offenders are described as later-life offenders. The second group of elderly offenders are those who are described as "career criminals," who consistently continue to offend and serve time. Lastly, the third and largest category of elderly offenders are those inmates who were incarcerated prior to age 50 and have aged in prison due to serving long prison sentences.[11]

[8] Williams, Brie A., et al. "Addressing the Aging Crisis in U.S. Criminal Justice Health Care." Journal of the American Geriatrics Society, vol. 60, no. 6, 2012, pp. 1150–1156.
[9] Ibid., 1151.
[10] Florida Department of Corrections Report, "Elderly Inmates, 2014-2015 Agency Annual Report." Web. 2 Nov. 2017.
[11] National Institute of Corrections, "Managing the Elderly in Corrections." Web. 6 Dec. 2017.

FISCAL YEAR 2017-2018 ADMISSIONS

DEMOGRAPHIC CHARACTERISTICS

In FY 2017-18, elderly offenders accounted for 13 percent (3,594) of 27,916 inmates admitted to FDC institutions. Males represented 90 percent (3,226) of elderly offender admissions, while females age 50 and older accounted for 10 percent (368) of admissions. When looking at racial/ethnic demographics for newly admitted inmates age 50 and older, 37 percent (1,319) were black; 9 percent (340) were Hispanic, 54 percent (1,926) were white, and 0.25 percent (9) were classified as other. Table 11 further details racial/ethnic demographics by gender.

Eighty percent (2,873) of newly admitted elderly offenders were between the ages of 50 and 59. The average age at time of admission for males was age 56, and for females age 55. The oldest male offender admitted in FY 2017-18 was age 92, while the oldest female admitted was age 77. Demographic data is summarized in Table 11 below:

Table 11. Fiscal Year 2017-2018 FDC Elderly Offender Admissions Demographics

Fiscal Year 2017-2018 Admissions: Demographics				
	Total Population	15-49	50+	Percentage of Total Population Age 50+
Gender				
Male	24,404	21,178	3,226	**13%**
Female	3,512	3,144	368	**10%**
Total	**27,916**	**24,322**	**3,594**	**13%**
Race/Ethnicity				
Black Female	809	715	94	**12%**
Black Male	10,521	9,296	1,225	**12%**
Hispanic Female	188	167	21	**11%**
Hispanic Male	2,851	2,532	319	**11%**
White Female	2,498	2,246	252	**10%**
White Male	10,918	9,244	1,674	**15%**
Other Female	17	16	1	**6%**
Other Male	114	106	8	**7%**
Total	**27,916**	**24,322**	**3,594**	**13%**
Age Range of 50+ Population				
Age Range	**Total**	**Percentage of Total Population**		
50-59	2,873	**10%**		
60-69	610	**2%**		
70+	111	**0.40%**		
Total	**3,594**			

COMMITMENTS AND PRIMARY OFFENSES

Most (34 percent or 1,224) of the elderly offenders admitted to FDC in FY 2017-18 had no prior commitments, while 15 percent (549) had one, 12 percent (418) had two, 9 percent (316) had three, and 28 percent (1,028) had four or more prior FDC commitments. Among new admissions, 30 percent (1,078) of inmates age 50 and older were incarcerated for violent crimes, 28 percent (1,004) for property crimes, 23 percent (828) for drug offenses, and 17 percent (625) were incarcerated for offenses classified as other. Table 12 summarizes previous FDC commitments for elderly offenders. Table 13 summarizes primary offense types.

Table 12. Fiscal Year 2017-18 Admissions: Summary of Previous FDC Commitments

Fiscal Year 2017-2018 Admissions: Previous FDC Commitments For Inmates Age 50 and Older		
Previous Number of Commitments	Total Number of Elderly Offenders	Percentage of Total Population Age 50+
0	1,224	34%
1	549	15%
2	418	12%
3	316	9%
4+	1,028	28%
Unknown	59	2%

Table 13. Fiscal Year 2017-18 Admissions: Summary of Primary Offense Categories

Fiscal Year 2017-2018 Admissions: Primary Offense Types For Inmates Age 50					
Primary Offense Type	50-59	60-69	70+	Total Inmates Age 50+	Percentage of Total Population Age 50+
Violent	823	197	58	**1,078**	**30%**
Property	836	155	13	**1,004**	**28%**
Drugs	668	143	17	**828**	**23%**
Other	494	110	21	**625**	**17%**
Unknown	52	5	2	59	**2%**

INMATE MORTALITY

It is estimated that two percent (536) of inmates admitted in FY 2017-18 will die while incarcerated and elderly offenders will account for 28 percent (151) of these inmates.

JUNE 30, 2018 POPULATION

DEMOGRAPHIC CHARACTERISTICS

At the end of FY 2017-18, 25 percent (23,338) of Florida's 96,253 general prison population was age 50 and older. Males accounted for 95 percent (22,073) of the June 30, 2018, elderly offender population and represented 25 percent of the total male inmate population. Female elderly offenders accounted for 5 percent (1,265) of inmates age 50 and over on June 30th and represented 19 percent (6,658) of the total female inmate population. The racial/ethnic demographics for the June 30, 2018, elderly offender population are as follows: 42 percent (9,698) were black, 47 percent (10,941) were white, 11 percent (2,596) were Hispanic, and 0.44 percent (103) were classified as other.

Elderly offenders between the ages of 50-59 represented 67 percent (15,674) of inmates age 50 and older. The average age of elderly offenders housed on June 30, 2018, was 58. The oldest male offender incarcerated on June 30, 2018 was age 90. The oldest female offender was age 77.

Table 14 summarizes the demographics of the June 30, 2018, inmate population.

Table 14. Fiscal Year 2017-2018 FDC Elderly Offender June 30, 2018, Demographics

June 30, 2018 Population: Demographics				
	Total Population	15-49	50+	Percentage of Total Population Age 50+
Gender				
Male	89,595	67,522	22,073	**25%**
Female	6,658	5,393	1,265	**19%**
Total	**96,253**	**72,915**	**23,338**	**24%**
Race/Ethnicity				
Black Female	1,855	1,507	348	**19%**
Black Male	43,444	34,094	9,350	**22%**
Hispanic Female	429	351	78	**18%**
Hispanic Male	11,551	9,033	2,518	**22%**
White Female	4,340	3,511	829	**19%**
White Male	34,264	24,152	10,112	**30%**
Other Female	336	243	93	**28%**
Other Male	34	24	10	**29%**
Total	**96,253**	**72,915**	**23,338**	**24%**
Age Range of 50+ Population				
Age Range	**Total**	**Percentage of Total Population**		
50-59	15,674	**16%**		
60-69	6,026	**6%**		
70+	1,638	**2%**		
Total	**23,338**			

COMMITMENTS AND PRIMARY OFFENSES

Forty-five percent (10,445) of elderly offenders housed on June 30, 2018, had no prior FDC commitments. The remaining 55 percent (12,856) of elderly offenders were repeat offenders with one or more previous FDC commitments. The majority of the June 30, 2018 elderly offender population, 65 percent (15,124), was incarcerated for violent crimes, 16 percent (3,813) for property crimes, 11 percent (2,674) for drug offenses, and 7 percent (1,727) for crimes classified as other.

Table 15. June 30, 2018, Population: Summary of Previous FDC Commitments

June 30, 2018, Population: Previous FDC Commitments For Inmates Age 50 and Older		
Previous Number of Commitments	Total Number of Elderly Offenders	Percentage of Total Population Age 50+
0	10,445	45%
1	3,643	16%
2	2,566	11%
3	2,031	9%
4+	4,616	20%
Unknown	37	0.16%

Table 16. June 30, 2018, Population: Summary of Primary Offense Categories

June 30, 2018: Primary Offense Types For Inmates Age 50 and Older					
Primary Offense Type	50-59	60-69	70+	Total Inmates Age 50+	Percentage of Total Population Age 50+
Violent	9,386	4,309	1,429	**15,124**	**65%**
Property	2,999	756	58	**3,813**	**16%**
Drugs	2,021	579	74	**2,674**	**11%**
Other	1,268	382	77	**1,727**	**7%**

INMATE MORTALITY

It is estimated that 15 percent (14,601) of inmates housed on June 30, 2018, will die while incarcerated. Elderly offenders account for 51 percent (7,430) of those expected to die in prison.

HEALTH SERVICES UTILIZATION

Like their community counterparts, elderly offenders are highly susceptible to age related chronic illnesses and are more likely to have one or more chronic health conditions or disabilities. To address the complex health needs of elderly offenders, FDC provides comprehensive medical and mental health care. This includes special accommodations and programs, medical passes, skilled nursing services for chronic and acute conditions, and palliative care for terminally ill inmates.

In addition to routine care, inmates age 50 and over receive annual periodic screenings and dental periodic oral examinations. Elderly offenders are also screened for signs of dementia and other cognitive impairments as a part of FDC's health care screening process.[12]

HEALTH SERVICES UTILIZATION: SICK CALL, EMERGENCY CARE, AND CHRONIC ILLNESS CLINICS

SICK CALL AND EMERGENCY CARE ENCOUNTERS

There were 432,491 sick call and emergency encounters in FY 2017-18. Elderly offenders accounted for 28 percent (121,857) of those encounters. Sick call represented the greatest proportion of those encounters. There were 94,838 (33 percent) sick call encounters for inmates age 50 and older.

Table 17 summarizes all sick call and emergency care encounters during FY 2017-18.

Table 17. Summary of Fiscal Year 2017-2018 Sick Call and Emergency Care Encounters

Sick Call and Emergency Care Encounters							
Encounter Type	Total Encounters	Females		Males		Total Encounters 50+	Percentage of Total
		15-49	50+	15-49	50+		
Sick Call	291,239	22,271	7,322	174,130	87,516	**94,838**	**33%**
Emergency	141,252	10,096	2,284	104,137	24,735	**27,019**	**19%**
Total	**432,491**	**32,367**	**9,606**	**278,267**	**112,251**	**121,857**	**28%**

CHRONIC ILLNESS CLINICS

In FY 2017-18, 63,729 inmates were enrolled in CICs, and inmates age 50 and older accounted for 50 percent (31,573) of enrolled inmates. Elderly offenders accounted for 50 percent or more of inmates in five clinics: cardiovascular, endocrine, renal, miscellaneous, and oncology clinics. Table 18 summarizes CIC enrollment.

[12] Florida Department of Corrections Report, "Elderly Inmates, 2014-2015 Agency Annual Report." Web. 2 Nov. 2017.

Table 18. Summary of Fiscal Year 2017-2018 Chronic Illness Clinic Enrollment

Chronic Illness Clinic Enrollment					
Chronic Clinic	Total Assigned Inmates	Females 50+	Males 50+	Total Number of Inmates 50+	Percentage of Total Assigned Inmates Age 50+
Cardiovascular	27,171	911	13,937	**14,848**	**55%**
Endocrine	9,027	399	4,790	**5,189**	**57%**
Gastrointestinal	9,794	259	3,965	**4,224**	**43%**
Immunity	2,728	71	1,145	**1,216**	**45%**
Renal	6	0	6	**6**	**100%**
Miscellaneous	2,523	96	1,349	**1,445**	**57%**
Neurology	3,065	62	785	**847**	**28%**
Oncology	791	27	572	**599**	**76%**
Respiratory	7,237	285	2,596	**2,881**	**40%**
Tuberculosis	1,387	12	306	**318**	**23%**
Total	**63,729**	**2,122**	**29,451**	**31,573**	**50%**

There were 127,102 reported CIC encounters during the fiscal year, and inmates age 50 and older accounted for 52 percent (65,514) of CIC visits. In five clinics, elderly offenders accounted for 50 percent or more of visits in FY 2017-18. Table 19 provides a breakdown of CIC encounters for elderly offenders by clinic.

Table 19. Summary of Fiscal Year 2017-2018 Chronic Illness Clinic Encounters

Chronic Illness Clinic Encounters					
Chronic Illness Clinic	Total Number of Clinic Visits	Females 50+	Males 50+	Total Encounters 50+	Percentage of Total Encounters
Cardiovascular	51,407	1,635	27,730	**29,365**	**57%**
Endocrine	18,550	740	10,244	**10,984**	**59%**
Gastrointestinal	16,644	430	7,625	**8,055**	**48%**
Immunity	8,578	221	3,744	**3,965**	**46%**
Renal	11	0	11	**11**	**100%**
Miscellaneous	4,542	152	2,607	**2,759**	**61%**
Neurology	5,667	91	1,594	**1,685**	**30%**
Oncology	1,666	45	1,275	**1,320**	**79%**
Respiratory	13,136	490	5,268	**5,758**	**44%**
Tuberculosis	6,901	68	1,544	**1,612**	**23%**
Total	**127,102**	**3,872**	**61,642**	**65,514**	**52%**

IMPAIRMENTS AND ASSISTIVE DEVICES

FDC assigns inmate impairment grades based on visual impairments, hearing impairments, physical limitations, and developmental disabilities. All FDC institutions have impaired inmate committees that develop, implement, and monitor individualized service plans for all impaired inmates.[13]

In FY 2017-18, there were 3,942 inmates with assigned impairment grades, with 55 percent (2,186) of assigned impairments being among elderly offenders. Inmates age 50 and older comprised 42 percent (763) of inmates with visual impairments, 70 percent (353) with hearing impairments, 72 percent (1,302) with physical impairments, and 52 percent (96) with developmental impairments.

Inmates requiring special assistance or assistive devices are issued special passes to accommodate their needs. FDC issued 23,083 passes for special assistance and/or assistive devices in FY 2017-18, and 50 percent (11,473) of those passes were issued to elderly offenders.

A summary of impairments and assistive devices is provided in Tables 20 and 21.

Table 20. Summary of Fiscal Year 2017-2018 FDC Impairment Grade Assignments

Impairment Grade Assignments				
Impairments	15-49	50+	Total Population	Percentage of Total Population Age 50+
Visual	1,071	763	1,834	**42%**
Hearing	151	353	504	**70%**
Physical	505	1,302	1,807	**72%**
Developmental	88	96	184	**52%**
Total	**1,815**	**2,514**	**4,329**	**58%**

Table 21. Summary of Fiscal Year 2017-2018 Issued Assistive Devices/Special Passes

Assistive Devices/Special Passes				
Assistive Devices/Special Passes	15-49	50+	Total Population	Percentage of Total Population Age 50+
Adaptive Device Assigned	1,473	1,224	2,697	**45%**
Attendant Assigned	71	74	145	**51%**
Low Bunk Pass	10,901	8,545	19,446	**44%**
Guide Assigned	4	7	11	**64%**
Hearing Aid Assigned	23	61	84	**73%**
Pusher Assigned	34	105	139	**76%**
Prescribed Special Shoes	202	234	436	**54%**
Wheelchair Assigned	218	526	744	**71%**
Total	**12,926**	**10,776**	**23,702**	

[13] Florida Department of Corrections Report, "Elderly Inmates, 2014-2015 Agency Annual Report." Web. 2 Nov. 2017.

HOUSING ELDERLY OFFENDERS

FDC does not house inmates based solely on age, therefore, elderly offenders are housed in most of the Department's major institutions. All inmates, including elderly offenders, who have significant limitations performing activities of daily living or serious physical conditions may be housed in institutions that have the capacity to meet their needs. Inmates who have visual or hearing impairments, require walkers or wheelchairs, or who have more specialized needs are assigned to institutions designated for assistive devices for ambulating.

Table 22 displays the ten institutions with the greatest concentration of inmates age 50 and older.

Table 22. FDC Institutions with the Greatest Concentration of Elderly Offenders

FDC Institutions with the Greatest Concentration of Elderly Offenders			
Institutions	Institution Total Population	Total 50+ Population	Percentage of Inmates 50+
Union CI	1,556	**1,258**	**81%**
South Florida Reception Center-South Unit	629	**491**	**78%**
Zephyrhills CI	594	**369**	**62%**
Central Florida Reception Center-South	76	**40**	**53%**
Everglades CI	1,305	**665**	**51%**
New River CI	629	**291**	**46%**
Dade CI	1,526	**614**	**40%**
Avon Park CI	1,066	**373**	**35%**
Hardee CI	1,328	**461**	**35%**
South Bay CF	1,925	**656**	**34%**

CMA RECOMMENDATIONS

Within the resources available, FDC has taken steps to develop programs that address the needs of older inmates such as consolidation of older inmates at certain institutions and palliative care units. While FDC has taken steps to better meet the needs of Florida's elderly offender population, additional system, policy, and programmatic changes are needed. As in previous years, the CMA makes the following recommendations for addressing Florida's elderly offender population:

- Continue efforts to expand FDC's housing and facilities to accommodate elderly offender populations.
- Policymakers and FDC should review conditional medical release policies to identify and address procedural barriers that impact the release of elderly offenders.
- In response to the complications of poor health associated with accelerated aging, FDC should explore the feasibility and health benefits of providing additional preventive health screenings for inmates age 45 to 49.
- Develop or enhance geriatric training programs for institutional staff. Training should address common health conditions and psychosocial needs of elderly offenders and be offered on a routine basis.
- Mental health policies and procedures should be reviewed to ensure they include guidance for detecting and addressing changes in cognitive functioning for inmates age 50 and older. Additionally, training and education regarding detecting cognitive impairment among elderly offenders should be offered to staff.

Cellon, Connie

From: Carolyn Snurkowski <Carolyn.Snurkowski@myfloridalegal.com>
Sent: Wednesday, October 16, 2019 3:40 PM
To: Cellon, Connie
Subject: RE: wrongful incarceration information
Attachments: Wrongful Incarceration Claims Successful, Denied and Pending.doc

FYI. There is one new request that we have not started to review.

From: Cellon, Connie <CELLON.CONNIE@flsenate.gov>
Sent: Wednesday, October 16, 2019 3:30 PM
To: Carolyn Snurkowski <Carolyn.Snurkowski@myfloridalegal.com>
Subject: RE: wrongful incarceration information

Your convenience.

From: Carolyn Snurkowski <Carolyn.Snurkowski@myfloridalegal.com>
Sent: Wednesday, October 16, 2019 3:29 PM
To: Cellon, Connie <CELLON.CONNIE@flsenate.gov>
Subject: RE: wrongful incarceration information

Hello,
On phone and will call when I get off. c

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To: Carolyn Snurkowski <Carolyn.Snurkowski@myfloridalegal.com>
Subject: wrongful incarceration information

Hey, Miss Carolyn, hope all is well with you! It's time for 2020 Session Committee meetings. I have a bill on wrongful incarceration compensation.
I need to know how who, if anyone, has successfully applied for and been awarded wrongful incarceration compensation since James Richardson in 2015 – if there is anyone, any additional information you can provide would be helpful – especially the amount awarded.

As always, thank you for everything you do to help!

Connie Cellon
Senate Criminal Justice
850-487-5192

Wrongful Incarceration Claims (961.03, F.S.)

Successful Claims

(1) Leroy McGee (2010) ($179,166.66)

(2) James Bain (2011) ($1,754,794.51)

(3) Luis Diaz (2012) ($2,397,569.28)

(4) James Richardson (2015) ($1,045,370.69)

Denied Claims

(1) Jarvis McBride (2012)

Ineligible/Incomplete Applications

(1) Robert Lewis (incomplete) (2011)

(2) Edwin Lampkin (incomplete) (2012)

(3) Ricardo Johnson (ineligible/incarcerated) (2013)

(4) Robert Glenn Mosley (incomplete) (2014)

(5) Joseph McGowan (Court reconsidered and determined applicant ineligible. Order issued 1/11/2016)

(6) Jessie Brinson (ineligible) (2016)

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2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

BILL INFORMATION	
BILL NUMBER:	SB 1308
BILL TITLE:	Criminal Justice
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	July 1, 2020

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

CURRENT COMMITTEE

SIMILAR BILLS	
BILL NUMBER:	
SPONSOR:	

PREVIOUS LEGISLATION	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	February 3, 2020
LEAD AGENCY ANALYST:	Michelle Palmer
ADDITIONAL ANALYST(S):	Angela Fryar, Jennifer Rechichi, Lisa Kinard, Sibyle Walker
LEGAL ANALYST:	Dan Burke
FISCAL ANALYST:	Sharon McNeal

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Creates a short title, "The Second Look Act,"; authorizes the resentencing and release of certain persons who are eligible for sentence review under specific revisions; reenacts and amends s. 921.1402, F.S. (Sentencing Review); revising the circumstances under which a juvenile offender is not entitled to a review of his or her sentence after a specified timeframe; creating s. 921.14021, F.S.; providing for retroactive application of a specified provision relating to review of sentence for juvenile offenders convicted of murder; providing for immediate review of certain sentences; creating s. 921.1403; F.S.; defining the term "young adult offender" precluding eligibility for a sentence review for young adult offenders who previously committed, or conspired to commit, specified offenses; providing timeframes within which young adult offenders who commit specified crimes are entitled to a review of their sentences; providing applicability; requiring the Florida Department of Corrections (FDC or Department) to notify young adult offenders in writing of their eligibility for sentence review within certain timeframes; requiring a young adult offender seeking a sentence review or a subsequent sentence review to submit an application to the original sentence court and request a hearing; providing for legal representation of eligible young adult offenders; providing for one subsequent review hearing for the young adult offender after a certain timeframe if the inmate is not resentenced at the initial sentence review hearing; requires the original sentencing court to hold a sentence review hearing upon receiving an application from an eligible young adult offender; requiring the court to consider certain factors in determining whether to modify the inmate's sentence if the court makes certain determinations; requiring the court to issue a written order stating certain information in specified circumstances; providing for retroactive application; amending s. 944.705, F.S., requiring the Department to provide inmates with certain information upon their release; creating s. 951.30, F.S.; requiring that administrators of county detention facilities provide inmates with certain information upon their release; amending s.1009.21, F.S.; providing that a specified period of time spent in a county detention facility or state correctional facility counts toward the 12-month residency requirement for tuition purposes; requiring OPAAGA to conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment; providing study requirements; requiring OPPAGA to submit a report to the Governor and the Legislature by a specified date; providing an effective date.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Release Reoffender:

Effective May 30, 1997, the Re-offender Act, s.775.082(9), provides for enhanced punishment for offenders who commit certain crimes within 3 years after release from prison, or who commit a crime enumerated within the statute while serving a prison sentence or while on escape status from a prison. The law requires the court to impose at a minimum a sentence equal to the statutory maximum for the offense as follows:

Life Felony – Life without parole
1st Degree - 30 years
2nd Degree – 15 years
3rd Degree – 5 years

A person sentenced as a prison release re-offender (PRR) must serve 100% of the minimum service requirement. Whether to file a notice of enhanced penalty is within the sole discretion of the state attorney; however, for every case in which the defendant meets the criteria for prison release reoffender and does not receive the minimum prison sentence, the state must explain the deviation in writing and place in the state attorney's case file.

It should be noted, the court-imposed sentence can exceed the statutory maximum based on the felony degree (e.g. sentencing under s.775.084 habitual offender). The habitual designation authorizes the court to exceed the normal statutory maximum and impose a greater sentence. For example, the inmate may be sentenced to 30 years as a habitual offender for a second-degree felony which typically carries a statutory maximum of 15 years and also receive a 15-year minimum as a release reoffender as part of that same sentence.

The courts have clarified the interaction of the re-offender act with other sentencing provisions. As such, the prohibition of gain time under the re-offender provision applies only to that portion of the sentence designated as a re-offender sentence. When an inmate receives a sentence that is greater than the minimum under the release reoffender provision, the inmate is eligible to earn gain time as long as the release date is greater than the minimum service requirement date.

In Grant v State, 770 So.2d 655 (Fla. 2000), the Florida Supreme Court rejected the 4th DCA's interpretation of the gain time implications of the re-offender act as set forth in Adams v State, 750 So.2d 659 (Fla. 4th DCA 1999). The

4th district had interpreted the re-offender act to function like a firearm mandatory, under which an inmate could not earn gain time at all until the minimum had been served. The court held that by sentencing the defendant "to the first fifteen years as a PRR, for which no gain time is credited, appellant would only accumulate the gain time in the last fifteen years of his concurrent 30 year habitual felony offender sentence, and would serve 12.75 additional years, or 27.75 years minimum, which would deprive him of allowable gain time under the habitual felony offender statute."

The Supreme Court in Grant clarified the meaning of a re-offender act sentence imposed with a habitual offender sentence as follows:

"Where a defendant is convicted of a single offense which qualifies for a sentence longer than an applicable mandatory minimum established by the Legislature, and the Legislature has authorized imposition of such longer sentence in the act creating the mandatory minimum, gain time would still accrue with respect to the non-PRR sentence during the overlapping time that both the mandatory minimum sentence and a portion of the longer sentence are being served; however, such gain time would obviously apply only to the longer sentence, and not to the mandatory minimum."

The re-offender act requires imposition and service of the statutory maximum penalty based on the felony degree of the crime for which sentence is being imposed. In cases where the sentencing orders reflect the defendant is a release re-offender but does not specify a minimum term in the sentencing order, the Department records the minimum term based on the felony degree per statute. For example, if the inmate has been sentenced to 5 years for a third degree and designated a release re-offender, but the court does not specify a minimum term, a five-year minimum, which is the statutory maximum for a third-degree felony, will be applied. This entry requires service of the entire 5 years without gain time. In this example, the inmate will serve 100% of the sentence imposed without gain-time.

If an inmate has been sentenced to a term longer than the normal statutory maximum by virtue of another enhancement provision such as habitual offender, gain time may accrue to reduce the longer overall term as long as the inmate serves at least the re-offender act minimum. For example, the statutory maximum for a second-degree felony is 15 years; however, an inmate sentenced as habitual offender for a second-degree felony may receive 30 years. If also sentenced as a re-offender, the sentence can be 30 years with 15 years minimum as a re-offender. In this scenario, the inmate would have a 15-year release reoffender provision, allowing gain time to apply to the entire 30-year sentence. The inmate would only be prevented from being released prior to serving the 15 years as a re-offender, he/she would not be prevented from earning gain time for the entire 30 years. The result in this example is that the re-offender provision has no effect on the release date since 85% of the 30-year sentence is far more than the 15 years required to be served under the re-offender provision. The inmate is NOT required to serve 100% of the 30-year habitual offender sentence, as a prison release re-offender.

Juvenile Sentencing/Reviews:

S. 921.1402, F.S., provides that a juvenile offender sentenced under s. 775.082, F.S., is entitled to review of his or her sentence after 25 years, 20 years, 15 years. A juvenile being defined as a person under the age of 18 at the time of the offense. The time of review after original sentencing is as follows:

- Homicide (under s. 782.04, F.S.,)
  - Intent to Kill - 25-year review
  - No intent to kill - 15-year review
- All other Non-homicides
  - 20-year review

For all inmates with offense dates prior to July 1, 2014, the court must first resentence the inmate under the new juvenile sentencing laws that went into effect on July 1, 2014, and (for Homicides) enter a written finding as to whether or not the inmate intended to kill the victim should be made and the court should order a resentencing review accordingly based on the finding. For all offenses committed on or after July 1, 2014, the court must sentence a person who was a juvenile at the time the offenses were committed in accordance with s.921.1401.

A juvenile offender is not entitled to review if he or she has a prior conviction for murder, manslaughter, sexual battery, armed burglary, armed robbery, armed carjacking, home invasion robbery, human trafficking for commercial sexual activity with a child under 18 years of age, false imprisonment under s. 787.02(3)(a), F.S., or kidnapping.

The Department currently provides notice of eligibility for judicial review to inmates who have been sentenced or resentenced pursuant to s. 921.1401, F.S., and who have served enough of that sentence to qualify for judicial review under s. 921.1402, F.S.

A juvenile offender seeking sentence review pursuant to subsection (2) must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The juvenile offender must submit a new application to the court of original jurisdiction to request subsequent sentence review hearings pursuant to paragraph (2)(d). The sentencing court shall retain original jurisdiction for the duration of the sentence for this purpose.

A juvenile offender who is eligible for a sentence review hearing is entitled to be represented by counsel, and the court shall appoint a public defender to represent the juvenile offender if the juvenile offender cannot afford an attorney.

Upon receiving an application from an eligible juvenile offender, the court of original sentencing jurisdiction shall hold a sentence review hearing to determine whether the juvenile offender's sentence should be modified. When determining if it is appropriate to modify the juvenile offender's sentence, the court shall consider multiple factors it deems appropriate.

If the court determines at a sentence review hearing that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society, the court shall modify the sentence and impose a term of probation of at least 5 years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court shall issue a written order stating the reasons why the sentence is not being modified.

Subsequent to enactment of s. 921.1402, F.S., multiple court decisions have ruled that s. 921.1401, F.S., and s. 921.1402, F.S., must be applied retroactively to inmates who were juveniles at the time of the offense.

For persons who commit an offense after they reach the age of 18, there is currently no mechanism in place, other than routine post-conviction relief motions, to have the court re-address the term imposed. Absent any post-conviction action by the court, they are required to serve the term originally imposed by the court.

Release:
Pursuant to s. 944.705, F.S., the department notifies every inmate of the following in their release documents:

- All outstanding terms of the inmate's sentence as defined in s. 98.0751, F.S.
- A "Warning" notice, notifying each inmate that they may be sentenced pursuant to s. 775.082(9), F.S., if the inmate commits any felony offense described in s.775.082(9) within 3 years after the inmate's release

In addition, the Department presently provides every inmate, without exception, a discharge certificate that reflect their release date from incarceration.

Education:
The Department currently participates in the Second Chance Pell Experimental Sites Initiative which is a pilot program launched by the U.S. Department of Education and the Department of Justice that includes experimental sites that were selected through a competitive process. The grant allows eligible inmates to access Pell Grant funds for post-secondary education. Funds can only be used by the student to cover the costs of tuition, fees, books, and supplies.

The Department and Florida Gateway College partnered to offer the Second Chance Pell Program at Columbia C.I. Annex which commenced on January 24, 2017. Of the 67 colleges and 120 institutions selected nationwide, this is, currently, the only experimental program site in Florida and has been extended for another three-year period.

In May 2019, the Department graduated 47 students from this highly successful first cohort. Florida Gateway College will confer 26 Associate of Science degrees that include five (5) Magna Cum Laude honor graduates who have an average grade point average (GPA) of 3.6, and 21 Suma Cum Laude honor graduates who have an average GPA of 3.95. Florida Gateway College will confer 22 Associate of Arts degrees that include one Magna Cum Laude honor graduate with a GPA of 3.70, and 21 Suma Cum Laude honor graduates who have an average GPA of 3.97. The second cohort of students were recruited in August 2019, and the two program tracks currently offered are an Associate of Science in Business Management and an Associate of Science in Agribusiness Management. The program is due to expand to offer a Bachelor of Applied Science (B.A.S.) degree in Water Resources Management that will launch in Summer 2020.

The Florida Second Chance Pell Pilot Program is unique in that statewide recruitment is conducted to allow eligible inmates to transfer to Columbia C.I. Annex for program participation. All inmate-students live in the same dorm as a learning community; however, the program has limited capacity of 65 students.

While the Department is currently attempting to expand post-secondary opportunities for inmates, and is collaborating with several Florida colleges/universities with their applications to participate in the expansion of the Second Chance Pell Experimental Sites Initiative, statewide recruiting efforts to qualify students for admission and enrollment meet with enormous challenges with the current prohibition that the period of incarceration may not be considered in establishing Florida residency.

OPPAGA presently is not required to conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment.

2. EFFECT OF THE BILL:

The bill creates a short titled called the "Second look Act".

The bill amends s. 775.082, F.S., providing for exception to persons sentenced under s. 775.082(9)(a), F.S., as a prison release reoffender by creating a new subsection that allows for resentencing for certain juveniles and young adult offenders. Although the language provides for an exception to include "young adult offenders", the language only provides for resentencing under s. 921.1401, F.S., and s. 921.1402, F.S., and does not include the newly added language s. 921.1403, F.S., thus, not providing resentencing for the "young adult offender" that has been sentenced with a prison release reoffender provision. Without this language, only offender who were juveniles at the time of the offense and currently have a prison release reoffender provision would be entitled to resentencing. There are approximately 15 inmates that would fit this category. If the young adult offender were to be added, it appears this number would increase to approximately 110 inmates that would be entitled to review.

The proposed legislation indicates juveniles and young adult offenders who meet criteria for judicial review of their sentences may be entitled to resentencing and release. As indicated above, the enhanced penalty is within the sole discretion of the state attorney; however, for every case in which the defendant meets the criteria for prison release reoffender and does not received the minimum prison sentence, the state must explain the deviation in writing and place in the state attorney's case file. It is unknown if the state would be amenable to removing this enhancement. The release reoffender statute mandates a minimum mandatory per felony degree. There may be a need for the enhancement to be removed at the time of resentencing to ensure the Department is not required to record the minimum sentencing provision.

Juvenile Sentencing Review:

The bill amends s. 921.1402, F.S., providing for a judicial sentencing review for inmates convicted of capital offenses with the exemption for a prior conviction for murder or conspiracy to commit murder, thereby removing the exclusions for prior convictions for manslaughter, sexual battery, armed burglary armed robbery, armed car-jacking, home invasion robbery, human trafficking for commercial sexual activity with a child under the age of 18, false imprisonment under s. 787.02(3)(a), F.S., or kidnapping. Inmates who were previously ineligible for review and resentencing will now be eligible.

There are approximately 28 inmates who would meet the criteria for sentencing review.

The proposed legislation creates s. 921.14021, F.S., allowing for retroactive application of the changes made to s. 921.1402(2)(a), F.S., to allow for review and resentencing for persons previously excluded. If 25 years have passed, those impacted would be entitled to a review immediately.

Of the current prison population, there would be approximately 9 inmates eligible for immediate review.

Young Adult Sentencing Review:

The bill creates s. 921.1403, F.S., allowing a new category of inmates that would be eligible for sentence review: " young adult offenders"—a person who committed an offense before age 25 resulting in a prison sentence term of years with the exception of murder related offenses and sentences pursuant to s. 775.082(3), F.S., excluding s. 775.082(3)(a)5, F.S., to include life felonies and a first degree felonies under s. 775.082(3)(b)1, F.S., that are punishable for a term of 30 year up to life in prison. The bill does not provide for resentencing for a young adult offenders convicted of a capital felony.

The bill does provide for judicial review for certain felony convictions as follows:

- Life and 1st degree punishable by life – review after 20 years for sentences greater than 20 years
- 1st degree felony – review after 15 years for sentences greater than 15 years

S. 921.1403, F.S., may have possible impact for approximately 4,259 currently incarcerated inmates. Some inmates within this eligibility pool have multiple offenses that fall with the different notification requirement periods. The total potentially sentence eligibility that will require notification is 5,312.

Notification:

The bill requires the Department notify the young adult offender in writing of their entitlement to a sentencing review hearing. An inmate meeting specified requirements as a young adult offender will have to submit an application to the court requesting the sentence review hearing.

Based on the number of inmates that would require notification or resentencing, the Department would need one Correctional Services Consultant to perform these duties. If these inmates are resentenced, this will increase the work load for the Victim Services to provide victim notification upon release.

The original sentencing court retains jurisdiction for the duration of the sentence, and entitlement to be represented by an attorney. If the initial sentence review is denied, the offender will be eligible for a subsequent review hearing 5 years after the initial hearing. The bill outlines criteria the court must take into consideration if it deems appropriate. If the court determines an offender has been rehabilitated, the court may modify the sentence and impose a term of probation of at least 5 years or 3 years based on if they were seeking sentencing review under paragraph (3)(a) or (3)(b). If the court determines the offender has not demonstrated rehabilitation or is not fit to reenter society, it must enter a written order stating the reasons why the sentence is not being modified.

There will be a possible increase to supervision case load; however, as the number of inmates being resentenced is indeterminate, the impact is unknown.

Release Information:

The bill amends s. 944.705, F.S., that requires the Department to provide every inmate in their release documents the admission date and release date from the Department's custody including the length of the term served.

Inmates often have multiple sentences with various admission dates, release dates and terms imposed. Sentences are calculated individually, taking into consideration the imposition date, credit awarded, term imposed and gain time earned. As an inmate may have multiple endpoints of their various sentences, this would require significant programming changes to generate this information.

County Release Information:

The bill creates s. 951.30, F.S., to require the administrator of a county detention facility to provide each inmate upon release from custody of the facility the admission and release date from the custody of the facility including the total length of the term of imprisonment from which he or she is being released.

Time Served/Residential Requirements:

The proposed legislation will greatly benefit the Department in its expansion efforts to offer post-secondary programming to its population. By assisting potential inmate students to declare Florida residency by allowing the 12 months of incarceration in a county detention facility or a state correctional facility to count toward the residency requirement, this will not only benefit the Florida Colleges and Universities system with an extended demographic of potential students, but will also assist potential students to alleviate undue fiscal burdens of cost generated by out-of-state tuition and fees, costs that cannot be realistically met through state financial aid programs and/or personal means.

The effectiveness of such programming is corroborated by the United States Department of Education's decision to expand the initial Experimental Sites Initiative, and the proposed legislation provides an achievable and equitable opportunity for students to off-set post-secondary educational costs incurred as declared Florida resident by accessing state and federal aid, as opposed to costs that are insurmountable, even with financial assistance, due to the application of additional out-of-state tuition and fees.

OPAAGA:

The proposed legislation mandates that the Office of Program Policy and Governmental Accountability (OPPAGA) conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment. It outlines the scope of the study to include, but does not limit to, any barriers to such opportunities; the collateral consequences that are present; and methods for reducing collateral consequences identified. The report is to be submitted to the Governor, President of the Senate, the Minority Leader of the Senate, and Speaker of the House of Representatives by November 1, 2020.

Legislation will take effect July 1, 2020. The department requests the effective date be changed to October 1, 2020 to allow for programming.

3. **DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☐ N☒**

If yes, explain:	
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☒ N☐

If yes, provide a description:	The bill requires OPAAGA conduct a study to evaluate the various opportunities available to persons returning to the community form imprisonment.
Date Due:	November 1, 2020
Bill Section Number(s):	Section 9

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☐

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☐

Revenues:	Unknown
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	No.
If yes, does the legislation provide for a local	

referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☐ N☐

Revenues:	Indeterminate
Expenditures:	If this bill is passed, the overall fiscal impact to inmate and community supervision population is indeterminate. However, when inmate population is impacted in small increments statewide, the inmate variable per diem of $21.70 is the most appropriate to use. This per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The Department's FY 18-19 average per diem for community supervision was $5.62. In addition, it is anticipated that the Department will need one position to notify the young adult offender in writing of their entitlement to a sentencing review hearing and technology impact due the changes that will need to be made to CPC and the sentencing screens in OBIS due to minimum mandatory sentencing changes, estimated costs are as follows:

Class Title	Class Code	Salary & Benefits	FTE #	Year 1 Annual Costs
Correctional Services Consultant	8058	68,931	1	68,931
Total salaries & benefits			**1**	**68,931**
Recurring expense - Prof light travel		$ 3,378		3,378
Non-recurring expense - Prof light travel		4,429		4,429
Total expenses				**7,807**
Human Resource Services		$ 329		329
Office of Information Technology				17,400
Total			**1**	**$ 94,467**

Summary of Costs

Recurring	$ 72,638
Non-recurring	21,829
Total	$ 94,467

Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☐ N☐

Revenues:	Unknown
Expenditures:	Unknown
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☐

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y☒ N☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	Although the analysis received states indeterminate impact, there will be significant technology impact due the changes that will need to be made to CPC and the sentencing screens in OBIS due to minimum mandatory sentencing changes. Cost estimate estimated hours 200 estimated cost per hour $87.00 total estimated cost $17, 400

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	

ADDITIONAL COMMENTS

N/A.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	N/A.

2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

BILL INFORMATION	
BILL NUMBER:	SB 1504
BILL TITLE:	Sentencing
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	October 1, 2020

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

CURRENT COMMITTEE

SIMILAR BILLS	
BILL NUMBER:	
SPONSOR:	

PREVIOUS LEGISLATION	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	January 31, 2020
LEAD AGENCY ANALYST:	Michelle Palmer
ADDITIONAL ANALYST(S):	Mary Le, Sibyle Walker
LEGAL ANALYST:	Beverly Brewster, Dan Burke, Taylor Anderson
FISCAL ANALYST:	Sharon McNeal

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

This bill creates s. 322.3401, F.S., providing for the retroactive application 2019-167, Laws of Florida for s. 322.34, F.S., and requiring resentencing for persons who committed offenses of Driving While License Suspended or Revoked (DWLSR), canceled or disqualified prior to October 1, 2019.

The bill creates s. 943.0587, F.S., allowing for persons to petition the court to expunge a conviction under s. 322.34, F.S., as it existed prior to October 1, 2019 if certain criteria are met.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Prior to October 1, 2019, the criminal penalties for knowingly driving while license or driving privilege was canceled, suspended or revoked under s. 322.34(2), F.S., were as follows:

- A first offense was a second-degree misdemeanor punishable by a term of incarceration not to exceeding 60 days.
- A second offense was a first-degree misdemeanor punishable to a term of incarceration not exceeding 1 year.
- A third or subsequent offense was a third-degree felony, punishable by a term of incarceration not exceeding 5 years.

Effective October 1, 2019, the criminal penalties under this section were expanded to include persons who do not have a driver license or driving privilege but is under suspension or revocation equivalent status. The criminal penalties under this section were also amended as follows:

- A first offense remains a second-degree misdemeanor.
- A second or subsequent offense is a first-degree misdemeanor and requiring that a person convicted of a third or subsequent offense must serve a minimum of 10 days in jail.
- A third or subsequent offense is a third-degree felony, if the current violation or most recent prior violation is related to driving while license canceled, suspended, revoked, or suspension or revocation equivalent status resulting from:
    - Driving under the influence;
    - Refusal to submit to a urine, breath-alcohol, or blood alcohol test;
    - A traffic offense causing death or serious bodily injury; or
    - Fleeing or eluding.

S. 943.0578, F.S., authorizes a person to petition for the expunction of a criminal history record if that person has obtained, and submitted to the department, on a form provided by the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which states whether an information, indictment, or other charging document was not filed or was dismissed by the state attorney, or dismissed by the court, because it was found that the person acted in lawful self-defense pursuant to chapter 776, F.S.

S. 943.0582 (3), F.S., requires the Florida Department of Law Enforcement (FDLE) to expunge the nonjudicial arrest record of a minor who has successfully completed a diversion program if that minor:
(a) Submits an application for diversion expunction, on a form prescribed by the department, signed by the minor's parent or legal guardian, or by the minor if he or she has reached the age of majority at the time of applying.
(b) Submits to the department, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's diversion program, that his or her participation in the program was based on an arrest for a misdemeanor, and that he or she has not otherwise been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.
(c) Has never been, before filing the application for expunction, charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.

S. 943.0581, F.S., allows for administrative expunction of any nonjudicial record of an arrest of a minor or an adult made contrary to law or by mistake.

S. 943.0582, F. S., allows for the expunction of a nonjudicial record of the arrest of a minor who has successfully completed a diversion program for a misdemeanor offense.

S. 943.0583 (3), F.S., authorizes a person who is a victim of human trafficking to petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking.

S. 943.0584, F.S., outlines offenses ineligible for expunction.

Pursuant to s. 943.0585, F.S., any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of s. 943.0585, F.S., The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction.

Pursuant to s. 943.059, F.S., any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with certain requirements set forth in the statute. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing. Pursuant to s. 943.059(4), F.S., a criminal history record of a minor or an adult which is ordered sealed by a court pursuant to this section is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), F.S., Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, to judges in the state courts system for the purpose of assisting them in their case-related decision making responsibilities, or to other certain entities set forth in the statute for their respective licensing, access authorization, and employment purposes.

Upon receipt of an order of expungement, the Florida Department of Corrections (FDC or Department) has processes in place to ensure that the inmate or offender record is updated as appropriate to comply with the order. Over the past year, there have been 870 probation records and no prison records expunged. Since 2014 there have been only 13 prison records expunged.

2. EFFECT OF THE BILL:

The bill creates s. 322.3401, F.S., providing for retroactive application of the 2016-167, Laws of Florida, as it relates to s.322.34, F.S., (DWLSR), which reduced the criminal penalties for a third or subsequent violation unless certain criteria are met.

The bill states that a person who committed DWLSR prior to October 1, 2019, but who were not sentenced until after October 1, 2020, may not be sentenced under the criminal penalties in place under s. 322.34(c) prior to October 1, 2019.

The bill states that any person who committed DWSLR before October 1, 2019, and who was sentenced before October 1, 2020, requiring that the person be resentenced in accordance with changes made s.322.34(c) effective October 1, 2019.

The Department's role in this process will be to notify inmates of their potential eligibly for resentencing. There are currently 2,086 inmates in FDC custody for felony DWLSR. Criminal penalties under the new s. 322.34(c) specify that a third or subsequent offense is a third-degree felony only if either the current or most recent violation for DWLSR results from specified offenses, the department will be limited in how to programmatically identify inmates whose most recent prior DWLSR violation meets this criteria.

There are currently 2,086 inmates in custody for DWLSR who were sentenced under former 332.34 and who would need to be reviewed. This would have a significant, albeit short term, impact on the department as this would require a thorough review of current and prior record would be required to make a final determination as to eligibility for notification. The Bureau of Admission and Release would need the following full time, temporary position (funded for no more than one year) to handle the work load increase required to complete reviews for the 2,086 inmates who would be immediately potentially eligible:

- 1 Correctional Services Assistant Consultant.

In order to be resentenced, the inmate would have to submit an application to the court of original jurisdiction requesting a sentence review hearing be held. Once received, the court is required to conduct a sentence review hearing to determine if the inmate meets the criteria for resentencing. If it is determined the inmate meets the criteria, the court must resentence the inmate in accordance with new s. 322.34, F.S.

As a result of the possible resentencing for those effected inmates, the new sentences may possibly result in supervision admissions and an increase to the supervised offender population. It is unknown how the resentencing will impact the overall inmate's sentence or how many inmates will apply for a resentencing review, the impact of this portion of the bill is indeterminate.

The bill also creates s. 943.0587, F.S., allowing for persons to petition the court to expunge a conviction under former s. 322.34, F.S., if the conviction would not be classified as felony under new s. 322.34, F.S., and the person has never been convicted of a felony other than for felony offenses classified as a felony under former s. 322.34, F.S.

The bill would require that a certificate of eligibility be issued by FDLE prior to petitioning the court and outlines criteria FDLE must consider in issuing a certificate of eligibility. The bill specifies information that must be included with a petition for expunction and provides for criminal penalties relating to providing false information as part of a petition. The bill provides for court authority and outlines steps to be taken in processing of such a petition.

The bill outlines those situations in which a person's record is expunged under s. 943.0587, F.S., may not deny or fail to acknowledge arrests and convictions covered by the expunged record.

Over the past 20 years, there have been approximately 27,000 individuals incarcerated or supervised for DWLSR offenses who appear to have no felony convictions for offenses excluding DWLSR and who may be eligible to petition for record expungement.

While this section of the bill has the potential to increase work load for records staff, because it is unknown how many individuals will petition to have records expunged pursuant to s. 943.0587, F.S., the impact of this section of the bill is indeterminate.

The bill has an effective date of October 1, 2019.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☐ N☒

If yes, explain:	
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☒

Board:	
Board Purpose:	
Who Appoints:	
Changes:	

Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☐

Revenues:	Unknown
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☐ N☐

Revenues:	Indeterminate
Expenditures:	If this bill is passed, the overall fiscal impact to inmate and community supervision population is indeterminate. However, when inmate population is impacted in small increments statewide, the inmate variable per diem of $21.70 is the most appropriate to use. This per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The Department's FY 18-19 average per diem for community supervision was $5.62. Additionally, it is anticipated that one staff person will be needed in Admission and Release to handle the workload increase required to complete reviews for the 2,086 inmates who would be immediately potentially eligible. Projected staff and OIT programming costs are as follows:

Class Title	Class Code	Salary & Benefits	FTE #	Year 1 Annual Costs
Correctional Services Asst Consultant	8055	53,779	1	53,779
Total salaries & benefits			**1**	**53,779**
Recurring expense - Prof light travel		$ 3,378		3,378
Non-recurring expense - Prof light travel		4,429		4,429
Total expenses				**7,807**
Human Resource Services		$ 329		329
Information Technology				3,480
Total			**1**	**$ 65,395**

Summary of Costs

Recurring	$ 57,486

	Non-recurring	7,909
	Total	$ 65,395
Does the legislation contain a State Government appropriation?	No	
If yes, was this appropriated last year?		

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☐ N☐

Revenues:	Unknown
Expenditures:	Unknown
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☐

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. **DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y☒ N☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	Based on the analysis received there may be minimal technology impact based on a possible request for expungement of cases. Cost Estimate: Estimated Hours 40 Estimated Cost Per Hour: $87.00 Estimated Total Cost: $3480

FEDERAL IMPACT

1. **DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	

ADDITIONAL COMMENTS

N/A.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	N/A.

DEPARTMENT OF CORRECTIONS
FISCAL IMPACT WORKSHEET

Bill Number: SB 574
Bill Title: Aging Inmate Conditional Release
Completed by: Sharon McNeal
Phone: (850) 717-3425

Class Title	Class Code	Salary & Benefits	FTE #	Year 1 Annual Costs
Correctional Program Consultant	8094	64,277	1	64,277
Correctional Services Asst Consultant	8055	53,779	1	53,779
Total salaries & benefits [1]			**2**	**118,056**
Recurring expense - Prof light travel		$ 3,378		6,756
Non-recurring expense - Prof light travel		4,429		8,858
Total expenses [2]				**15,614**
Human Resource Services		$ 329		658
Salary incentive (if applicable)				-
Total			**2**	**$ 134,328**

Summary of Costs

Recurring	$ 125,470
Non-recurring	8,858
Total	$ 134,328

Notes:

(1) Salaries and benefits cost is based on vacant minimum for class, per LAS/PBS position default.

(2) Expenses unit costs is based on department 2020-21 unit costs for positions

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DEPARTMENT OF CORRECTIONS
FISCAL IMPACT WORKSHEET

Bill Number: SB 574
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Phone: (850) 717-3425

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Prepared by Office of Budget
1/17/20203:07 PM

2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

BILL INFORMATION	
BILL NUMBER:	SB 574
BILL TITLE:	Aging Inmate Conditional Release
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	July 1, 2020

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

CURRENT COMMITTEE

SIMILAR BILLS	
BILL NUMBER:	
SPONSOR:	

PREVIOUS LEGISLATION	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No.

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	December 6, 2019
LEAD AGENCY ANALYST:	Michelle Palmer
ADDITIONAL ANALYST(S):	Mary Le, Laura Carter, Shana Lasseter, Sibyle Walker
LEGAL ANALYST:	Philip Fowler
FISCAL ANALYST:	Sharon McNeal

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Creates a conditional aging inmate release program within the Department of Corrections for inmates 70 years of age or older who meet certain criteria.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Starting October 1, 1983 (but not effective until adopted by the Legislature on July 1, 1984), the sentencing guidelines eliminated parole for all offenses except capital offenses. By October 1, 1995, the Legislature removed parole eligibility for all capital felonies.

There is currently no mechanism for early release under Florida statute for individuals with offenses committed on or after October 1, 1995 except for Conditional Medical Release, s. 947.149, F.S., which is overseen by the Florida Commission on Offender Review.

As of October 18, 2019, there are a total of 1,849 inmates age 70 or older in the Florida Department of Corrections (FDC or Department) custody, the top 5 offenses of incarceration for these inmates are: first degree murder, sexual battery on a victim under 12, second degree murder, lewd or lascivious molestation on a victim under 12 and robbery with a gun or deadly weapon.

2. EFFECT OF THE BILL:

The bill creates s. 945.0912, F.S., the conditional aging inmate release program within the Department of Corrections and outlines that the program must consist of a three-member panel, appointed by the Secretary or his/her designee, responsible for determining appropriateness for release under the program and conducting revocation hearings for program violators. The bill does not provide any additional guidance as to education, experience or areas of expertise the panel members would need to possess; however, it is anticipated that these will need to be high level positions.

Under the bill, an inmate would be eligible for consideration for release under the conditional aging inmate release program if he or she meets the following criteria:

- Is 70 years of age or older.
- Has served at least 10 years on his or her imprisonment.
- Has never been found guilty of, regardless of adjudication, pled nolo contendere or guilty to or has been adjudicated delinquent for committing:
    - A violation of any of the following sections which resulted in the actual killing of a human being:
        - s. 775.33(4), F.S.
        - s. 782.04(1) or (2), F.S.
        - s. 782.09, F.S.
    - Any felony violation that serves as a predicate to registration as a sexual offender under s. 943.0435, F.S.
    - Any similar offense committed in another jurisdiction which would be an offense listed above if committed in this state.

Database programming would need to be created to assist in identifying potentially eligible inmates.

The bill creates some anomalies within its eligibility criteria. Some second degree felonies resulting in the death of a human would exclude an inmate for consideration for release while other first degree felonies resulting in the death of a human would not exclude the inmate from consideration. For example, if an inmate is convicted of third degree murder of an unborn child, s. 782.09(1)(C), F.S., or manslaughter of an unborn child, 782.09(2), F.S., which are both second degree felonies, he or she would be excluded from consideration for release under the program. However, if an inmate is convicted of aggravated manslaughter of a child, s. 782.07(3), F.S., or aggravated manslaughter of an elderly person or disabled adult, s. 782.07(2), F.S., which are both first degree felonies, he or she would be eligible for consideration for release under the program. Also of note, while a conviction for providing material support or resources for terrorism which results in death, a life felony, would exclude an inmate from consideration for release under the program, other terroristic activities resulting in death such as the use of a weapon of mass destruction resulting in death, s. 790.166(2), or discharge of a destructive device resulting in death, s. 790.161(4), F.S., both capital felonies, would not exclude an inmate from consideration for release under the program. Additionally, there are several capital and life felonies contained in Florida statute which would not exclude an individual from being released under the proposed program.

The bill requires that an inmate must have served at least 10 years of his or her current term of incarceration to be considered for release under the proposed program; however, the bill does not provide any exception to the required 85% minimum service of sentence provided for in s. 921.002(1)(e), F.S. The bill also does not address how the 10 years of required service would be calculated for inmates who are released to non-court imposed supervision, such as parole or conditional release, and subsequently revoked and returned to Department custody.

The bill requires that any inmate identified as potentially eligible for release under the program must be referred to the panel for review and allows that the Department may require additional evidence or investigations deemed necessary to determine appropriateness of release under the program. The bill specifies that the panel conduct a hearing to determine the appropriateness for conditional aging inmate release be held within 45 days of referral and requires that a majority of the panel must agree to release under the program. Requirements for notifying victims and detailing victim representation in the decision making process are also included.

The Department currently does not track victim requests for notification under S. 16, Art. I of the State Constitution since the Department is not currently an "early release authority" where the victim would be eligible to participate. This bill would create that authority and require: tracking of victims who request notification, notification to participate and provide information before any release decision is made, as well as staff to confer with the victim and provide accompaniment and support during the hearings. Tracking of victims who request notifications under S. 16, Art I, will require database modification. Victims who need to travel to attend hearing may be eligible for increased restitution considerations or re-imbursement for their travel expenses. Re-imbursement can be funded through Victims Of Crime Act (VOCA) grant funding. Such grant application, monitoring, invoicing, etc. would greatly impact victim services staffing as well as budget and finance and accounting staff.

The bill allows that an inmate denied release by the panel may have this decision reviewed. A review would be completed by the Department's general counsel, who would then make a recommendation to the Secretary. The Secretary would then make a final decision which would not be subject to appeal. The process by which an inmate would request such a review is not addressed in the bill.

The bill requires that an inmate granted release under the program would be under supervision for a period of time equal to the length of time remaining on his or her imprisonment. It would be required that individuals released under the program be supervised "by an officer trained to handle special offender caseloads," and be subject to, at minimum, any conditions of community control. Community control is the Department's most restrictive type of supervision and, under s. 948.10, F.S., community control caseloads are limited to no more than 30 offenders per officer. Staff supervising such caseloads require more experience and training and are normally at the Correctional Probation Senior Officer level or higher. Other conditions for supervision outlined under the bill include electronic monitoring, if determined necessary, and any other conditions deemed appropriate by the Department.

The bill also specifies that individuals released under the program are still considered to be in the care, custody, supervision, and control of the Department and remain eligible to earn or lose gain time but may not be counted in the prison population. If individuals on this supervision program are still earning gain time, the tracking and recording of gain time would be an added responsibility placed upon supervising probation staff and will require additional training.

It is unclear in the bill how supervision violators will be returned to custody. The bill states that the Department must order that the individual subject to revocation be returned to custody, however, the bill does not give the Department the authority to issue warrants for retaking of violators, similar to the powers provided to the Florida Commission on Offender review in s. 947.141, F.S.

The bill outlines the process for revocation hearings and recommitment under the program and requires that a majority of panel members must agree to revocation of supervision. It is required that if the releasee chooses to proceed with a revocation hearing, he or she must be informed orally and in writing of the alleged violations and the releasee's rights pursuant to the revocation process. If supervision is revoked, the releasee must serve the balance of his or her sentence with credit for time served on supervision and any gain time accrued prior to release may be subject to forfeiture pursuant to s. 944.28(1), F.S. Finally, the bill details that a releasee whose supervision is revoked under this program but who is eligible for parole or any other release program may be considered for release under such programs.

It should be noted that victims who request the rights under S. 16, Art. I, would also be eligible to participate in the revocation hearing process. As noted above, this would require additional notifications, conferences and accompaniment of victims to the hearings, revocation decisions and release notifications as well as potential funding of victim travel.

The bill allows that a releasee who has had supervision revoked by the panel may have this decision reviewed. A review would be completed by the Department's general counsel, who would then make a recommendation to the Secretary. The Secretary would then make a final decision which would not be subject to appeal. The process by which a release would request such a review is not addressed in the bill.

The Bureau of Classification Management would likely require additional staffing in the field as well as central office to oversee, provide guidance, and coordinate the implementation and administration of this program. Duties would include, but not be limited to: administrative rule, policy, and procedure creation/promulgation and interpretation. On-going management of eligible inmates by providing guidance, oversight, database creation/updating as it relates to the placement, removal, and reinstatement of inmates into and out of the program.

It appears that Community Corrections would be able to absorb those eligible for this program; however, due to uncertainties with how the program will be implemented, the operational impact to Community Corrections is indeterminate.

As of October 18, 2019, there are 1,849 inmates in Department custody who are age 70 or older. Under the criteria set forth in this bill, only 168 of these inmates (9%) would currently meet eligibility criteria for consideration for release under the proposed program with a projected 291 inmates becoming eligible over the next 5 years. This number will not hold up when individual reviews are completed, however, because it does not take into account prior convictions which did not result in a commitment to FDC (jail sentences, other jurisdiction convictions). In addition, because release will be at the discretion of the Department, the overall impact of the bill is indeterminate.

Additionally, please note:

Depending on the interpretation of "care" (line 131) may require the Department to cover medical costs. The Department's contract with Centurion (C2930) for the provision of comprehensive healthcare is specifically for "inmates housed at the Department's correctional institutions and their assigned satellite facilities, including annexes, work camps, road prisons, and work release centers." Assuming that this bill is interpreted that FDC has a fiscal responsibility for inmate's care, this would require an amendment to the current contract.

The bill authorizes the Department authority to adopt rules to implement its provisions.

The bill provides a July 1, 2020 effective date. The Department recommends an October 1 effective date to facilitate creation of rule and policy, database programming and training.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☐ N☒

If yes, explain:	
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	
Opponents and summary of position:	

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☒

Board:	

Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☐

Revenues:	Unknown
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☐ N☐

Revenues:	Indeterminate
Expenditures:	If this bill is passed, the overall inmate and community supervision population fiscal impact is indeterminate. When inmate population is impacted in small increments statewide, the inmate variable per diem of $20.04 is the most appropriate to use. This per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The Department's FY 17-18 average per diem for community supervision was $5.47. In addition, if this bill is passed, it is projected that Bureau of Classification Management would likely require additional staffing in the field as well as central office to oversee, provide guidance, and coordinate the implementation and administration of this program. Also, based on the above analysis, there will be technology impact due to programming needed for the Offender Based Information System (OBIS) to include new sentencing screens as well as screen changes, and Criminal Punishment Code (CPC) impact. Estimated cost is $17,400.
Does the legislation contain a State Government appropriation?	No

If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☐ N☐

Revenues:	Unknown
Expenditures:	Unknown
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☐

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y☒ N☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	There will likely be a significant technology impact due to programming needed for the Offender Based Information System (OBIS) to include new sentencing screens as well as screen changes, and Criminal Punishment Code (CPC) impact. The estimated cost is $17,400.

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	

ADDITIONAL COMMENTS

N/A.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	• Constitutional Authority for the creation of a "probation and parole commission" rests in Article IV, section 8 (c) of the Florida Constitution. Specifically, the Florida Constitution states that "[t]here may be created by law a parole and probation commission with power to supervise persons on probation and to grant paroles or conditional releases to persons under sentences for crime. The qualifications, method of selection and terms, not to exceed six years, of members of the commission shall be prescribed by law." Art. IV, sec. 8(c), Fla. Const. SB 574 does not invest the Florida Commission on Offender Review ("FCOR") with any authority over the conditional release described in the bill. Instead, FDC is obligated to determine whether to grant a specific type of conditional release if the statutory criteria are met and to set the terms of the release. • Subsection 1 (lines 41-49) – creates the administrative "panel" who are appointed by the Secretary of Corrections. No special statutory immunity or liability protections are provided in the current bill draft for individual members of the FDC review panel or others involved in the proposed review or revocation process for liability potentially arising from any of their release or revocation decisions. This could pose a chilling effect upon such individuals' deliberations. • Subsection 3 (lines 70-96) – this section governs the referral for consideration, mandating that all inmates who meet the eligibility requirements must be considered for CAR. However, this bill does not

create the right of CAR, and vests in the Department sole discretion to grant or deny CAR. This subsection also has a victim notification requirement of an inmate's consideration for CAR and provides victims an opportunity to be heard by the panel at any release hearing.

- Subsection 4 (lines 97-113) – this section establishes the release hearing process. Even though the bill creates a "panel" which has the authority to determine whether or not an inmate is granted CAR, based upon case law and the current language of the bill, the panel would be engaging in "decision making authority" and thus could be subject to chapter 286, Florida Statutes, unless specifically exempted from those requirements. *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). Given that panel hearings are compulsory once an inmate is identified as potentially being eligible for CAR, this requirement could impact FDC's status as a covered entity under HIPAA if medical conditions are discussed before the panel and other hearing attendees. Because the Department is a covered entity, the Department is required to maintain protected health information as confidential and may only disclose such information in accordance with the HIPAA Privacy Rule. 45 C.F.R. § 164.502. While the Privacy Rule does permit disclosure of protected health information pursuant to a valid inmate authorization or "administrative tribunals" pursuant to a valid order, the bill in its current form could put the Department in a conflicting position with satisfying the statutory framework under which these proceedings are conducted (requiring panel meetings to be conducted in the sunshine) and complying with the Privacy Rule if medical information is to be discussed. This subsection also has an appeal mechanism by which the General Counsel and the Secretary review decisions made by the panel denying release, possibly implicating ch. 286 requirements as well.

- Subsection 5 (lines 114-137) – this section establishes release conditions for inmates on CAR. Lines 131 through 132 contain the phase "an aging releasee is considered to be in the care, custody, supervision, and control of the department…" Depending on interpretation of this phrase (especially the terms "care" and "custody"), Department resources and liability may be implicated. *See* AGO 75-194 ("When a state prisoner incarcerated in a state correctional institution is, pursuant to court order, taken into county custody and incarcerated in a county detention facility to stand trial for violation of a state law, the sheriff has the duty to provide medical care to the prisoner during the time he is in custody of the county.") The bill does not specify where a released inmate's medical and other cost burdens lie- either with the inmate or with FDC or with a local law enforcement agency that retakes a CAR inmate for release revocation (example: where a CAR jail detainee encounters acute medical distress while detained by county officials). However, Florida Law would not appear to deem a CMR releasee ineligible for disbursement of Medicaid benefits under this bill. *See* s. 409.9025, F.S.

- Subsection 6 (138-192) – this section sets forth the process by which revocation hearings occur. The US Supreme Court considered in Morrissey v. Brewer, 408 U.S. 471 (1972) what due process mechanisms must be in place for revocation hearings. Those minimal due processes mechanisms are 1) written notice of the claimed violations of eligibility criteria, 2) disclosure to the releasee of evidence against him or her, 3) opportunity to be heard in person and to present witnesses and documentary evidence, 4) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation), 5) a "neutral and detached" hearing body, and 6) a written statement by the factfinders at to the

	evidence relied on and reasons for revoking the conditional release. While some of the Morrissey criteria appears to be contained in the bill, others appear to be left out. Robust rulemaking would be necessary to ensure that the minimum Constitutional requirements for revocation hearings are met. Also, these hearings and any revocation appeals would likely have to be conducted in the sunshine as well, presenting the same issues addressed in the analysis of subsection 4. lines 176-192 establish certain rights for inmates facing CAR revocation; however, it is unclear through what court's authority an inmate would be able to subpoena witnesses to compel them to be present at an FDC revocation hearing.

2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

BILL INFORMATION	
BILL NUMBER:	SB 574
BILL TITLE:	Aging Inmate Conditional Release
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	October 1, 2020

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

CURRENT COMMITTEE
Appropriations Subcommittee on Criminal and Civil Justice (01/29/20).

SIMILAR BILLS	
BILL NUMBER:	HB 837
SPONSOR:	Dubose

PREVIOUS LEGISLATION	
BILL NUMBER:	SB 606
SPONSOR:	Clemens; Brandes
YEAR:	2017
LAST ACTION:	Indefinitely postponed and withdrawn from consideration

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No.

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	January 24, 2020
LEAD AGENCY ANALYST:	Michelle Palmer
ADDITIONAL ANALYST(S):	Mary Le, Laura Carter, Shana Lasseter, Lisa Kinard, Angella New, Sibyle Walker
LEGAL ANALYST:	Ian Carnahan; Philip Fowler
FISCAL ANALYST:	Sharon McNeal

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Creates s.945.0912, F.S., creating a conditional aging inmate release program (CAIR) within the Department of Corrections for inmates 70 years of age or older who meet certain criteria.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Starting October 1, 1983 (but not effective until adopted by the Legislature on July 1, 1984), the sentencing guidelines eliminated parole for all offenses except capital offenses. By October 1, 1995, the Legislature removed parole eligibility for all capital felonies.

There is currently no mechanism for early release under Florida statute for individuals with offenses committed on or after October 1, 1995 except for Conditional Medical Release, s. 947.149, F.S., which is overseen by the Florida Commission on Offender Review.

As of October 18, 2019, there are a total of 1,849 inmates age 70 or older in the Florida Department of Corrections (FDC or Department) custody, the top 5 offenses of incarceration for these inmates are: first degree murder, sexual battery on a victim under 12, second degree murder, lewd or lascivious molestation on a victim under 12 and robbery with a gun or deadly weapon.

2. EFFECT OF THE BILL:

The bill creates s. 945.0912, F.S., the conditional aging inmate release (CAIR) program within the Department of Corrections.

The bill requires FDC create a panel of at least three members, as appointed by the Secretary or his/her designee, would be responsible for determining appropriateness for release under the program and conducting revocation hearings for program violators.

Under the bill, an inmate would be eligible for consideration for release under the conditional aging inmate release program if he or she meets the following criteria:

- Is 70 years of age or older.
- Has served at least 10 years on his or her imprisonment.
- Has never been found guilty of, regardless of adjudication, pled nolo contendere or guilty to or has been adjudicated delinquent for committing:
    - A violation of any of the following sections which resulted in the actual killing of a human being:
        - s. 775.33(4), F.S.
        - s. 782.04(1) or (2), F.S.
        - s. 782.09, F.S.
    - Any felony violation that serves as a predicate to registration as a sexual offender under s. 943.0435, F.S.
    - Any similar offense committed in another jurisdiction which would be an offense listed above if committed in this state.

The bill creates some anomalies within its eligibility criteria. Some second degree felonies resulting in the death of a human would exclude an inmate for consideration for release while other first degree felonies resulting in the death of a human would not exclude the inmate from consideration. For example, if an inmate is convicted of third degree murder of an unborn child, s. 782.09(1)(C), F.S., or manslaughter of an unborn child, 782.09(2), F.S., which are both second degree felonies, he or she would be excluded from consideration for release under the program. However, if an inmate is convicted of aggravated manslaughter of a child, s. 782.07(3), F.S., or aggravated manslaughter of an elderly person or disabled adult, s. 782.07(2), F.S., which are both first degree felonies, he or she would be eligible for consideration for release under the program. Also of note, while a conviction for providing material support or resources for terrorism which results in death, a life felony, would exclude an inmate from consideration for release under the program, other terroristic activities resulting in death such as the use of a weapon of mass destruction resulting in death, s. 790.166(2), or discharge of a destructive device resulting in death, s. 790.161(4), F.S., both capital felonies, would not exclude an inmate from consideration for release under the program. Additionally, there are several capital and life felonies contained in Florida statute which would not exclude an individual from being released under the proposed program.

The bill requires that an inmate must have served at least 10 years of his or her current term of incarceration to be considered for release under the proposed program; however, the bill also does not address how the 10 years of required service would be calculated for inmates who are released to non-court imposed supervision, such as parole or conditional release, and subsequently revoked and returned to Department custody.

The bill provides for any inmate identified as meeting eligibility criteria be referred to the panel for review. The bill allows that the Department may require additional evidence or investigations deemed necessary to determine appropriateness of release under the program and requires that the panel conduct a hearing to determine the appropriateness for CAIR within 45 days of referral and requires that a majority of the panel must agree to release under the program. Eligibility requirements for referral to the panel do not include the establishment of an appropriate release plan. The bill does not contain language allowing inmates to opt-out consideration for release under this program.

Victims, if specifically requested, will be notified of an inmate's referral to the panel immediately upon identification of the inmate's potential eligibility for release. The victim must be afforded the right to be heard during the hearing process, including revocation hearings. Currently, FDC uses VINE as a victim notification mechanism, FDC maintains full confidentiality of victim information in order to be in full compliance with Section 16, FL Constitution requirements that pertain to us. The VINE system allows for anyone to register for notification of an inmate's release. Programmatic changes would be required to the system in order to include the identification of CAIR eligible inmates for notification, which would include anyone registered in VINE. Such notification may raise concern of HIPAA violations. Bill also requires immediate notification to victims which would equate to an immediate notification in VINE regardless of time of day or night. Alternatively, manual notification of victims would ensure compliance with this section and allow for a reasonable time of contact.

The bill provides for an inmate to appeal a denial of release under CAIR by requesting a review by the Department's General Counsel, whose recommendation would be submitted to the Secretary for final review and decision. The Secretary's final decision would not be subject to appeal.

The bill requires that an inmate granted release under the program would be under supervision for a period of time equal to the length of time remaining on his or her imprisonment. Inmates granted release under the program must also be released by the Department to the community within a "reasonable amount of time" and will be referred to as "aging releasees" upon release to the community.

Individuals released under the program be supervised "by an officer trained to handle special offender caseloads," be subject to electronic monitoring, if deemed necessary, and be subject to, at minimum, any conditions of community control. Community control is the Department's most restrictive type of supervision and, under s. 948.10, F.S., community control caseloads are limited to no more than 30 offenders per officer. Staff supervising such caseloads require more experience and training and are normally at the Correctional Probation Senior Officer level or higher. Other conditions for supervision outlined under the bill include electronic monitoring, if determined necessary, and any other conditions deemed appropriate by the Department.

Individuals released under the program are still considered to be in the care, custody, supervision, and control of the Department and remain eligible to earn or lose gain time but may not be counted in the prison population. Therefore, the bill will allow an inmate to continue service of the sentence outside of the secure perimeter of an FDC facility in a community setting. This would include inmates that have not yet met the 85% minimum service requirement.

If, by considering an inmate to be in the "care" of the Department their healthcare is fiscally provided by FDC, contractual arrangements and funding would be required. The current contract with Centurion (C2930) provides for health care for those "inmates housed at the Department's correctional institutions and their assigned satellite facilities, including annexes, work camps, road prisons, and work release centers." Fiscal impact would be determined by contract negotiations.

Conditional aging inmate may be revoked for a violation of any condition of the release conditions established by the Department, including new law violations. Rulemaking would be required to define the process with which to return to FDC those inmates that have their release revoked and to address the authority of correctional probation staff to detain inmates released under this program, but remaining in the care, custody, supervision, and control.

Revocations require a majority decision by the panel. Releasees are afforded due process rights if they choose to proceed with a revocation hearing. Inmates may request that a revocation be reviewed by the FDC General Counsel who must make a recommendation to the Secretary, whose decision is final. The bill does allow that a releasee whose is revoked under this program but who is eligible for parole or any other release program may be considered for release under such programs.

The bill also amends ss.316.1935, 775.084, 790.235. 794.0115, 893.135, 921.0024, conforming these provisions to changes made by the bill to allow for individuals serving minimum mandatory sentences under these sections to be released under the CAIR program. It is noted that the language added to S.794.0115 allows that defendants

sentenced to a mandatory minimum term as a dangerous sexual felony offender would be eligible for conditional aging inmate release prior to serving the minimum sentence. However, all offenses which would qualify for such mandatory sentencing under s.794.0115 are also predicates to registering a sex offender under s. 943.0435, which under s.945.0912(2)(b)2 would eliminate an inmate from consideration for release under the conditional aging inmate release program.

The bill also amends ss. 944.605 and 944.70 conforming these provisions to changes made under the bill.

As of October 2019, there are 1,849 inmates in Department custody who are age 70 or older. Research and Data Analysis has identified 168 of these inmates who may currently meet eligibility criteria set forth in this bill who would require a records review and potential consideration by the panel with a projected 291 inmates becoming potentially eligible over the next 5 years.

Proposed staffing needs and projected costs are detailed as follows:

Panel Staff would be appointed from existing FDC staff.

Attorney (pay grade 220) – to provide legal support for panel members

Three positions handling administrative rule development, policy and procedure development, creation of database management as it relates to affected inmates, coordination of training and implementation across program areas, preparation of packets for panel members, scheduling hearings, liaison with victim services and classification staff, preparation of revocation packets, tracking and entering gain time, etc.

- Correctional Programs Administrator (pay grade 425)
- Correctional Services Consultant (pay grade 023)
- Correctional Services Assistant Consultant (pay grade 021)

Note: This panel staff would be able to handle the requirements of both SB556 and SB574 if both are passed.

5 Correctional Probation Senior Officers – to provide supervision by an officer trained to handle special offender caseloads.

1 Government Operations Consultant I – To coordinate victim services notification requirements

Note: These positions would be able to cover the requirements of SB556.

Ancillary costs include travel, public notifications, hearing rooms, electronic record keeping, increased monitoring costs.

As the bill allows for electronic monitoring, if deemed necessary, appropriations would need to be increased by $1,642.50 per year for each person released to the CAIR program to accommodate for the cost for the electronic monitoring. The maximum immediate impact would 168 inmate immediately eligible with an additional 291 inmates eligible over the next 5 years.

The bill provides an October 1, 2020 effective date.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☒ N☐

If yes, explain:	Lines 169-170 (December 10, 2019 Committee Substitute) state that FDC may adopt rules as necessary to implement the new statute.
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	

***4.* WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	
Opponents and summary of position:	

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☒

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☐

Revenues:	Indeterminate
Expenditures:	Indeterminate
Does the legislation increase local taxes or fees? If yes, explain.	No.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☐ N☐

Revenues:	Unknown
Expenditures:	If this bill is passed, the overall inmate and community supervision population fiscal impact to the Department is indeterminate. When inmate population is impacted in small increments statewide, the inmate variable per diem of $21.70 is the most appropriate to use. This per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The Department's FY 18-19 average per diem for community supervision was $5.62. If supervision via electronic monitoring is imposed, there would be an additional supervision cost of $4.50 per day.

In addition, if this bill is passed, it is projected that additional staffing and programming costs would be required as follows:

Class Title	Class Code	Salary & Benefits	FTE #	Year 1 Annual Costs
Correctional Program Administrator	8094	$ 90,279	1	90,279
Correctional Services Consultant	8058	68,931	1	68,931
Correctional Services Asst Consultant	8055	58,732	1	58,732
Government Operations Consultant I	2234	52,324	1	52,324
Senior Attorney	7738	79,073	1	79,073
Correctional Probation Officer	8039	61,712	5	308,560
Total salaries & benefits			**10**	**657,899**
Recurring expense - Prof light travel		$ 3,378		16,890
Recurring expense - P&P		8,455		42,275
Non-recurring expense - Prof light travel		4,429		22,145
Non-recurring expense - P&P		5,959		29,795
Total expenses				**111,105**
Human Resource Services		$ 329		3,290
Salary incentive (if applicable)		$ 1,128		5,640
Information Technology				17,400
Total			**10**	**$ 795,334**

Summary of Costs

Recurring	$ 725,994
Non-recurring	69,340
Total	$ 795,334

The Department also anticipates that there will be a fiscal impact associated with:

- an inmate's healthcare that is fiscally provided by FDC via its current contract with Centurion (C2930). Contractual arrangements and funding would be required. Fiscal impact would be determined by contract negotiations; and
- discretionary release determinations (parole and CAIR). In FY18-19, FCOR calculates the per unit cost for a discretionary release was $696.98.

Does the legislation contain a State Government appropriation?	No.
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☐ N☐

Revenues:	Unknown
Expenditures:	Unknown

Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☐

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y☒ N☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	There will likely be a significant technology impact due to programming needed for the Offender Based Information System (OBIS) to include new sentencing screens as well as screen changes, and Criminal Punishment Code (CPC) impact. The estimated cost is $17,400.

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	

ADDITIONAL COMMENTS

N/A.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	• Comments below refer to the December 2019 Committee Substitute. • Constitutional Authority for the creation of a "probation and parole commission" rests in Article IV, section 8 (c) of the Florida Constitution. Specifically, the Florida Constitution states that "[t]here may be created by law a parole and probation commission with power to supervise persons on probation and to grant paroles or conditional releases to persons under sentences for crime. The qualifications, method of selection and terms, not to exceed six years, of members of the commission shall be prescribed by law." Art. IV, sec. 8(c), Fla. Const. SB 574 does not invest the Florida Commission on Offender Review ("FCOR") with any authority over the conditional release described in the bill. Instead, FDC is obligated to determine whether to grant a specific type of conditional release if the statutory criteria are met and to set the terms of the release. • Subsection 1 (lines 8-16) – creates an administrative "panel" comprised of appointees designated by the Secretary of Corrections. No special statutory immunity or liability protections are provided in the current bill draft for individual members of the FDC review panel or others involved in the proposed review or revocation process for liability potentially arising from any of their release or revocation decisions. This could pose a chilling effect upon such individuals' deliberations.

- Subsection 3 (lines 37-63) – this section governs the referral for consideration, mandating that all inmates who meet the eligibility requirements must be considered for CAR. A hearing would be required to be held by the panel to consider each eligible inmate referred regardless of inmate security history, release plans, etc. See Lines 37-55. However, this bill does not create the right of CAR, and vests in the Department sole discretion to grant or deny CAR. This subsection also has a victim notification requirement of an inmate's consideration for CAR and provides victims an opportunity to be heard by the panel at any release hearing.
- Subsection 4 (lines 64-86) – this section establishes the release hearing process. Even though the bill creates a "panel" which has the authority to determine whether or not an inmate is granted CAR, based upon case law and the current language of the bill, the panel would be engaging in "decision making authority" and thus could be subject to chapter 286, Florida Statutes, unless specifically exempted from those requirements. *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). Given that panel hearings are compulsory once an inmate is identified as potentially being eligible for CAR, this requirement could impact FDC's status as a covered entity under HIPAA if medical conditions are discussed before the panel and other hearing attendees. Because the Department is a covered entity, the Department is required to maintain protected health information as confidential and may only disclose such information in accordance with the HIPAA Privacy Rule. 45 C.F.R. § 164.502. While the Privacy Rule does permit disclosure of protected health information pursuant to a valid inmate authorization or "administrative tribunals" pursuant to a valid order, the bill in its current form could put the Department in a conflicting position with satisfying the statutory framework under which these proceedings are conducted (requiring panel meetings to be conducted in the sunshine) and complying with the Privacy Rule if medical information is to be discussed. This subsection also has an appeal mechanism by which the General Counsel and the Secretary review decisions made by the panel denying release, possibly implicating ch. 286 requirements as well. It is acknowledged that SB 1718 (2020) has been filed in an apparent attempt to alleviate these concerns.

- Ssection 5 (lines 87-111) – this section establishes release conditions for inmates on CAR. Lines 105 through 106 contain the phase "an aging releasee is considered to be in the care, custody, supervision, and control of the department…" Depending on interpretation of this phrase (especially the terms "care" and "custody"), Department resources and liability may be implicated. *See* AGO 75-194 ("When a state prisoner incarcerated in a state correctional institution is, pursuant to court order, taken into county custody and incarcerated in a county detention facility to stand trial for violation of a state law, the sheriff has the duty to provide medical care to the prisoner during the time he is in custody of the county.") The bill does not specify where a released inmate's medical and other cost burdens lie- either with the inmate or with FDC or with a local law enforcement agency that retakes a CAR inmate for release revocation (example: where a CAR jail detainee encounters acute medical distress while detained by county officials). However, Florida Law would not appear to deem a releasee ineligible for disbursement of Medicaid benefits under this bill. *See* s. 409.9025, F.S.

	• Section 6 (112-168) – this section sets forth the process by which revocation hearings occur. The US Supreme Court considered in Morrissey v. Brewer, 408 U.S. 471 (1972) what due process mechanisms must be in place for revocation hearings. Those minimal due processes mechanisms are 1) written notice of the claimed violations of eligibility criteria, 2) disclosure to the releasee of evidence against him or her, 3) opportunity to be heard in person and to present witnesses and documentary evidence, 4) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation), 5) a "neutral and detached" hearing body, and 6) a written statement by the factfinders at to the evidence relied on and reasons for revoking the conditional release. While some of the Morrissey criteria appears to be contained in the bill, others appear to be left out. Robust rulemaking would be necessary to ensure that the minimum Constitutional requirements for revocation hearings are met. Also, these hearings and any revocation appeals would likely have to be conducted in the sunshine as well, presenting the same issues addressed in the analysis of subsection 4. Certain rights for inmates facing CAR revocation are established; however, it is unclear through what court's authority an inmate would be able to subpoena witnesses to compel them to be present at an FDC revocation hearing.

DEPARTMENT OF CORRECTIONS
FISCAL IMPACT WORKSHEET

Bill Number: SB 574
Bill Title: Aging Inmate Conditional Release
Completed by: Sharon McNeal
Phone: (850) 717-3425

Class Title	Class Code	Salary & Benefits	FTE #	Year 1 Annual Costs
Correctional Program Consultant	8094	64,277	1	64,277
Correctional Services Asst Consultant	8055	53,779	1	53,779
Total salaries & benefits [1]			**2**	**118,056**
Recurring expense - Prof light travel		$ 3,378		6,756
Non-recurring expense - Prof light travel		4,429		8,858
Total expenses [2]				**15,614**
Human Resource Services		$ 329		658
Salary incentive (if applicable)				-
Total			**2**	**$ 134,328**

Summary of Costs

Recurring	$ 125,470
Non-recurring	8,858
Total	$ 134,328

Notes:

(1) Salaries and benefits cost is based on vacant minimum for class, per LAS/PBS position default.

(2) Expenses unit costs is based on department 2020-21 unit costs for positions

Prepared by Office of Budget
1/17/20203:07 PM

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/25/20
Meeting Date

1308
Bill Number (if applicable)

139329
Amendment Barcode (if applicable)

Topic Criminal Justice

Name Jack Campbell

Job Title State Attorney

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Email Campbell15@leoncountyfl.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Prosecuting Attorneys Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

02/25/2020
Meeting Date

SB 1308
Bill Number (if applicable)

139324 (DE)
Amendment Barcode (if applicable)

Topic CRIMINAL JUSTICE

Name GARY HESTER

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA POLICE CHIEFS ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

2/25/2020
Meeting Date

1308
Bill Number (if applicable)

139324
Amendment Barcode (if applicable)

Topic Criminal Justice

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive
Street

Phone (850) 877-2165

Tallahassee FL 32308
City *State* *Zip*

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

2/25/2020
Meeting Date

1308
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Greg Black

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Tallahassee FL 32308
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Speaking: ☐ For ☐ Against ☐ Information

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

Representing R Street Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

2/25/20
Meeting Date

1308
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chelsea Murphy

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Phone 9545570016.

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Right on Crime

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

25 Feb 20
Meeting Date

1308
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Barney Bishop III

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

2 25 20
Meeting Date

1308
Bill Number (if applicable)

Topic CRIM JUSTICE

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title vol pres, TALLAHASSEE VETERANS LEGAL COLLABORATIVE

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Email danbhendrickson@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing TALLAHASSEE VETERANS LEGAL COLLABORATIVE

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/25/20
Meeting Date

1308
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Criminal Justice

Name Kristina Wiggins

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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

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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)

2/25/2020
Meeting Date

1308
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Criminal Justice

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive
Street

Tallahassee FL 32308
City *State* *Zip*

Phone (850) 877-2165

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/25/2020 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1308

Meeting Date *Bill Number (if applicable)*

Topic Criminal Justice *Amendment Barcode (if applicable)*

Name Ida V. Eskamani

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City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information Waive Speaking: ☑ In Support ☐ Against

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

Representing Organize Florida & New Florida Majority

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)

By the Committee on Criminal Justice; and Senators Brandes and Bracy

591-03084-20 20201308c1

A bill to be entitled

An act relating to criminal justice; providing a short title; amending s. 775.082, F.S.; authorizing the resentencing and release of certain persons who are eligible for sentence review under specified provisions; reenacting and amending s. 921.1402, F.S.; revising the circumstances under which a juvenile offender is not entitled to a review of his or her sentence after a specified timeframe; creating s. 921.14021, F.S.; providing legislative intent; providing for retroactive application of a specified provision relating to a review of sentence for juvenile offenders convicted of murder; providing for immediate review of certain sentences; creating s. 921.1403, F.S.; defining the term "young adult offender"; precluding eligibility for a sentence review for young adult offenders who previously committed, or conspired to commit, murder; providing timeframes within which young adult offenders who commit specified crimes are entitled to a review of their sentences; providing applicability; requiring the Department of Corrections to notify young adult offenders in writing of their eligibility for sentence review within certain timeframes; requiring a young adult offender seeking a sentence review or a subsequent sentence review to submit an application to the original sentencing court and request a hearing; providing for legal representation of eligible young adult offenders; providing for one subsequent review

hearing for the young adult offender after a certain timeframe if he or she is not resentenced at the initial sentence review hearing; requiring the original sentencing court to hold a sentence review hearing upon receiving an application from an eligible young adult offender; requiring the court to consider certain factors in determining whether to modify the young adult offender's sentence; authorizing a court to modify the sentence of certain young adult offenders if the court makes certain determinations; requiring the court to issue a written order stating certain information in specified circumstances; providing for retroactive application; amending s. 944.705, F.S.; requiring the department to provide inmates with certain information upon their release; creating s. 951.30, F.S.; requiring that administrators of county detention facilities provide inmates with certain information upon their release; amending s. 1009.21, F.S.; providing that a specified period of time spent in a county detention facility or state correctional facility counts toward the 12-month residency requirement for tuition purposes; requiring the Office of Program Policy and Governmental Accountability (OPPAGA) to conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment; providing study requirements; requiring OPPAGA to submit a report to the Governor and the Legislature by a specified date; providing an effective date.

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

Section 1. This act may be cited as "The Second Look Act."

Section 2. Paragraph (b) of subsection (9) of section 775.082, Florida Statutes, is amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(9)

(b)1. Except as provided in subparagraph 2., a person sentenced under paragraph (a) shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence.

2. A juvenile or young adult offender who is eligible for review of his or her sentence under s. 921.1402 or s. 921.1403, respectively, may be resentenced and released from imprisonment if a court deems the resentencing appropriate in accordance with the review requirements under such sections.

Section 3. Paragraph (a) of subsection (2) of section 921.1402, Florida Statutes, is amended, and subsection (4) of that section is reenacted, to read:

921.1402 Review of sentences for persons convicted of specified offenses committed while under the age of 18 years.—

(2)(a) A juvenile offender sentenced under s. 775.082(1)(b)1. is entitled to a review of his or her sentence after 25 years. However, a juvenile offender is not entitled to

review if he or she has previously been convicted of committing ~~one of the following offenses~~, or of conspiracy to commit ~~one of the following offenses~~, murder if the murder offense for which the person was previously convicted was part of a separate criminal transaction or episode than the murder ~~that~~ which resulted in the sentence under s. 775.082(1)(b)1.~~÷~~

~~1. Murder;~~

~~2. Manslaughter;~~

~~3. Sexual battery;~~

~~4. Armed burglary;~~

~~5. Armed robbery;~~

~~6. Armed carjacking;~~

~~7. Home-invasion robbery;~~

~~8. Human trafficking for commercial sexual activity with a child under 18 years of age;~~

~~9. False imprisonment under s. 787.02(3)(a); or~~

~~10. Kidnapping.~~

(4) A juvenile offender seeking sentence review pursuant to subsection (2) must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The juvenile offender must submit a new application to the court of original jurisdiction to request subsequent sentence review hearings pursuant to paragraph (2)(d). The sentencing court shall retain original jurisdiction for the duration of the sentence for this purpose.

Section 4. Section 921.14021, Florida Statutes, is created to read:

921.14021 Retroactive application relating to s. 921.1402; legislative intent; review of sentence.—

(1) It is the intent of the Legislature to retroactively apply the amendments made to s. 921.1402 which are effective on July 1, 2020, only as provided in this section, to juvenile offenders convicted of a capital offense and sentenced under s. 775.082(1)(b)1. who have been ineligible for sentence review hearings because of a previous conviction of an offense enumerated in s. 921.1402(2)(a) thereby providing such juvenile offenders with an opportunity for consideration by a court and an opportunity for release if deemed appropriate under law.

(2) A juvenile offender, as defined in s. 921.1402, who was convicted for a capital offense and sentenced under s. 775.082(1)(b)1., and who was ineligible for a sentence review hearing pursuant to s. 921.1402(2)(a)2.-10. as it existed before July 1, 2020, is entitled to a review of his or her sentence after 25 years or, if on July 1, 2020, 25 years have already passed since the sentencing, immediately.

Section 5. Section 921.1403, Florida Statutes, is created to read:

921.1403 Review of sentences for persons convicted of specified offenses committed while under 25 years of age.—

(1) As used in this section, the term "young adult offender" means a person who committed an offense before he or she reached 25 years of age and for which he or she is sentenced to a term of years in the custody of the Department of Corrections, regardless of the date of sentencing.

(2) A young adult offender is not entitled to a sentence review under this section if he or she has previously been convicted of committing, or of conspiring to commit, murder if the murder offense for which the person was previously convicted

was part of a separate criminal transaction or episode than that which resulted in the sentence under s. 775.082(3)(a)1., 2., 3., 4., or 6., or (b)1.

(3)(a)1. A young adult offender who is convicted of an offense that is a life felony, that is punishable by a term of years not exceeding life imprisonment, or that was reclassified as a life felony, which was committed after the person attained 18 years of age and who is sentenced to a term of more than 20 years under s. 775.082(3)(a)1., 2., 3., 4., or 6., is entitled to a review of his or her sentence after 20 years.

2. This paragraph does not apply to a person who is eligible for sentencing under s. 775.082(3)(a)5.

(b) A young adult offender who is convicted of an offense that is a felony of the first degree or that was reclassified as a felony of the first degree and who is sentenced to a term of more than 15 years under s. 775.082(3)(b)1. is entitled to a review of his or her sentence after 15 years.

(4) The Department of Corrections must notify a young adult offender in writing of his or her eligibility to request a sentence review hearing 18 months before the young adult offender is entitled to a sentence review hearing or notify him or her immediately in writing if the offender is eligible as of July 1, 2020.

(5) A young adult offender seeking a sentence review under this section must submit an application to the original sentencing court requesting that the court hold a sentence review hearing. The young adult offender seeking a subsequent sentence review hearing must submit a new application to the original sentencing court to request a subsequent sentence

review hearing pursuant to subsection (7). The original sentencing court retains jurisdiction for the duration of the sentence for this purpose.

(6) A young adult offender who is eligible for a sentence review hearing under this section is entitled to be represented by an attorney, and the court must appoint a public defender to represent the young adult offender if he or she cannot afford an attorney.

(7)(a) If the young adult offender seeking sentence review under paragraph (3)(a) is not resentenced at the initial sentence review hearing, he or she is eligible for one subsequent review hearing 5 years after the initial review hearing.

(b) If the young adult offender seeking sentence review under paragraph (3)(b) is not resentenced at the initial sentence review hearing, he or she is eligible for one subsequent review hearing 5 years after the initial review hearing.

(8) Upon receiving an application from an eligible young adult offender, the original sentencing court must hold a sentence review hearing to determine whether to modify the young adult offender's sentence. When determining if it is appropriate to modify the young adult offender's sentence, the court must consider any factor it deems appropriate, including, but not limited to, any of the following:

(a) Whether the young adult offender demonstrates maturity and rehabilitation.

(b) Whether the young adult offender remains at the same level of risk to society as he or she did at the time of the

initial sentencing.

(c) The opinion of the victim or the victim's next of kin. The absence of the victim or the victim's next of kin from the sentence review hearing may not be a factor in the determination of the court under this section. The court must allow the victim or victim's next of kin to be heard in person, in writing, or by electronic means. If the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or previous sentencing review hearings.

(d) Whether the young adult offender was a relatively minor participant in the criminal offense or whether he or she acted under extreme duress or under the domination of another person.

(e) Whether the young adult offender has shown sincere and sustained remorse for the criminal offense.

(f) Whether the young adult offender's age, maturity, or psychological development at the time of the offense affected his or her behavior.

(g) Whether the young adult offender has successfully obtained a high school equivalency diploma or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available.

(h) Whether the young adult offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.

(i) The results of any mental health assessment, risk assessment, or evaluation of the young adult offender as to rehabilitation.

(9)(a) If the court determines at a sentence review hearing that the young adult offender who is seeking sentence review under paragraph (3)(a) has been rehabilitated and is reasonably believed to be fit to reenter society, the court may modify the sentence and impose a term of probation of at least 5 years.

(b) If the court determines at a sentence review hearing that the young adult offender who is seeking sentence review under paragraph (3)(b) has been rehabilitated and is reasonably believed to be fit to reenter society, the court may modify the sentence and impose a term of probation of at least 3 years.

(c) If the court determines that the young adult offender seeking sentence review under paragraph (3)(a) or (3)(b) has not demonstrated rehabilitation or is not fit to reenter society, the court must issue a written order stating the reasons why the sentence is not being modified.

(10) This section applies retroactively to a young adult offender eligible under this section.

Section 6. Paragraph (a) of subsection (7) of section 944.705, Florida Statutes, is amended to read:

944.705 Release orientation program.—

(7)(a) The department shall notify every inmate in the inmate's release documents:

1. Of all outstanding terms of the inmate's sentence at the time of release to assist the inmate in determining his or her status with regard to the completion of all terms of sentence, as that term is defined in s. 98.0751. This subparagraph does not apply to inmates who are being released from the custody of the department to any type of supervision monitored by the department;

2. Of the dates of admission to and release from the custody of the department, including the total length of the term of imprisonment for which he or she is being released; and

3.~~2.~~ In not less than 18-point type, that the inmate may be sentenced pursuant to s. 775.082(9) if the inmate commits any felony offense described in s. 775.082(9) within 3 years after the inmate's release. This notice must be prefaced by the word "WARNING" in boldfaced type.

Section 7. Section 951.30, Florida Statutes, is created to read:

951.30 Release documents requirements.—The administrator of a county detention facility must provide to each inmate upon release from the custody of the facility the dates of his or her admission to and release from the custody of the facility, including the total length of the term of imprisonment from which he or she is being released.

Section 8. Paragraph (a) of subsection (2) and paragraphs (b) and (c) of subsection (3) of section 1009.21, Florida Statutes, are amended to read:

1009.21 Determination of resident status for tuition purposes.—Students shall be classified as residents or nonresidents for the purpose of assessing tuition in postsecondary educational programs offered by charter technical career centers or career centers operated by school districts, in Florida College System institutions, and in state universities.

(2)(a) To qualify as a resident for tuition purposes:

1. A person or, if that person is a dependent child, his or her parent or parents must have established legal residence in

this state and must have maintained legal residence in this state for at least 12 consecutive months immediately before ~~prior to~~ his or her initial enrollment in an institution of higher education. The 12 consecutive months immediately before enrollment may include time spent incarcerated in a county detention facility or state correctional facility.

2. Every applicant for admission to an institution of higher education shall be required to make a statement as to his or her length of residence in the state and, further, shall establish that his or her presence or, if the applicant is a dependent child, the presence of his or her parent or parents in the state currently is, and during the requisite 12-month qualifying period was, for the purpose of maintaining a bona fide domicile, rather than for the purpose of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

(3)

(b) Except as otherwise provided in this section, evidence of legal residence and its duration shall include clear and convincing documentation that residency in this state was for a minimum of 12 consecutive months prior to a student's initial enrollment in an institution of higher education. Time spent incarcerated in a county detention facility or state correctional facility must be credited toward the residency requirement, with any combination of documented time living in Florida before and after incarceration.

(c) Each institution of higher education shall affirmatively determine that an applicant who has been granted admission to that institution as a Florida resident meets the

residency requirements of this section at the time of initial enrollment. The residency determination must be documented by the submission of written or electronic verification that includes two or more of the documents identified in this paragraph. No single piece of evidence shall be conclusive.

1. The documents must include at least one of the following:

a. A Florida voter's registration card.

b. A Florida driver license.

c. A State of Florida identification card.

d. A Florida vehicle registration.

e. Proof of a permanent home in Florida which is occupied as a primary residence by the individual or by the individual's parent if the individual is a dependent child.

f. Proof of a homestead exemption in Florida.

g. Transcripts from a Florida high school for multiple years if the Florida high school diploma or high school equivalency diploma was earned within the last 12 months.

h. Proof of permanent full-time employment in Florida for at least 30 hours per week for a 12-month period.

2. The documents may include one or more of the following:

a. A declaration of domicile in Florida.

b. A Florida professional or occupational license.

c. Florida incorporation.

d. A document evidencing family ties in Florida.

e. Proof of membership in a Florida-based charitable or professional organization.

f. Any other documentation that supports the student's request for resident status, including, but not limited to,

utility bills and proof of 12 consecutive months of payments; a lease agreement and proof of 12 consecutive months of payments; or an official local, state, federal, or court document evidencing legal ties to Florida.

Section 9. The Office of Program Policy and Governmental Accountability (OPPAGA) must conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment. The study's scope must include, but need not be limited to, any barriers to such opportunities; the collateral consequences that are present, if applicable, for persons who are released from incarceration into the community; and methods for reducing the collateral consequences identified. OPPAGA must submit a report to the Governor, the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives by November 1, 2020.

Section 10. This act shall take effect July 1, 2020.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL:	PCS/CS/SB 1496 (557820)
INTRODUCER:	Appropriations Subcommittee on Criminal and Civil Justice; Military and Veterans Affairs and Space Committee; and Senator Lee
SUBJECT:	Veterans Treatment Courts
DATE:	February 27, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Caldwell	MS	**Fav/CS**
2.	Forbes	Jameson	ACJ	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1496 redesignates the Military Veterans and Servicemembers Program as the Veterans Treatment Court Program. The bill authorizes courts to develop and operate a veterans treatment court with an emphasis on therapeutic treatment over incarceration of mental illness, traumatic brain injury, a substance use disorder, or a psychological problem. Like existing law, the program is open to a servicemember, veteran, and a current or former member of any state National Guard, a current of former defense contractor or military member of a foreign allied country. Similarly, a veteran who has received a less than honorable discharge is eligible to participate.

Conditions of participation are set forth in a written participation agreement. Upon a finding by the court that the participant has successfully completed conditions of the agreement, the charge is disposed of in accordance with the agreement. If a participant fails to successfully comply, the court may modify or revoke participation in the program and the case may revert back to the original court.

The bill encourages the court to develop policies and procedures, including employing a nonadversarial approach; identifying participants early in the process; and engaging in partnerships among other veterans treatment courts, the United States Department of Veterans Affairs, the Florida Department of Veteran's Affairs, public agencies, and community-based organizations.

The bill authorizes the continued operation of existing programs and requires the bill to apply only prospectively to new cases.

This bill is estimated to have a negative indeterminate prison bed impact. See Section V.

The bill is effective July 1, 2020.

II. Present Situation:

Veterans Courts

The first veterans court opened in Buffalo, N.Y. in 2008.[1] Veterans court follows the model of other specialty courts, such as drug court and mental health court whereby the court emphasizes treatment over incarceration.[2] Like other specialty courts, veterans court involves therapeutic intervention under a nonadversarial framework. Successful completion of pretrial court conditions may result in a dismissal of criminal charges.[3] As of June 2016, 461 courts operate veterans court programs across the country.[4]

In Florida, 31 counties operate a veterans court program.[5] Moreover, veterans court programs operate in 17 of the 20 judicial circuits.[6] Even in those circuits without a designated program, accommodations are provided to defendants who would otherwise qualify to participate in a veterans court program.[7]

Military Veterans and Servicemembers Court Program

In 2012, the Legislature established the T. Patt Maney Veterans' Treatment Intervention Act.[8] The Act authorizes the chief judge of each judicial circuit to create a Military Veterans and Servicemember Court Program (veterans court). The program is available to eligible veterans, servicemembers, current or former United States Department of Defense contractors, and current

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[1] National Center for State Courts, *Veterans Courts Resource Guide*, available at https://www.ncsc.org/Topics/Alternative-Dockets/Problem-Solving-Courts/Veterans-Court/Resource-Guide.aspx (last visited Feb. 4, 2020).
[2] Public Health Post, *A New Court System to Rehabilitate Veterans,* available at https://www.publichealthpost.org/research/rehabilitating-veterans-in-the-criminal-justice-system/ (last visited Feb. 4, 2020).
[3] Law for Veterans, *Veterans Courts*, available at https://www.lawforveterans.org/veterans-courts (last visited Feb. 4, 2020).
[4] National Center for State Courts, *supra* note 1.
[5] Veterans court programs operate in Alachua, Bay, Brevard, Broward, Clay, Citrus, Collier, Duval, Escambia, Hernando, Hillsborough, Indian River, Lake, Lee, Leon, Manatee, Marion, Miami-Dade, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Pasco, Pinellas, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, and Volusia counties. Email correspondence with Sean Burnfin, Office of State Courts Administrator, Florida Courts (Jan. 21, 2020)(on file with the Senate Committee on Military and Veterans Affairs and Space).
[6] Office of the State Courts Administrator, *2020 Judicial Impact Statement* (Feb. 5, 2020)(on file with the Senate Committee on Military and Veterans Affairs and Space).
[7] *Id*. The Tenth Judicial Circuit operates a holistic veterans court docket with dedicated staff, an outreach counselor from the Veterans Administration/Department of Veterans Affairs, veteran mentors, and partnerships with providers and the justice system. The Third Judicial Circuit issued an administrative order which details the authority for a qualifying defendant to move to transfer his or her case to a veterans court. The Sixteenth Judicial Circuit reports that it has on a case-by-case basis, provided special services to veterans in conjunction with its adult drug court upon a recommendation from the state attorney.
[8] Chapter 2012-159, s. 9, L.O.F.; Section 394.47891, F.S.

or former military members of a foreign allied country. The purpose of the program is for a court to tailor sentencing to treatment of an individual's underlying disorder. Participation is voluntary.

Eligibility to Participate in the Program

When first implemented, the bill provided that to be eligible, a veteran or servicemember must:

- Be convicted of a criminal offense;
- Suffer from a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem; and
- If a veteran, have received an honorable discharge from military service.[9]

In 2016, the Legislature expanded the requirement of an honorable discharge to include eligibility for a veteran released under a general discharge.[10] Subsequently, in 2019, the Legislature again expanded the program to provide eligibility for a veteran discharged or released under any condition, including a release under a dishonorable discharge.[11]

Pretrial Intervention Program

Both misdemeanor and felony cases may be processed in a pretrial intervention program of a veterans court. However, a court may deny admission if the defendant has previously entered a court-ordered veterans treatment program.[12] While enrolled in a pretrial intervention program, the defendant fulfills the terms of a written coordinated strategy developed by the veterans' treatment invention team.[13] Protocol may require successful completion of outpatient or inpatient treatment, including at a jail-based treatment program. Upon successful completion of the program, the court may dismiss the charges. If the participant is otherwise eligible to do so, he or she may petition the court to have the arrest record expunged.[14] If the court finds that the defendant has not successfully completed the program, the court may return the case to the criminal docket for prosecution.[15]

Certain pending felony charges disqualify a defendant from participation in a pretrial intervention program. Considered more serious felony charges, they include:

- Kidnapping or attempted kidnapping; false imprisonment of a child under the age of 13; or luring or enticing a child;
- Murder or attempted murder; attempted felony murder; or manslaughter;
- Aggravated battery or attempted aggravated battery;
- Sexual battery or attempted sexual battery;
- Lewd or lascivious battery, molestation, conduct, or exhibition, or attempted lewd or lascivious battery, or lewd or lascivious offense or attempted offense against an elderly or disabled person;
- Robbery or attempted robbery;
- Sexual performance of a child or attempted sexual performance of a child;

[9] Chapter 2012-159, s. 9, L.O.F.
[10] Chapter 2016-127, s. 9, L.O.F.
[11] Chapter 2019-61, s. 1, L.O.F.
[12] Sections 948.08(7), F.S., and 948.16(2), F.S.
[13] Sections 948.08(7)(b), F.S., and 948.16(2)(b), F.S.
[14] Sections 948.08((2)(b), F.S., and 948.16(2)(b), F.S.
[15] Sections 948.08(4), F.S., and 948.16(4), F.S.

- Computer pornography of a minor; transmission of child pornography; or buying or selling of minors; and
- Aggravated assault or stalking.[16]

Transfer of Case for Participation in a Problem-Solving Court

A veteran who is eligible for participation in a veterans court may, upon request and approval, transfer his or her case to a county other than that in which the charge arose.[17] Both a representative of the original trial court and the receiving court must agree to the transfer. At the time of transfer, a court case may either be in its pretrial or postadjudicatory phase.[18] The receiving jurisdiction disposes of the case.[19]

Participation in a Treatment Program as a Condition of Probation or Community Control

The court may order as a condition of probation or community control that a veteran or servicemember participate in a treatment program designed to address the individual's mental illness, traumatic brain injury, substance abuse disorder, or psychological problem.[20] The court must give preference to those treatment programs for which the veteran or servicemember is eligible through the United States Department of Veterans Affairs or the Florida Department of Veterans Affairs.[21]

The court may also order a person who commits a violation of probation or community control to successfully complete a military veterans and servicemembers court program if the underlying offense is a nonviolent felony and the person otherwise qualifies.[22]

Problem-solving Court Reports

A problem-solving court means a specialty drug court, military veterans and servicemembers court, mental health court, community court, or delinquency pretrial intervention court program.[23] The Office of the State Courts Administrator is required to provide an annual report on problem-solving courts to the President of the Senate and the Speaker of the House of Representatives.

Specifically, the report must include:
- number of participants in each problem-solving court for each fiscal year the court has been operating;
- types of services provided;
- each source of funding for each court by fiscal year; and

[16] Section 948.06((8)(c), F.S.
[17] Section 910.035(5)(a)(and (b), F.S.
[18] Section 910.035(d)), F.S.
[19] Section 910.035(f), F.S.
[20] Section 948.21, F.S.; The ability of a veteran released from service under a dishonorable discharge to participate in a treatment program as a condition of probation or community control is only available to an individual who committed his or her crime on or after October 1, 2019 (s. 948.21(3), F.S.).
[21] Section 948.21(4), F.S.
[22] Section 948.06(2)(k)1., F.S.
[23] Section 43.51(2), F.S.

- performance of each court based on outcome measures established by the courts.[24]

III. Effect of Proposed Changes:

This bill redesignates as the Veterans Treatment Court Program the existing Military Veterans and Servicemembers Court Program. The program authorizes the chief judge of each judicial circuit to create a veterans treatment court.

Like existing law, a veterans treatment court can accept both pre- and post-adjudication misdemeanor and felony cases. A defendant who wishes to participate must submit an application to the court. If the court determines that the defendant is eligible to participate, his or her case is governed by the terms of an individual participant agreement.

Policies and Procedures of a Veterans Treatment Court

A veterans treatment court must create a record of policies and procedures that specifically include:

- Integrating substance abuse, mental health treatment services, and other treatment into case processing;
- Employing a nonadversarial approach;
- Identifying eligible defendants early in the process;
- Frequently testing for alcohol and drug use;
- Providing ongoing judicial interaction with each defendant;
- Monitoring of program goals; and
- Forging partnerships among veterans' treatment courts, the United States Department of Veterans Affairs, the Florida Department of Veterans' Affairs, public agencies, and community-based organizations to generate local support and enhance court effectiveness.

The court must consult nationally recognized best practices related to key components in adopting policies and procedures.

The court may also establish supplemental policies and procedures for referring a defendant to a health care provider, or assisting with housing, employment, nutrition, mentoring, and education.

Eligibility for Participation in a Veterans Treatment Court

To qualify for a veterans treatment court, a defendant must either be a veteran, defined as in s. 1.01 (14), F.S., a person who has served in the military, or a servicemember, defined in s. 250.01, F.S., as an active or former member of any state National Guard, a current or former contractor for the United States Department of Defense; or a current or former military member of a foreign allied country. A veteran released under any type of discharge if otherwise eligible may participate in veterans treatment court.

[24] Section 43.51(1), F.S.

To further qualify:

- The defendant must have a mental health condition, traumatic brain injury, substance use disorder, or psychological problem;
- The defendant must agree on the court record to enter the court voluntarily and comply with a participant agreement; and
- The defendant's participation in the court, as determined by the court, is in the interest of justice and of benefit to the defendant and the community.

In determining whether participation furthers justice and is of sufficient benefit, the court must consider:

- The nature and circumstances of the offense;
- The recommendation of the state attorney;
- Special characteristics or circumstances of both the defendant and the victim, including any recommendations of the victim;
- Prior criminal history and whether the defendant previously participated in a veterans treatment or other similar program;
- Whether the defendant's needs exceed resources available through the court;
- Impact of participation on the community;
- Recommendations of the law enforcement agency involved;
- Provision for and the likelihood of obtaining restitution during participation in the court;
- Any mitigating circumstances; and
- Other reasonably related circumstances.

A veteran or a servicemember does not have a right to participate in a veterans treatment court.

Participant Agreement

Participation in a veterans treatment court requires a defendant to sign and a court to approve a participant agreement. If a court determines that a defendant has fully complied with the agreement, the charge is disposed of in accordance with the participation agreement and any applicable plea agreement, order, or judgment. If the defendant has failed to comply with the agreement, the court may modify or revoke the defendant's participation and the case may revert to the original court.

Veterans Treatment Court for Post-Adjudication Probationer or Community Controllee

The bill provides that for a person who is on probation or community control for a crime committed on or after July 1, 2020, and otherwise qualified to participate in a veterans treatment court, the court may order participation in a treatment program for a mental illness, traumatic brain injury, substance use disorder, or psychological problem.

Existing Military Veterans and Servicemembers Program and Participants

In amending s. 394.47891, F.S., the bill substitutes as the name of the program Veterans Treatment Court for the Military Veterans and Servicemembers Court. Additionally, a program in operation as of June 30, 2020, may continue to operate and is not required to operate under the

provisions of this bill. Similarly, the bill does not affect or alter the rights or responsibilities of any person admitted to and participating in the program.

Cross-references and conforming changes to ss. 43.51, 910.035, 948.06, 948.08, 948.16, and 948.21, F.S., are included in the bill.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

As this bill authorizes, rather than requires the chief judge to establish veterans treatment courts, the bill does not impose a mandate on local municipalities or counties.

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:

By reducing the number of veterans who are incarcerated and linking conditions with treatment, the bill may reduce costs for veterans and their families.

C. Government Sector Impact:

Costs to the Judiciary
According to the Office of the State Courts Administrator (OSCA), creation of a veterans treatment court is discretionary. The impact on judicial and court workload cannot be determined because it is not immediately clear how the provisions of this bill would operate in conjunction with the existing military and servicemembers courts. To the extent the bill

may expand eligibility, it will not have a significant fiscal impact because admission is discretionary and would be governed by existing resources. In addition, OSCA advises that the fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to quantifiably establish the effects on judicial or court workload resulting from creating and implementing the veterans treatment court program.[25]

SB 2500, the Senate's General Appropriations Bill for Fiscal Year 2020-2021, includes $10.8 million in general revenue to fund problem solving courts statewide. This funding also includes $1.4 million for veterans' treatment intervention programs in several counties. [26]

Prison Beds Cost

As of March 2019, the state has 31 veterans courts. Per the Department of Corrections (DOC), in Fiscal Year 2018-2019, there were 142 offenders admitted for veterans' treatment intervention. A fiscal impact from an increase in eligible participants to veterans treatment intervention is not quantifiable at this time. However, this bill is estimated to have a negative indeterminate prison bed impact (unquantifiable decrease in prison beds).[27]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 43.51, 394.47891, 910.035, 948.06, 948.08, 948.16, and 948.21.

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 February 25, 2020:
The committee substitute:

- Changes the definition of "defendant" to a veteran, servicemember, a current or former member of any state National Guard, a current or former contractor for the

[25] The Office of The State Courts Administrator, *2020 Judicial Impact Statement* for SB 1496, (February 5, 2020), p. 4, (on file with Senate Appropriations Subcommittee on Criminal and Civil Justice).
[26] SB 2500, General Appropriations Bill, Fiscal Year 2020-2021, Specific Appropriation 3226, p. 391 & 392.
[27] February 10, 2020 Conference Results, Criminal Justice Impact Conference, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm (last visited February 20, 2020).

United States Department of Defense, or a current or former military member of a foreign allied country who has been charged or convicted of a criminal offense.
- Changes the definition of "servicemember" to be as defined in s. 250.01, F.S., and changes the definition of veteran to be as defined in s. 1.01 (14), F.S.
- Provides that a defendant with a mental health disorder is eligible to participate in the program.
- Deletes the requirement for a defendant seeking to participate to submit an application for the court to review.
- Provides that a person who is on probation or community control for a crime committed on or after July 1, 2020, and otherwise qualifies to participate in a veterans treatment court, may participate.
- Provides the act shall only apply prospectively to new cases on or after the effective day of the bill.

CS by Military and Veterans Affairs and Space on February 12, 2020:
This committee substitute:
- Renames as the Veterans Treatment Court Program the existing Military and Servicemembers Court Program;
- Requires the underlying condition of a mental health condition, traumatic brain injury, substance use disorder, or a psychological problem to be military-related;
- Restores equal access to the veterans treatment court for a veteran released under any discharge from service;
- Restores current law by not giving the treatment court adjudicatory authority;
- Restores the role of the court as the sole decider of whether a veteran or servicemember qualifies to participate in a veterans treatment court and requires the court to consider the recommendation of the state attorney;
- Removes duplicative references to the confidentiality of health information records;
- Removes duplicative references to domestic violence cases;
- Grandfathers in existing programs, courts, and participants; and
- Provides conforming cross-references.

B. Amendments:

None.

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/25/2020	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice (Lee) recommended the following:

Senate Amendment

Delete lines 53 - 328

and insert:

(a) "Defendant" means a veteran, a servicemember, a current or former contractor for the United States Department of Defense, or a current or former military member of a foreign allied country, who has been charged with or convicted of a criminal offense.

(b) "Participant agreement" means the agreement as set

forth in subsection (9) and any specific terms and conditions applicable to the defendant. The term includes any modifications made to the agreement under subsection (10).

(c) "Servicemember" means a servicemember as defined in s. 250.01.

(d) "Veteran" means a veteran as defined in s. 1.01(14), regardless of the discharge or release condition of the veteran.

(e) "Veterans treatment court" means a specialized docket administered by a court for veterans and servicemembers as set forth in this section.

(3) AUTHORIZATION.—The chief judge of each judicial circuit may establish a veterans treatment court.

(4) ADMISSION.—A defendant who meets the eligibility requirements under subsection (8) may be admitted to a veterans treatment court at any stage of a criminal proceeding.

(5) RECORD OF POLICIES AND PROCEDURES.—A veterans treatment court shall create a record of the policies and procedures adopted to implement subsections (6) and (7).

(6) KEY COMPONENTS OF A VETERANS TREATMENT COURT.—

(a) A veterans treatment court shall adopt policies and procedures to implement the following key components, including, but not limited to:

1. Integrating substance abuse and mental health treatment services and any other related treatment and rehabilitation services with justice system case processing;

2. Using a nonadversarial approach in which the state attorney and defense counsel promote public safety while protecting the due process rights of the defendant;

3. Providing early identification of eligible defendants;

4. Monitoring defendants for abstinence from alcohol and drugs by frequent testing;

5. Providing ongoing judicial interaction with each defendant;

6. Monitoring and evaluating the achievement of each defendant's program goals; and

7. Forging partnerships among the veterans treatment courts, the United States Department of Veterans Affairs, the Florida Department of Veterans' Affairs, public agencies, and community-based organizations to generate local support and enhance the effectiveness of the veterans treatment court.

(b) In adopting policies and procedures under this section, the court shall consult nationally recognized best practices related to the key components of veterans treatment courts.

(7) SUPPLEMENTAL POLICIES AND PROCEDURES OF VETERANS TREATMENT COURTS.—A veterans treatment court may adopt supplemental policies and procedures to:

(a) Refer a defendant with a medical need to an appropriate health care provider or refer a defendant for other appropriate assistance, including assistance with housing, employment, nutrition, mentoring, and education.

(b) Otherwise encourage participation in the veterans treatment court.

(8) ELIGIBILITY.—

(a) A defendant may participate in a veterans treatment court if:

1. The defendant has a military-related mental health condition, traumatic brain injury, substance use disorder, or psychological problem;

2. The defendant voluntarily agrees to the terms of the participation agreement by signing the agreement; and

3. The defendant's participation in the veterans treatment court is in the interests of justice, the defendant, and the community, as determined by the court.

(b) In making the determination under subparagraph (a)3., the court must consider:

1. The nature and circumstances of the offense charged;

2. The recommendation of the state attorney;

3. The special characteristics or circumstances of the defendant and any victim or alleged victim, including any recommendation of the victim or alleged victim;

4. The defendant's criminal history and whether the defendant previously participated in a veterans treatment court or similar program;

5. Whether the defendant's needs exceed the treatment resources available through the veterans treatment court;

6. The impact on the community of the defendant's participation and treatment in the veterans treatment court;

7. Recommendations of any law enforcement agency involved in investigating or arresting the defendant;

8. If the defendant owes restitution, the likelihood of payment during the defendant's participation in the veterans treatment court;

9. Any mitigating circumstances; and

10. Any other circumstances reasonably related to the defendant's case.

(9) PARTICIPANT AGREEMENT.—To participate in a veterans treatment court, the defendant must sign, and the court must

approve, a participant agreement.

(10) MODIFICATION OR TERMINATION.—If a veterans treatment court determines after a hearing that a defendant has not complied with the participant agreement, the court may modify or revoke the defendant's participation in the program.

(11) COMPLETION OF THE PARTICIPANT AGREEMENT.—If a veterans treatment court determines that a defendant has completed the requirements of the participant agreement, the court shall dispose of the charge or charges that served as the basis of participation in the veterans treatment court in accordance with the participant agreement and any applicable plea agreement, court order, or judgment.

(12) LIBERAL CONSTRUCTION.—The provisions of this section shall be liberally construed.

(13) NO RIGHT TO PARTICIPATE.—This section does not create a right of a veteran or servicemember to participate in a veterans treatment court ~~The chief judge of each judicial circuit may establish a Military Veterans and Servicemembers Court Program under which veterans, as defined in s. 1.01; veterans who were discharged or released under any condition; servicemembers, as defined in s. 250.01; individuals who are current or former United States Department of Defense contractors; and individuals who are current or former military members of a foreign allied country, who are charged or convicted of a criminal offense, and who suffer from a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem can be sentenced in accordance with chapter 921 in a manner that appropriately addresses the severity of the mental illness, traumatic brain~~

~~injury, substance abuse disorder, or psychological problem through services tailored to the individual needs of the participant. Entry into any Military Veterans and Servicemembers Court Program must be based upon the sentencing court's assessment of the defendant's criminal history, military service, substance abuse treatment needs, mental health treatment needs, amenability to the services of the program, the recommendation of the state attorney and the victim, if any, and the defendant's agreement to enter the program~~.

Section 2. Subsection (2) of section 43.51, Florida Statutes, is amended to read:

43.51 Problem-solving court reports.—

(2) For purposes of this section, the term "problem-solving court" includes, but is not limited to, a drug court pursuant to s. 397.334, s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans treatment ~~military veterans' and servicemembers'~~ court pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; a mental health court program pursuant to s. 394.47892, s. 948.01, s. 948.06, s. 948.08, or s. 948.16; a community court pursuant to s. 948.081; or a delinquency pretrial intervention court program pursuant to s. 985.345.

Section 3. Paragraph (a) of subsection (5) of section 910.035, Florida Statutes, is amended to read:

910.035 Transfer from county for plea, sentence, or participation in a problem-solving court.—

(5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.—

(a) For purposes of this subsection, the term "problem-solving court" means a drug court pursuant to s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans treatment

~~military veterans' and servicemembers'~~ court pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; a mental health court program pursuant to s. 394.47892, s. 948.01, s. 948.06, s. 948.08, or s. 948.16; or a delinquency pretrial intervention court program pursuant to s. 985.345.

Section 4. Paragraph (k) of subsection (2) of section 948.06, Florida Statutes, is amended to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(2)

(k)1. Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2016, the court may order the offender to successfully complete a postadjudicatory mental health court program under s. 394.47892 or a veterans treatment ~~military veterans and servicemembers~~ court program under s. 394.47891 if:

a. The court finds or the offender admits that the offender has violated his or her community control or probation;

b. The underlying offense is a nonviolent felony. As used in this subsection, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08. Offenders charged with resisting an officer with violence under s. 843.01, battery on a law enforcement officer under s. 784.07, or aggravated assault may participate in the mental health court program if the court so orders after the victim is given his or her right to provide testimony or written statement to the court as provided in s. 921.143;

c. The court determines that the offender is amenable to the services of a postadjudicatory mental health court program, including taking prescribed medications, or a veterans treatment ~~military veterans and servicemembers~~ court program;

d. The court explains the purpose of the program to the offender and the offender agrees to participate; and

e. The offender is otherwise qualified to participate in a postadjudicatory mental health court program under s. 394.47892(4) or a veterans treatment ~~military veterans and servicemembers~~ court program under s. 394.47891.

2. After the court orders the modification of community control or probation, the original sentencing court shall relinquish jurisdiction of the offender's case to the postadjudicatory mental health court program until the offender is no longer active in the program, the case is returned to the sentencing court due to the offender's termination from the program for failure to comply with the terms thereof, or the offender's sentence is completed.

Section 5. Paragraph (a) of subsection (7) of section 948.08, Florida Statutes, is amended to read:

948.08 Pretrial intervention program.—

(7)(a) Notwithstanding any provision of this section, a person who is charged with a felony, other than a felony listed in s. 948.06(8)(c), and who is identified as a veteran or a servicemember, as defined in s. 394.47891, and is otherwise qualified to participate in a veterans treatment court under s. 394.47891 ~~s. 1.01; a veteran who is discharged or released under any condition; a servicemember, as defined in s. 250.01; an individual who is a current or former United States Department~~

~~of Defense contractor; or an individual who is a current or former military member of a foreign allied country, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem~~ is eligible for voluntary admission into a pretrial veterans' treatment intervention program approved by the chief judge of the circuit, upon motion of either party or the court's own motion, except:

1. If a defendant was previously offered admission to a pretrial veterans' treatment intervention program at any time before trial and the defendant rejected that offer on the record, the court may deny the defendant's admission to such a program.

2. If a defendant previously entered a court-ordered veterans' treatment program, the court may deny the defendant's admission into the pretrial veterans' treatment program.

Section 6. Paragraph (a) of subsection (2) of section 948.16, Florida Statutes, is amended to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program; misdemeanor pretrial veterans' treatment intervention program; misdemeanor pretrial mental health court program.—

(2)(a) A veteran or a servicemember, as defined in s. 394.47891, who is otherwise qualified to participate in a veterans treatment court under that section ~~s. 1.01; a veteran who is discharged or released under any condition; a servicemember, as defined in s. 250.01; an individual who is a current or former United States Department of Defense contractor; or an individual who is a current or former military~~

~~member of a foreign allied country, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem,~~ and ~~who~~ is charged with a misdemeanor is eligible for voluntary admission into a misdemeanor pretrial veterans' treatment intervention program approved by the chief judge of the circuit, for a period based on the program's requirements and the treatment plan for the offender, upon motion of either party or the court's own motion. However, the court may deny the defendant admission into a misdemeanor pretrial veterans' treatment intervention program if the defendant has previously entered a court-ordered veterans' treatment program.

Section 7. Present subsection (4) of section 948.21, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section, to read:

948.21 Condition of probation or community control; military servicemembers and veterans.—

(4) Effective for a probationer or community controllee whose crime is committed on or after July 1, 2020, and is a veteran or a servicemember, as defined in s. 394.47891, who is otherwise qualified to participate in a veterans treatment court under s. 394.47891, the court may, in addition to any other conditions imposed, impose a condition requiring the probationer or community controllee to participate in a treatment program capable of treating the probationer or community controllee's mental illness, traumatic brain injury, substance use disorder, or psychological problem.

Section 8. A Military Veterans and Servicemembers Court Program in operation under s. 394.47891, Florida Statutes, as of

June 30, 2020, may continue to operate, but the provisions of this act shall apply only prospectively to new cases on and after the effective date of this act. This act does not

930566

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/25/2020	.	
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	.	

Appropriations Subcommittee on Criminal and Civil Justice (Brandes) recommended the following:

Senate Amendment to Amendment (251488)

Delete lines 5 - 66
and insert:
(a) "Defendant" means a veteran, a servicemember, a current or former member of any state National Guard, a current or former contractor for the United States Department of Defense, or a current or former military member of a foreign allied country, who has been charged with or convicted of a criminal offense.

930566

(b) "Participant agreement" means the agreement as set forth in subsection (9) and any specific terms and conditions applicable to the defendant. The term includes any modifications made to the agreement under subsection (10).

(c) "Servicemember" means a servicemember as defined in s. 250.01.

(d) "Veteran" means a veteran as defined in s. 1.01(14), regardless of the discharge or release condition of the veteran.

(e) "Veterans treatment court" means a specialized docket administered by a court for veterans and servicemembers as set forth in this section.

(3) AUTHORIZATION.—The chief judge of each judicial circuit may establish a veterans treatment court.

(4) ADMISSION.—A defendant who meets the eligibility requirements under subsection (8) may be admitted to a veterans treatment court at any stage of a criminal proceeding. A defendant seeking to participate in a veterans treatment court must submit an application to the court. The court must review each application and determine whether the defendant meets the eligibility requirements in subsection (8).

(5) RECORD OF POLICIES AND PROCEDURES.—A veterans treatment court shall create a record of the policies and procedures adopted to implement subsections (6) and (7).

(6) KEY COMPONENTS OF A VETERANS TREATMENT COURT.—

(a) A veterans treatment court shall adopt policies and procedures to implement the following key components, including:

1. Integrating substance abuse and mental health treatment services and any other related treatment and rehabilitation services with justice system case processing;

930566

2. Using a nonadversarial approach in which the state attorney and defense counsel promote public safety while protecting the due process rights of the defendant;

3. Providing early identification of eligible defendants;

4. Monitoring defendants for abstinence from alcohol and drugs by frequent testing;

5. Providing ongoing judicial interaction with each defendant;

6. Monitoring and evaluating the achievement of each defendant's program goals; and

7. Forging partnerships among the veterans treatment courts, the United States Department of Veterans Affairs, the Florida Department of Veterans' Affairs, public agencies, and community-based organizations to generate local support and enhance the effectiveness of the veterans treatment court.

(b) In adopting policies and procedures under this section, the court shall consult nationally recognized best practices related to the key components of veterans treatment courts.

(7) SUPPLEMENTAL POLICIES AND PROCEDURES OF VETERANS TREATMENT COURTS.—A veterans treatment court may adopt supplemental policies and procedures to:

(a) Refer a defendant with a medical need to an appropriate health care provider or refer a defendant for other appropriate assistance, including assistance with housing, employment, nutrition, mentoring, and education.

(b) Otherwise encourage participation in the veterans treatment court.

(8) ELIGIBILITY.—

(a) A defendant may participate in a veterans treatment

930566

court if:

1. The defendant has a mental health

446302

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/25/2020	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice (Brandes) recommended the following:

Senate Amendment to Amendment (251488)

Delete lines 5 - 66

and insert:

(a) "Defendant" means a veteran, a servicemember, a current or former member of any state National Guard, a current or former contractor for the United States Department of Defense, or a current or former military member of a foreign allied country, who has been charged with or convicted of a criminal offense.


446302

(b) "Participant agreement" means the agreement as set forth in subsection (9) and any specific terms and conditions applicable to the defendant. The term includes any modifications made to the agreement under subsection (10).

(c) "Servicemember" means a servicemember as defined in s. 250.01.

(d) "Veteran" means a veteran as defined in s. 1.01(14), regardless of the discharge or release condition of the veteran.

(e) "Veterans treatment court" means a specialized docket administered by a court for veterans and servicemembers as set forth in this section.

(3) AUTHORIZATION.—The chief judge of each judicial circuit may establish a veterans treatment court.

(4) ADMISSION.—A defendant who meets the eligibility requirements under subsection (8) may be admitted to a veterans treatment court at any stage of a criminal proceeding.

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(6) KEY COMPONENTS OF A VETERANS TREATMENT COURT.—

(a) A veterans treatment court shall adopt policies and procedures to implement the following key components, including:

1. Integrating substance abuse and mental health treatment services and any other related treatment and rehabilitation services with justice system case processing;

2. Using a nonadversarial approach in which the state attorney and defense counsel promote public safety while protecting the due process rights of the defendant;

3. Providing early identification of eligible defendants;

446302

4. Monitoring defendants for abstinence from alcohol and drugs by frequent testing;

5. Providing ongoing judicial interaction with each defendant;

6. Monitoring and evaluating the achievement of each defendant's program goals; and

7. Forging partnerships among the veterans treatment courts, the United States Department of Veterans Affairs, the Florida Department of Veterans' Affairs, public agencies, and community-based organizations to generate local support and enhance the effectiveness of the veterans treatment court.

(b) In adopting policies and procedures under this section, the court shall consult nationally recognized best practices related to the key components of veterans treatment courts.

(7) SUPPLEMENTAL POLICIES AND PROCEDURES OF VETERANS TREATMENT COURTS.—A veterans treatment court may adopt supplemental policies and procedures to:

(a) Refer a defendant with a medical need to an appropriate health care provider or refer a defendant for other appropriate assistance, including assistance with housing, employment, nutrition, mentoring, and education.

(b) Otherwise encourage participation in the veterans treatment court.

(8) ELIGIBILITY.—

(a) A defendant may participate in a veterans treatment court if:

1. The defendant has a mental health

142094

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/25/2020	.	
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	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice (Brandes) recommended the following:

Senate Amendment

Delete lines 63 - 121
and insert:
2. A current or former member of any state National Guard;
3. A current or former contractor for the United States Department of Defense; or
4. A current or former military member of a foreign allied country.
(d) "Veteran" means a person who has served in the

142094

military.

(e) "Veterans treatment court" means a specialized docket administered by a court for veterans and servicemembers as set forth in this section.

(3) AUTHORIZATION.—The chief judge of each judicial circuit may establish a veterans treatment court.

(4) ADMISSION.—A defendant who meets the eligibility requirements under subsection (8) may be admitted to a veterans treatment court at any stage of a criminal proceeding. A defendant seeking to participate in a veterans treatment court must submit an application to the court. The court must review each application and determine whether the defendant meets the eligibility requirements in subsection (8).

(5) RECORD OF POLICIES AND PROCEDURES.—A veterans treatment court shall create a record of the policies and procedures adopted to implement subsections (6) and (7).

(6) KEY COMPONENTS OF A VETERANS TREATMENT COURT.—

(a) A veterans treatment court shall adopt policies and procedures to implement the following key components, including:

1. Integrating substance abuse and mental health treatment services and any other related treatment and rehabilitation services with justice system case processing;

2. Using a nonadversarial approach in which the state attorney and defense counsel promote public safety while protecting the due process rights of the defendant;

3. Providing early identification of eligible defendants;

4. Monitoring defendants for abstinence from alcohol and drugs by frequent testing;

5. Providing ongoing judicial interaction with each

142094

defendant;

6. Monitoring and evaluating the achievement of each defendant's program goals; and

7. Forging partnerships among the veterans treatment courts, the United States Department of Veterans Affairs, the Florida Department of Veterans' Affairs, public agencies, and community-based organizations to generate local support and enhance the effectiveness of the veterans treatment court.

(b) In adopting policies and procedures under this section, the court shall consult nationally recognized best practices related to the key components of veterans treatment courts.

(7) SUPPLEMENTAL POLICIES AND PROCEDURES OF VETERANS TREATMENT COURTS.—A veterans treatment court may adopt supplemental policies and procedures to:

(a) Refer a defendant with a medical need to an appropriate health care provider or refer a defendant for other appropriate assistance, including assistance with housing, employment, nutrition, mentoring, and education.

(b) Otherwise encourage participation in the veterans treatment court.

(8) ELIGIBILITY.—

(a) A defendant may participate in a veterans treatment court if:

1. The defendant has a mental health

OFFICE OF THE STATE COURTS ADMINISTRATOR
2020 JUDICIAL IMPACT STATEMENT

BILL NUMBER: SB 1496 DATE: February 5, 2020

SPONSOR(S): Senator Lee

STATUTE(S) AFFECTED: Creates s. 26.58, F.S.

COMPANION BILL(S): HB 1085

AGENCY CONTACT: Sean M. Burnfin

TELEPHONE: (850) 922-0358

ASSIGNED OSCA STAFF: CK/EWM

I. SUMMARY: The bill creates s. 26.58, F.S., the "Florida Veterans Treatment Court Act." The bill authorizes a court with jurisdiction in criminal cases to create and administer a veterans treatment court to adjudicate misdemeanors and felonies. The bill specifies that the intent is "to encourage and support the judicial circuits of the state, and other such agencies, local governments, interested public or private entities, and individuals to create and maintain veterans treatment courts in each circuit." The bill addresses applicable definitions, development and maintenance of policies and procedures, key components of a veterans treatment court, eligibility and admission, provisions related to domestic violence victims, participant agreements, modification or termination of participation, and access to records.

II. EFFECT OF PROPOSED CHANGES:

Present Situation

In 2012 the Legislature enacted provisions governing creation and operation of military veterans and service members court programs. (See the "T. Patt Maney Veterans' Treatment Invention Act," ss. 16-20, ch. 2012-159, Laws of Fla.). Specifically, and as subsequently amended, s. 394.47891, F.S., provides that veterans, as defined in s. 1.01, F.S.; veterans who were discharged or released under any condition; servicemembers, as defined in s. 250.01; individuals who are current or former United States Department of Defense contractors; and individuals who are current or former military members of a foreign allied country, who are charged or convicted of a criminal offense, and who suffer from a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem can be sentenced in accordance with chapter 921, F.S., in a manner that appropriately addresses the severity of the mental illness, traumatic brain injury, substance abuse disorder, or psychological problem through services tailored to the individual needs of the participant. Complementary statutory provisions include

ss. 948.01 (probation or community control), 948.06 (violation of probation or community control), 948.08(7) (felony pretrial veterans' treatment intervention), 948.16(2) (misdemeanor pretrial veterans' treatment intervention), and 948.21 (condition of probation or community control; military servicemembers and veterans), F.S. As discussed in the "Considerations" section, below, although there is some overlap between current statutory provisions and the bill, there are also substantive differences.

Presently, there are military veterans and servicemembers court programs in 17 of the 20 judicial circuits.[1]

Effect of Proposed Changes

The bill provides authority for criminal courts to create and administer a veterans treatment court for an eligible defendant who has a mental health condition, traumatic brain injury, or substance use disorder. The bill provides definitions and eligibility criteria. Defendants are required to adhere to a participant agreement. The bill includes veterans or servicemembers who have been charged with a criminal offense. "Veteran" means a person who has served in the military. "Servicemember" means a member of the active or reserve components of the United States military, a member of the Florida National Guard, a Department of Defense contractor, or a military member of a foreign allied country. The chief judge and state attorney of the circuit have the exclusive authority to determine whether a veteran who has been dishonorably discharged may participate in the veterans treatment court.

If a defense attorney chooses to have a case heard in a veterans treatment court, the defense attorney must submit an application to the state attorney. The state attorney and court must review each application for admission to the veterans treatment court using eligibility requirements set forth in the bill. The defendant's participation must be found in the interest of justice and of benefit to the defendant and the community, as determined by the state attorney with regard to pretrial diversion, or the court with regard to all other matters. A veterans treatment court may adjudicate misdemeanors and felonies. The defendant must sign, and the court must approve, a participant agreement. If the defendant completes the agreement, the court shall dispose of the charge in accordance with the agreement and any applicable plea agreement, court order, or judgment. If a veterans treatment court determines after a hearing that a defendant has not complied with the participant agreement, the veterans treatment court may modify or revoke the defendant's participation in the program.

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[1] Although not officially counted among the 17 circuits with a "military veterans and service members court," the Tenth Judicial Circuit operates a holistic veterans court docket with dedicated staff, an outreach counselor from the Veterans Administration/Department of Veterans Affairs, trained volunteer veteran mentors who are linked to a veteran to serve as a mentor/advocate, and relationships with providers and justice system partners. The Third Judicial Circuit, which does not operate such a court, issued an administrative order that provides for a qualifying defendant to move for transfer of his or her case to a circuit and county in which a veterans court exists, consistent with s. 910.035(5), F.S. The Sixteenth Judicial Circuit reports that it has, on a case-by-case basis, provided special services for veterans in conjunction with its adult drug court after recommendations from the state attorney's office.

Considerations

Review of the current statutory framework for military veterans and service members court programs and the provisions proposed by the bill identifies the following considerations:

- The bill does not reference, amend, or repeal existing s. 394.47891, F.S., which addresses the establishment of military veterans and service members court programs. It is not immediately clear how the two statutory frameworks might interact, such as, for example, whether veterans courts could be created and operated under either statute. Similarly, it is not known if the bill contemplates that existing military veterans and service members court programs would need to be modified to match any different criteria prescribed in the proposed s. 26.58, F.S.
- The bill does not reference, amend, or repeal existing ss. 948.06(2) (violation of probation or community control), 948.08(7) (felony pretrial veterans' treatment intervention), 948.16(2) (misdemeanor pretrial veterans' treatment intervention), and 948.21 (condition of probation or community control; military servicemembers and veterans), F.S. These sections contain some provisions that are not consistent with provisions in the bill. The Legislature may wish to harmonize applicable sections in chapter 948, F.S., to avoid potential confusion.
- Apparent substantive differences between the two statutory frameworks are:

    - Current statute (s. 394.47891, F.S.) specifies that a participant's mental illness, traumatic brain injury, substance abuse disorder or psychological problem is "military-related." The bill (lines 150-51) cites similar conditions but does not specify that the conditions are "military-related." Further, the bill does not include psychological problem among the specified conditions.
    - Current statute (s. 394.47891, F.S.) applies to current and former Department of Defense contractors and current and former military members of a foreign allied country. The bill appears to capture current contractors and foreign allied military members (lines 59-61).
    - Current statutes (ss. 948.08(7) (felony pretrial veterans' treatment intervention) and 948.16(2) (misdemeanor pretrial veterans' treatment intervention), F.S.) contemplate that referral to a program can be made upon motion of either party or the court's own motion. The bill (lines 82-91) provides for the defense attorney to submit an application to the state attorney with review by the state attorney and the court.
    - Current statute (s. 394.47891, F.S.) applies to veterans "discharged or released under any condition." The bill (lines 75-81) provides that the chief judge and the state attorney have the exclusive authority to determine whether a veteran who is dishonorably discharged may participate in that circuit's veterans treatment court.

- Current statute (s. 394.47891, F.S.) does not allow the veterans treatment court to adjudicate cases. The bill (lines 73-74) specifically authorizes a veterans treatment court to adjudicate misdemeanors and felonies.
- Current statutes (ss. 948.08(7) (felony pretrial veterans' treatment intervention) and 948.16(2) (misdemeanor pretrial veterans' treatment intervention), F.S.) place the decision to admit defendants into pretrial diversion programs with the court. The bill (lines 158) appears to allow the state attorney to make pretrial diversion decisions.
- Section 948.08(7) (felony pretrial veterans' treatment intervention), F.S., allows the court to deny admission if the defendant was previously offered admission to a pretrial veterans court and rejected the offer or had previously entered a court-ordered veterans court. Section 948.16(2) (misdemeanor pretrial veterans' treatment intervention), F.S., allows the court to deny admission if the defendant had previously entered a court-ordered veterans court. Proposed s. 26.58, F.S., specifies that the state attorney and the court shall consider whether the defendant previously participated in a veterans treatment court or a similar program (lines 165-67), as part of the determination whether the defendant's participation is in the best interest of justice and of benefit to the defendant and the community.
- Current statute (s. 394.47891, F.S.) provides for defendants who are charged or convicted of a criminal offense. The bill's definition of "defendant" (lines 43-44) applies to a veteran or servicemember charged with a criminal offense.

III. ANTICIPATED JUDICIAL OR COURT WORKLOAD IMPACT: Under the bill, a court's creation of a veterans treatment court is discretionary. The impact on judicial and court workload cannot be determined because it is not immediately clear how the provisions of this bill would operate in conjunction with the existing military and servicemembers courts and related statutes, such as, for example, whether existing veterans courts would be replaced by or modified in accordance with veterans courts authorized under proposed s. 26.58, F.S. See "Considerations" above. To the extent the bill may expand eligibility (e.g., because the condition does not have to be military-related), it will not have a significant fiscal impact because admission is discretionary and would be governed by existing resources.

IV. IMPACT TO COURT RULES/JURY INSTRUCTIONS: None anticipated.

V. **ESTIMATED FISCAL IMPACTS ON THE JUDICIARY:**

A. Revenues: None.

B. Expenditures: The fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to quantifiably establish the effects on judicial or court workload resulting from creating and implementing the veterans treatment court program, as discussed in Section II and Section III, above.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20
Meeting Date

1490
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title Right on Crime state

Address 605 Middlebrooks Ct Phone _____
Street

TLH FL 32312 Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Right on Crime.

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

2/25/2020 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1496

Meeting Date *Bill Number (if applicable)*

Topic Vets Treatment Courts *Amendment Barcode (if applicable)*

Name Ida V Eskamani

Job Title Policy Policy

Address 126 N. Mills Phone 4073764801

Street

Orlando FL 32801 Email ida.eskamani@gmail.com

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information Waive Speaking: ☒ In Support ☐ Against

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

Representing Organize Florida + New Florida Majority

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)

2/24/20
Meeting Date

1496
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic VETERAN Treatment Court

Name JAMES SIGMAN

Job Title Commandant. MARINE CORPS LEAGUE TALLY

Address 1109 LOTHIAN DR
Street

Phone 850-528-3554

TALLY FL 32312
City State Zip

Email SIGMANJAMES@GATOR.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing MARINE CORPS LEAGUE ARTHUR R. MEYER JR DET 472

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)

25 Feb 20
Meeting Date

1496
Bill Number (if applicable)

Topic Veteran's Treatment Court

Amendment Barcode (if applicable)

Name Gail Ernst

Job Title

Address P.O. Box 802
Street

Phone 813-727-5983

Havana, FL 32333
City *State* *Zip*

Email ernstgail@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Legion / Marine Corps League

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)

2/25/2020
Meeting Date

1496
Bill Number (if applicable)

Topic VETERAN'S TREATMENT COURT

Amendment Barcode (if applicable)

Name FRED INGLEY

Job Title RETIRED

Address POB 802
Street

HAVANA FL 32333
City *State* *Zip*

Phone 8505108134

Email fritzy39@gmail.com

Speaking: ☑ For ☑ Against ☐ Information

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

Representing VETERANS TREATMENT COURT

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)

2 25 20
Meeting Date

1496
Bill Number (if applicable)

Topic Veterans Treatment Court

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title vol pres, TALLAHASSEE VETERANS LEGAL COLLABORATIVE

Address PO Box 1201
Street

Phone 850 570-1967

Tallahassee, FI 32302
City *State* *Zip*

Email danbhendrickson@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing TALLAHASSEE VETERANS LEGAL COLLABORATIVE

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)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/25/20
Meeting Date

1496
Bill Number (if applicable)

Topic Veterans Treatment Courts
Amendment Barcode (if applicable)

Name Kristina Wiggins

Job Title Executive Director

Address 103 North Gadsden Street
Street

Tallahasee FL 32301
City *State* *Zip*

Phone 850-488-6850

Email kwiggins@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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

25 Feb 20
Meeting Date

1496
Bill Number (if applicable)

Topic Veterans Treatment Courts

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/25/2020 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1496

Meeting Date *Bill Number (if applicable)*

Amendment Barcode (if applicable)

Topic VETERANS TREATMENT COURTS

Name ROY CLARK

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Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against

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

Representing FLORIDA DEPARTMENT of VETERANS' AFFAIRS

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)

By the Committee on Military and Veterans Affairs and Space; and Senator Lee

583-03552-20 20201496c1

A bill to be entitled

An act relating to veterans treatment courts; amending s. 394.47891, F.S.; providing legislative intent; providing definitions; authorizing the establishment of veterans treatment courts by the chief judge of a judicial circuit; specifying standards for admission into the program; specifying required components and policies for the program; specifying eligibility requirements for participation in the program; providing factors that a court must consider in determining a defendant's eligibility to participate; requiring participant agreements and specifying requirements for such agreements; providing for construction; specifying that the act does not create a right to participate in the program; amending ss. 43.51, 910.035, 948.06, 948.08, and 948.16, F.S.; conforming provisions to changes made by the act; amending s. 948.21, F.S.; authorizing a court to impose a condition requiring a probationer or community controllee who is eligible to participate in a veterans treatment court to participate in certain treatment programs under certain circumstances; specifying applicability of the act to participants in certain court programs in existence as of a specified date; providing an effective date.

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

Section 1. Section 394.47891, Florida Statutes, is amended

to read:

394.47891 ~~Military~~ Veterans treatment ~~and servicemembers~~ court programs.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to encourage and support the judicial circuits of the state, and other such agencies, local governments, interested public or private entities, and individuals, to create and maintain veterans treatment courts in each circuit. The purpose of a veterans treatment court program is to address the underlying causes of a servicemember's or veteran's involvement with the judicial system through the use of specialized dockets, multidisciplinary teams, and evidence-based treatment. A veterans treatment court program shall use nonadversarial approaches to resolve such issues. Veterans treatment courts depend on the leadership of judges or magistrates who are educated in the issues and science of behaviors leading to court involvement and require a rigorous team effort to detect, discern, and assist servicemembers and veterans in correcting the behaviors and choices that led to the veterans' court involvement. This section creates a detailed statewide standard for the creation and operation of, and procedures for, veterans treatment courts.

(2) DEFINITIONS.—For purposes of this section, the term:

(a) "Defendant" means a veteran or servicemember who has been charged with or convicted of a criminal offense.

(b) "Participant agreement" means the agreement as set forth in subsection (9) and any specific terms and conditions applicable to the defendant. The term includes any modifications made to the agreement under subsection (10).

(c) "Servicemember" means:

1. A member of the active or reserve components of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard;

2. A member of the Florida National Guard;

3. A current or former contractor for the United States Department of Defense; or

4. A current or former military member of a foreign allied country.

(d) "Veteran" means a person who has served in the military.

(e) "Veterans treatment court" means a specialized docket administered by a court for veterans and servicemembers as set forth in this section.

(3) AUTHORIZATION.—The chief judge of each judicial circuit may establish a veterans treatment court.

(4) ADMISSION.—A defendant who meets the eligibility requirements under subsection (8) may be admitted to a veterans treatment court at any stage of a criminal proceeding. A defendant seeking to participate in a veterans treatment court must submit an application to the court. The court must review each application and determine whether the defendant meets the eligibility requirements in subsection (8).

(5) RECORD OF POLICIES AND PROCEDURES.—A veterans treatment court shall create a record of the policies and procedures adopted to implement subsections (6) and (7).

(6) KEY COMPONENTS OF A VETERANS TREATMENT COURT.—

(a) A veterans treatment court shall adopt policies and procedures to implement the following key components, including:

1. Integrating substance abuse and mental health treatment services and any other related treatment and rehabilitation services with justice system case processing;

2. Using a nonadversarial approach in which the state attorney and defense counsel promote public safety while protecting the due process rights of the defendant;

3. Providing early identification of eligible defendants;

4. Monitoring defendants for abstinence from alcohol and drugs by frequent testing;

5. Providing ongoing judicial interaction with each defendant;

6. Monitoring and evaluating the achievement of each defendant's program goals; and

7. Forging partnerships among the veterans treatment courts, the United States Department of Veterans Affairs, the Florida Department of Veterans' Affairs, public agencies, and community-based organizations to generate local support and enhance the effectiveness of the veterans treatment court.

(b) In adopting policies and procedures under this section, the court shall consult nationally recognized best practices related to the key components of veterans treatment courts.

(7) SUPPLEMENTAL POLICIES AND PROCEDURES OF VETERANS TREATMENT COURTS.—A veterans treatment court may adopt supplemental policies and procedures to:

(a) Refer a defendant with a medical need to an appropriate health care provider or refer a defendant for other appropriate assistance, including assistance with housing, employment, nutrition, mentoring, and education.

(b) Otherwise encourage participation in the veterans

treatment court.

(8) ELIGIBILITY.—

(a) A defendant may participate in a veterans treatment court if:

1. The defendant has a military-related mental health condition, traumatic brain injury, substance use disorder, or psychological problem;

2. The defendant voluntarily agrees to the terms of the participation agreement by signing the agreement; and

3. The defendant's participation in the veterans treatment court is in the interests of justice, the defendant, and the community, as determined by the court.

(b) In making the determination under subparagraph (a)3., the court must consider:

1. The nature and circumstances of the offense charged;

2. The recommendation of the state attorney;

3. The special characteristics or circumstances of the defendant and any victim or alleged victim, including any recommendation of the victim or alleged victim;

4. The defendant's criminal history and whether the defendant previously participated in a veterans treatment court or similar program;

5. Whether the defendant's needs exceed the treatment resources available through the veterans treatment court;

6. The impact on the community of the defendant's participation and treatment in the veterans treatment court;

7. Recommendations of any law enforcement agency involved in investigating or arresting the defendant;

8. If the defendant owes restitution, the likelihood of

payment during the defendant's participation in the veterans treatment court;

9. Any mitigating circumstances; and

10. Any other circumstances reasonably related to the defendant's case.

(9) PARTICIPANT AGREEMENT.—To participate in a veterans treatment court, the defendant must sign, and the court must approve, a participant agreement.

(10) MODIFICATION OR TERMINATION.—If a veterans treatment court determines after a hearing that a defendant has not complied with the participant agreement, the court may modify or revoke the defendant's participation in the program.

(11) COMPLETION OF THE PARTICIPANT AGREEMENT.—If a veterans treatment court determines that a defendant has completed the requirements of the participant agreement, the court shall dispose of the charge or charges that served as the basis of participation in the veterans treatment court in accordance with the participant agreement and any applicable plea agreement, court order, or judgment.

(12) LIBERAL CONSTRUCTION.—The provisions of this section shall be liberally construed.

(13) NO RIGHT TO PARTICIPATE.—This section does not create a right of a veteran or servicemember to participate in a veterans treatment court ~~The chief judge of each judicial circuit may establish a Military Veterans and Servicemembers Court Program under which veterans, as defined in s. 1.01; veterans who were discharged or released under any condition; servicemembers, as defined in s. 250.01; individuals who are current or former United States Department of Defense~~

~~contractors; and individuals who are current or former military members of a foreign allied country, who are charged or convicted of a criminal offense, and who suffer from a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem can be sentenced in accordance with chapter 921 in a manner that appropriately addresses the severity of the mental illness, traumatic brain injury, substance abuse disorder, or psychological problem through services tailored to the individual needs of the participant. Entry into any Military Veterans and Servicemembers Court Program must be based upon the sentencing court's assessment of the defendant's criminal history, military service, substance abuse treatment needs, mental health treatment needs, amenability to the services of the program, the recommendation of the state attorney and the victim, if any, and the defendant's agreement to enter the program~~.

Section 2. Subsection (2) of section 43.51, Florida Statutes, is amended to read:

43.51 Problem-solving court reports.—

(2) For purposes of this section, the term "problem-solving court" includes, but is not limited to, a drug court pursuant to s. 397.334, s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans treatment ~~military veterans' and servicemembers'~~ court pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; a mental health court program pursuant to s. 394.47892, s. 948.01, s. 948.06, s. 948.08, or s. 948.16; a community court pursuant to s. 948.081; or a delinquency pretrial intervention court program pursuant to s. 985.345.

Section 3. Paragraph (a) of subsection (5) of section

910.035, Florida Statutes, is amended to read:

910.035 Transfer from county for plea, sentence, or participation in a problem-solving court.—

(5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.—

(a) For purposes of this subsection, the term "problem-solving court" means a drug court pursuant to s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans treatment ~~military veterans' and servicemembers'~~ court pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; a mental health court program pursuant to s. 394.47892, s. 948.01, s. 948.06, s. 948.08, or s. 948.16; or a delinquency pretrial intervention court program pursuant to s. 985.345.

Section 4. Paragraph (k) of subsection (2) of section 948.06, Florida Statutes, is amended to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(2)

(k)1. Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2016, the court may order the offender to successfully complete a postadjudicatory mental health court program under s. 394.47892 or a veterans treatment ~~military veterans and servicemembers~~ court program under s. 394.47891 if:

a. The court finds or the offender admits that the offender has violated his or her community control or probation;

b. The underlying offense is a nonviolent felony. As used in this subsection, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony

offense that is not a forcible felony as defined in s. 776.08. Offenders charged with resisting an officer with violence under s. 843.01, battery on a law enforcement officer under s. 784.07, or aggravated assault may participate in the mental health court program if the court so orders after the victim is given his or her right to provide testimony or written statement to the court as provided in s. 921.143;

c. The court determines that the offender is amenable to the services of a postadjudicatory mental health court program, including taking prescribed medications, or a veterans treatment ~~military veterans and servicemembers~~ court program;

d. The court explains the purpose of the program to the offender and the offender agrees to participate; and

e. The offender is otherwise qualified to participate in a postadjudicatory mental health court program under s. 394.47892(4) or a veterans treatment ~~military veterans and servicemembers~~ court program under s. 394.47891.

2. After the court orders the modification of community control or probation, the original sentencing court shall relinquish jurisdiction of the offender's case to the postadjudicatory mental health court program until the offender is no longer active in the program, the case is returned to the sentencing court due to the offender's termination from the program for failure to comply with the terms thereof, or the offender's sentence is completed.

Section 5. Paragraph (a) of subsection (7) of section 948.08, Florida Statutes, is amended to read:

948.08 Pretrial intervention program.—

(7)(a) Notwithstanding any provision of this section, a

person who is charged with a felony, other than a felony listed in s. 948.06(8)(c), and who is identified as a veteran or a servicemember, as defined in s. 394.47891, and is otherwise qualified to participate in a veterans treatment court under s. 394.47891 ~~s. 1.01; a veteran who is discharged or released under any condition; a servicemember, as defined in s. 250.01; an individual who is a current or former United States Department of Defense contractor; or an individual who is a current or former military member of a foreign allied country, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem~~ is eligible for voluntary admission into a pretrial veterans' treatment intervention program approved by the chief judge of the circuit, upon motion of either party or the court's own motion, except:

1. If a defendant was previously offered admission to a pretrial veterans' treatment intervention program at any time before trial and the defendant rejected that offer on the record, the court may deny the defendant's admission to such a program.

2. If a defendant previously entered a court-ordered veterans' treatment program, the court may deny the defendant's admission into the pretrial veterans' treatment program.

Section 6. Paragraph (a) of subsection (2) of section 948.16, Florida Statutes, is amended to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program; misdemeanor pretrial veterans' treatment intervention program; misdemeanor pretrial mental health court program.—

(2)(a) A veteran or a servicemember, as defined in s. 394.47891, who is otherwise qualified to participate in a veterans treatment court under that section ~~s. 1.01; a veteran who is discharged or released under any condition; a servicemember, as defined in s. 250.01; an individual who is a current or former United States Department of Defense contractor; or an individual who is a current or former military member of a foreign allied country, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem,~~ and ~~who~~ is charged with a misdemeanor is eligible for voluntary admission into a misdemeanor pretrial veterans' treatment intervention program approved by the chief judge of the circuit, for a period based on the program's requirements and the treatment plan for the offender, upon motion of either party or the court's own motion. However, the court may deny the defendant admission into a misdemeanor pretrial veterans' treatment intervention program if the defendant has previously entered a court-ordered veterans' treatment program.

Section 7. Present subsection (4) of section 948.21, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section, to read:

948.21 Condition of probation or community control; military servicemembers and veterans.—

(4) Effective for a probationer or community controllee whose crime is committed on or after October 1, 2020, and is a veteran or a servicemember as defined in s. 394.47891, who is otherwise qualified to participate in a veterans treatment court under s. 394.47891, the court may, in addition to any other

conditions imposed, impose a condition requiring the probationer or community controllee to participate in a treatment program capable of treating the probationer or community controllee's mental illness, traumatic brain injury, substance use disorder, or psychological problem.

Section 8. A Military Veterans and Servicemembers Court Program in operation under s. 394.47891, Florida Statutes, as of June 30, 2020, may continue to operate but must comply with the amendments made by this act to that section. This act does not affect or alter the rights or responsibilities of any person who, as of June 30, 2020, was admitted to and participating in a Military Veterans and Servicemembers Court Program established under s. 394.47891, Florida Statutes.

Section 9. This act shall take effect July 1, 2020.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL:	PCS/CS/SB 1552 (481528)
INTRODUCER:	Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee; and Senator Flores
SUBJECT:	Law Enforcement Activities
DATE:	February 27, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	**Fav/CS**
2.	Dale	Jameson	ACJ	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1552 amends section 683.231, Florida Statutes, which authorizes the Florida Department of Law Enforcement (FDLE) to establish a citizen support organization (CSO) to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day. The bill expands the CSO's authority to authorize the CSO to provide financial support to law enforcement agencies for missing and unidentified persons investigations and specialized training to support the resolution of such investigations through the issuance of grants.

The CSO is authorized to create a grant program for these purposes and raise and accept funds from any public or private source. The CSO may also establish criteria and set specific time periods for the acceptance of applications from local and state law enforcement agencies and for the selection process for awards. These criteria must be publicly available on the CSO's website.

The CSO may not award grants if the president of the CSO or the staff of the FDLE reasonably believe that the CSO has not yet met its obligations for funding Florida Missing Children's Day. The total amount of grants awarded may not exceed funds available to the CSO. The CSO must determine the assignment and use of grants awarded with oversight by the FDLE.

The bill also amends section 775.21, Florida Statutes (sexual predator registration), section 943.0435, Florida Statutes (sexual offender registration) and section 943.0311, Florida Statutes (FDLE chief of domestic security) to:

- Specify that the FDLE's secure online system includes updates to all vehicles owned by sexual predators and sexual offenders (registrants) and authorize registrants to report such updates to the FDLE through this system;
- Clarify a registration requirement relating to the in-person reporting of a change of residence to another state or jurisdiction by changing "within 48 hours before the date" the registrant intends to leave Florida to "at least 48 hours before the date" of intended travel;
- Provide that any travel not known by the registrant 48 hours before the date of intended travel must be reported as soon as possible before departure;
- Amend a registration requirement relating to international travel to require that a registrant residing in Florida report all international travel, regardless of how long they are leaving the United States;
- Specifically require reporting of airport departures and cruise ship departures;
- Provide a process for a petition for relief of registration for sexual offenders required to register based solely upon a requirement to register in another state or jurisdiction, and whose registration is considered confidential from public disclosure in that state or jurisdiction; and
- Provide that the FDLE will develop a statewide strategy for targeted violence prevention (STVP).

The bill has a fiscal impact. See Section V.

The bill takes effect July 1, 2020.

II. Present Situation:

Florida Missing Children's Day

Section 683.23, F.S., provides that the second Monday in September of each year is designated as "'Florida Missing Children's Day' in remembrance of Florida's past and present missing children and in recognition of our state's continued efforts to protect the safety of children through prevention, education, and community involvement"[1] "Each year parents, children, law enforcement officers and citizens convene on the steps of the Old Capitol Building in Tallahassee to remember Florida's missing children who are still missing and those who will never come home again. The Governor, Lieutenant Governor, and the [FDLE] Commissioner are invited as speakers."[2]

FDLE's CSO: Florida Missing Children's Day Foundation, Inc.

CSOs are statutorily-created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public

[1] Section 683.23, F.S.
[2] *Florida Missing Children's Day*, Florida Department of Law Enforcement, available at http://www.fdle.state.fl.us/mcic/fmcd.aspx (last visited on Feb. 6, 2020).

causes. The functions and purpose of a CSO are prescribed by its enacting statute and, for most, by a written contract with the agency the CSO was created to support.

In 2008, the Legislature created s. 683.231, F.S., which authorizes the FDLE to establish a CSO to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day.[3] In 2008, the Florida Missing Children's Day Foundation, Inc., was established to provide such assistance, funding, and promotional support.[4] In 2018, the Legislature reenacted statutory authority (s. 683.23, F.S.) for the FDLE to establish a CSO to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day.[5]

Section 683.231(1), F.S., authorizes the FDLE to establish a CSO to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day. For purposes of s. 683.231, F.S., "citizen support organization" means an organization that is:

- A Florida corporation not for profit incorporated under ch. 617, F.S., and approved by the Department of State; and
- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, either real or personal; and make expenditures to or for the direct or indirect benefit of the FDLE in furtherance of Florida Missing Children's Day.[6]

Section 683.231(3), F.S., provides that the CSO is not a registered lobbyist within the meaning of s. 11.045, F.S.[7]

Section 683.231(4), F.S., authorizes the CSO to collect and expend funds to be used for awards; public awareness and awards ceremonies, workshops, and other meetings, including distribution materials for public education and awareness; travel; Internet and web-hosting services; administrative costs, including personnel costs; costs of audits; and costs of rental facilities.

Section 683.231(5), F.S., provides that the activities of the CSO must be determined by the FDLE to be consistent with the goals and mission of the FDLE and in the best interests of the state and approved in writing by the FDLE to operate for the direct or indirect benefit of the FDLE. The approval must be given in a letter of agreement from the FDLE.

Section 683.231(6)(a), F.S., authorizes the FDLE to fix and collect charges for the rental of facilities and properties managed by the FDLE and to permit, without charge, appropriate use of administrative services, property, and facilities of the FDLE by the CSO, subject to s. 683.231, F.S. The use must be directly in keeping with the approved purposes of the CSO and may not be made at times or places that would unreasonably interfere with opportunities for the public to use such facilities for established purposes. Any money received from rentals of facilities and

[3] Section 683.231(1), F.S.
[4] *Florida Missing Children's Day Foundation (FMCDF)*, Florida Department of Law Enforcement, available at http://www.fdle.state.fl.us/MCICSearch/FMCDFoundation.asp (last visited on Feb. 6, 2020).
[5] Ch. 2018-54, L.O.F.
[6] Section 683.231(2), F.S.
[7] Section 11.045, F.S., sets forth registration requirements for lobbyists who lobby the Legislature.

properties managed by the FDLE may be held in the Operating Trust Fund of the FDLE or in a separate depository account in the name of the CSO and subject to the provisions of the letter of agreement with the FDLE. The letter of agreement must provide that any funds held in the separate depository account in the name of the CSO must revert to the FDLE if the CSO is no longer approved by the department to operate in the best interests of the state.

Section 683.231(6)(c), F.S., prohibits the FDLE from permitting the use of any administrative services, property, or facilities of the state by a CSO that does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, gender, age, or national origin.

Section 683.231(7), F.S., requires the CSO to provide for an independent annual financial audit in accordance with s. 215.981, F.S. Copies of the audit must be provided to the FDLE, the Office of Policy and Budget in the Executive Office of the Governor, and the Florida Cabinet.

Florida's Sexual Predator and Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.[8] These laws also provide for public and community notification of certain information about sexual predators and sexual offenders. Relevant to the bill, this information includes vehicle information and information regarding travel outside Florida. The laws span several different chapters and numerous statutes,[9] and are implemented through the combined efforts of FDLE, all Florida sheriffs, the Department of Corrections, the Department of Juvenile Justice, the Department of Highway Safety and Motor Vehicles, and the Department of Children and Families.

A person is designated as a sexual predator by a court if the person:
- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;[10]
- Has been convicted of a current qualifying sex offense[11] committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.[12]

A person is classified as a sexual offender if the person:

[8] Sections 775.21 and 943.0435, F.S.
[9] Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.
[10] Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.), and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).
[11] Examples of qualifying sex offenses include luring or enticing a child by an adult with a prior sexual conviction (s. 787.025(2)(c), F.S.), human trafficking for commercial sexual activity (s. 787.06(3)(b), (d), (f), or (g), F.S.), sexual battery (s. 794.011, excluding s. 794.011(10), F.S.), unlawful sexual activity with a minor (s. 794.05, F.S.), and lewd or lascivious battery, molestation, conduct, or exhibition (s. 800.04, F.S.). Section 775.21(4)(a), F.S.
[12] Section 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

- Has been convicted of a qualifying sex offense[13] and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.[14]

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders, including residence information.[15] Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

Registrant Reporting of Vehicle Information

Sexual predators and sexual offenders must report in-person to the sheriff's office within 48 hours after any change in vehicles owned.[16] According to the FDLE, there are currently 55,987 vehicles registered to the 31,627 non-incarcerated registrants residing in Florida. The FDLE reports: "While vehicle information is incredibly important to law enforcement, the mandate to have every change to this information reported in-person to the sheriff's office has created a significant impact to these local sheriff's offices. Since 2007, registrants have had the ability to electronically report and update other specific supplemental registration information such as email addresses, Internet identifiers, and phone numbers through a secure online system."[17]

Registrant Reporting of Travel Information

Sexual predators and sexual offenders must report a change of residence to another state or jurisdiction within 48 hours before the date of intended travel. If the intended residence of 5 days or more is outside of the United States, it must be reported at least 21 days before the date of intended travel.[18]

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[13] Examples of qualifying sex offenses include luring or enticing a child by an adult with a prior sexual conviction (s. 787.025(2)(c), F.S.), human trafficking for commercial sexual activity (s. 787.06(3)(b), (d), (f), or (g), F.S.), sexual battery (s. 794.011, excluding s. 794.011(10), F.S.), unlawful sexual activity with a minor (s. 794.05, F.S.), and lewd or lascivious battery, molestation, conduct, or exhibition (s. 800.04, F.S.). Section 943.0435(1)(h), F.S.

[14] Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the Department of Corrections' supervision, also define the term "sexual offender."

[15] The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. *About Us*, Florida Department of Law Enforcement, available at http://offender.fdle.state.fl.us/offender/About.jsp (last visited on Feb. 6, 2020). The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. *Sexual Offenders and Predators Search*, Florida Department of Law Enforcement, available at http://offender.fdle.state.fl.us/offender/Search.jsp (last visited on Feb. 6, 2020).

[16] Sections 775.21(6)(a)1.d. and 943.0435(2)(b)3., F.S.

[17] Analysis of SB 1552 (July 1, 2020), Florida Department of Law Enforcement. This analysis is on file with the Senate Committee on Criminal Justice.

[18] Sections 775.21(6)(i) and 943.0435(7), F.S.

Relief from Registration Requirements for Persons Required to Register in Another State or Jurisdiction

According to the FDLE "[c]urrent law has no mechanism for relief of registration for individuals required to register based solely upon a requirement to register in another state for an offense that is not similar to a conviction offense requiring registration in Florida, and whose registration is considered confidential from public disclosure in that state."[19]

Behavioral Threat Assessment and Management

Governor Ron DeSantis requested the FDLE to conduct a detailed review of Florida's readiness to prevent and mitigate targeted threats and incidents of violence. The Governor specifically requested that Florida develop a broader and more comprehensive threat assessment strategy, and appropriate training, to be used by local law enforcement agencies.[20]

FDLE defines Behavioral Threat Assessment and Management (BTAM) as a structured group process used to evaluate the risk posed by an individual, typically as a response to an actual or perceived threat or concerning behavior.[21] The primary purpose of a threat assessment is to identify individuals on a pathway to violence by collecting, corroborating and analyzing probative information from all sources, including published academic and operational research to contextualize and understand the patterned thinking and behavior of an identifiable person of concern[22] and make a determination as to whether or not the individual poses a threat of violence to a target. If an inquiry indicates that there is a risk of violence in a specific situation, authorities conducting the threat assessment collaborate with others to develop, implement, and monitor a strategic, individualized plan to directly or indirectly intervene in an identified person of concern's pattern of life through coordinated, operational activities designed to:

- Stabilize and support, to the extent possible, an identified person of concern's current situation;
- Influence, control, or incapacitate an identified person of concern's threat-enhancing thinking and behavior;
- Harden and protect any identifiable targets; and

III. Mitigate concern to prevent targeted violence.[23]Effect of Proposed Changes:

CSO Grant Authority

The bill amends s. 683.231, F.S., which authorizes the FDLE to establish a CSO to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day. The bill expands CSO grant authority to authorize the CSO to provide financial support to law enforcement agencies for missing and unidentified persons investigations and

[19] See footnote 17.
[20] Press Release, Executive Office of the Governor, Governor Ron DeSantis Directs FDLE to Prioritize Threat Assessment Strategy (February 13, 2019), available at https://www.flgov.com/2019/02/13/governor-ron-desantis-directs-fdle-to-prioritize-threat-assessment-strategy/ (last visited February 25, 2020).
[21] Email from the Department of Law Enforcement, FDLE Response, (January 4, 2020). On file with the Senate Committee on Infrastructure and Security.
[22] Vossekuil, Fein, and Berglund, Threat Assessment, 2015.
[23] Calhoun and Weston, Contemporary, 2003; Amman et al., Making Prevention, 2017.

specialized training to support the resolution of such investigations through the issuance of grants.

The CSO may create a grant program for these purposes and raise and accept funds from any public or private source. The CSO may also establish criteria and set specific time periods for the acceptance of applications from local and state law enforcement agencies and for the selection process for awards. These criteria must be publicly available on the CSO's website.

The CSO may not award grants if the president of the CSO or the staff of the FDLE reasonably believe that the CSO has not yet met its obligations for funding Florida Missing Children's Day. The total amount of grants awarded may not exceed funds available to the CSO. The CSO must determine the assignment and use of grants awarded with oversight by the FDLE.

Registrant Reporting of Vehicle Information

The bill amends ss. 775.21 and s. 943.0435, F.S., to specify that the FDLE's secure online system includes updates to all vehicles owned by registrants and authorizes registrants to report such updates to the FDLE through this system. According to the FDLE, this change will facilitate "faster access to this critical information and [reduce] the impact on sheriff's offices. Sexual offenders and sexual predators will still have the option to report this information in-person to the sheriff's office."[24]

Registrant Reporting of Travel Information

The bill also amends ss. 775.21 and 943.0435, F.S., to:

- Clarify a registration requirement relating to in-person reporting of a change of residence to another state or jurisdiction by changing "within 48 hours before the date" the sexual offender or sexual predator intends to leave Florida to "at least 48 hours before the date" of intended travel.
- Provide that any travel not known by the offender or predator 48 hours before the date of intended travel must be reported as soon as possible before departure.
- Amend a registration requirement relating to international travel to require that a sexual offender or sexual predator residing in Florida report all international travel, regardless of how long they are leaving the United States.
- Specifically require reporting of airport returns and cruise ship returns.

Relief from Registration Requirements for Persons Required to Register in Another State or Jurisdiction

The bill also amends s. 943.0435, F.S., to provide for a removal of Florida sexual offender registration requirements for a person who:

- Establishes or maintains a residence in Florida and who has not been designated as a sexual predator by a Florida court but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and

[24] Analysis of SB 1552 (July 1, 2020), Florida Department of Law Enforcement. This analysis is on file with the Senate Committee on Criminal Justice.

was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender; and

- Petitions for removal of Florida sexual offender registration requirements and asserts in that petition that his or her designation as a sexual predator or sexually violent predator or any other sexual offender designation in the state or jurisdiction in which the designation was made is confidential from public disclosure or that such designation, if not imposed by a court, is considered confidential from public disclosure by operation of law or court order in the state or jurisdiction in which the designation was made, provided that such person does not meet the criteria under Florida law for registration as a sexual offender.

The person must file the petition for relief in the circuit court in the jurisdiction in which the person resides or, for a person who no longer resides in Florida, the court in the jurisdiction in which the person last resided in Florida.

A petition for relief must document the person's conviction and include a copy of the order issued by the court in the state or jurisdiction which made the designation confidential from public disclosure. If there was no such court designation, the person must demonstrate to the Florida circuit court that the designation has been made confidential by operation of law in the state or jurisdiction in which the designation was made.

The state attorney and the FDLE must be given notice at least 21 days before the date of the hearing on the petition and may present evidence in opposition to the requested relief or may otherwise demonstrate why it should be denied.

If relief is granted by the Florida circuit court and the offender provides to the FDLE a certified copy of the court's order removing the requirement to register in Florida, the person is no longer required to register as a sexual offender in Florida and the FDLE must remove the person's information from the public registry of sexual offenders and sexual predators maintained by the department.

Statewide Strategy for Targeted Violence Prevention

The bill specifies that the duties of the Chief of Domestic Security for the FDLE include:

- Oversight of the development of a statewide strategy for targeted violence prevention;
- Development of a comprehensive threat assessment strategy and appropriate training to be used by state and local law enforcement agencies; and
- Coordination with state and local law enforcement agencies in the development of the statewide strategy and its implementation.

The statewide strategy for targeted violence prevention is required to be evaluated periodically, as determined by the FDLE, and after any event of targeted violence, to incorporate changes needed to address deficiencies and improve effectiveness.

In addition, the bill states that any statewide strategy for targeted violence prevention may not abrogate or diminish any person's right to be secure in their persons, houses, papers, and effects

against unreasonable seizures and searches as provided in the United States and Florida Constitutions, and in the laws of Florida and the Federal Government, including, but not limited to, s. 933.04, F.S.

Effective Date

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

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 Florida Sexual Predators Act

According to the FDLE, the changes proposed by the bill related to sexual predators will require the department to:

- Update sexual offender/predator registration forms and e-forms, the Florida Sexual Offender/Predator Public Registry website and the CJNet website and training materials; and
- Coordinate and send notifications of these changes to criminal justice partners via e-mail and sexual offenders/predators via physical mail.[25]

The FDLE states that within the last five years, the total cost to send physical letters to all sexual offenders and predators with an active Florida address to notify them of updates in registration requirements as a result of legislation has ranged from approximately $12,000 to $19,000.[26] The FDLE further states that costs of implementing the requirements of the bill related to sexual predators will be absorbed by the department.[27]

By allowing changes to registrant vehicle information to be reported online to the FDLE as an alternative to in-person reporting of this information to a sheriff office, sheriff offices may experience a reduction in costs associated with this reporting requirement.

Statewide Strategy for Targeted Violence Prevention
According to the FDLE, the funding requested in the "Statewide Behavioral Threat Assessment Management Strategy" issue in the Governor's Recommended Budget for Fiscal Year 2020-2021 would be required to implement these requirements. This issue recommends $4,700,776 in General Revenue funding and 20 new FTE.[28] Currently, SB 2500, Senate General Appropriations Bill for Fiscal Year 2020-2021, includes $1,000,000 recurring General Revenue funds for this purpose.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 683.231, 775.21, 943.0311 and 943.0435.

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 February 25, 2020:

[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] Email on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice received February 25, 2020.

The committee substitute increases the duties of the Chief of Domestic Security within FDLE to include:

- Oversight of the development of a statewide strategy for targeted violence prevention;
- Development of a comprehensive threat assessment strategy and appropriate training to be used by state and local law enforcement agencies; and
- Coordination with state and local law enforcement agencies in the development of the statewide strategy and its implementation.

Any statewide strategy for targeted violence prevention is required to be evaluated periodically, as determined by the FDLE, and after any event of targeted violence, to incorporate changes needed to address deficiencies and improve effectiveness.

In addition, the amendment states that any statewide strategy for targeted violence prevention may not abrogate or diminish any person's right to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches as provided in the United States and Florida Constitutions, and in the laws of Florida and the Federal Government, including, but not limited to, s. 933.04, F.S

CS by Criminal Justice on February 11, 2020:
The committee substitute:

- Makes technical corrections for proper placement of language relating to reporting changes in vehicle information.
- Clarifies the process for a petition for relief of registration for sexual offenders required to register based solely upon a requirement to register in another state or jurisdiction, and whose registration is considered confidential from public disclosure in that state or jurisdiction.

B. Amendments:

None.

540900

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/25/2020	.	
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	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice (Flores) recommended the following:

Senate Amendment (with title amendment)

Between lines 499 and 500
insert:

Section 4. Present subsection (7) of section 943.0311, Florida Statutes, is redesignated as subsection (10), and a new subsection (7) and subsections (8) and (9) are added to that section, to read:

943.0311 Chief of Domestic Security; duties of the department with respect to domestic security.—

540900

(7) The chief shall oversee the development of a statewide strategy for targeted violence prevention to develop a comprehensive threat assessment strategy and appropriate training to be used by state and local law enforcement agencies. The chief shall coordinate with state and local law enforcement agencies in the development of the statewide strategy and its implementation.

(8) Any statewide strategy for targeted violence prevention shall be evaluated periodically, as determined by the department, and after any event of targeted violence, to incorporate changes needed to address deficiencies and improve effectiveness.

(9) Subsections (7) and (8) may not be construed to abrogate or diminish any person's right to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches as provided in the United States and Florida Constitutions, and in the laws of this state and the Federal Government, including, but not limited to, s. 933.04.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 16

and insert:

offender under certain circumstances; amending s. 943.0311, F.S.; requiring the Chief of Domestic Security to oversee the development of a statewide strategy for targeted violence prevention; requiring the chief to coordinate with state and local law enforcement agencies in the development of the

statewide strategy and in its implementation; requiring periodic evaluation of the statewide strategy; providing construction; providing an

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.25.20
Meeting Date

1552
Bill Number (if applicable)

Topic Law Enforcement Activities

Amendment Barcode (if applicable)

Name Ron Dree

Job Title External Affairs Director

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Tallahassee FL 32308
City *State* *Zip*

Email ronalddree@fdle.state.fl.us

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FDLE

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)

25 Feb 20
Meeting Date

1552
Bill Number (if applicable)

Topic Law Enforcement Activities

Amendment Barcode (if applicable)

Name Barney Bishop III

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Street

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Tallahassee FL 32308
City *State* *Zip*

Email barney@barneybishop.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

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)

By the Committee on Criminal Justice; and Senator Flores

591-03463-20 20201552c1

A bill to be entitled

An act relating to law enforcement activities; amending s. 683.231, F.S.; authorizing a citizen support organization for Florida Missing Children's Day to provide grants to law enforcement agencies for specified purposes; redefining the term "citizen support organization"; providing requirements for such grants and for the citizen support organization; amending ss. 775.21 and 943.0435, F.S.; authorizing sexual predators and sexual offenders to report online certain information to the Department of Law Enforcement; revising reporting requirements for sexual predators and sexual offenders; making technical changes; providing for consideration for removal of the requirement to register as a sexual offender under certain circumstances; providing an effective date.

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

Section 1. Subsection (7) of section 683.231, Florida Statutes, is renumbered as subsection (10), subsection (1), paragraph (b) of subsection (2), and subsection (4) are amended, and a new subsection (7) and subsections (8) and (9) are added to that section, to read:

683.231 Citizen support organization for Florida Missing Children's Day.—

(1) The Department of Law Enforcement may establish a citizen support organization to provide assistance, funding, and

promotional support for activities authorized for Florida Missing Children's Day under s. 683.23 and to provide financial support to law enforcement agencies for missing and unidentified persons investigations and specialized training to support the resolution of such investigations through the issuance of grants.

(2) As used in this section, the term "citizen support organization" means an organization that is:

(b) Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, either real or personal; and make expenditures to or for the direct or indirect benefit of the department in furtherance of Florida Missing Children's Day and missing and unidentified persons investigations and specialized training to support the resolution of such investigations.

(4) The citizen support organization is specifically authorized to collect and expend funds to be used for awards; public awareness and awards ceremonies, workshops, and other meetings, including distribution materials for public education and awareness; grants to assist missing and unidentified persons investigations and specialized training to support the resolution of such investigations; travel; Internet and web-hosting services; administrative costs, including personnel costs; costs of audits; and costs of facilities rental.

(7) The citizen support organization is authorized to create a grant program to provide financial support to law enforcement agencies for missing and unidentified persons

investigations and specialized training to support the resolution of such investigations through the issuance of grants. The citizen support organization may raise and accept funds from any public or private source. The citizen support organization may establish criteria and set specific time periods for the acceptance of applications from local and state law enforcement agencies and for the selection process for awards. The citizen support organization shall make such criteria publicly available on its website.

(8) The citizen support organization may not award grants if the president of the citizen support organization or the staff of the department reasonably believe that the citizen support organization has not yet met its obligations for funding Florida Missing Children's Day. The total amount of grants awarded may not exceed funds available to the citizen support organization.

(9) The citizen support organization shall manage the assignment and use of grants awarded. The department shall oversee these activities consistent with subsection (5).

Section 2. Paragraphs (a), (g), and (i) of subsection (6) of section 775.21, Florida Statutes, are amended to read:

775.21 The Florida Sexual Predators Act.—

(6) REGISTRATION.—

(a) A sexual predator shall register with the department through the sheriff's office by providing the following information to the department:

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; photograph; address of legal residence and

address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home telephone numbers and cellular telephone numbers; employment information; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; date and place of each conviction; fingerprints; palm prints; and a brief description of the crime or crimes committed by the offender. A post office box may not be provided in lieu of a physical residential address. The sexual predator shall produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual predator shall also provide information about any professional licenses he or she has.

a. Any change that occurs after the sexual predator registers in person at the sheriff's office as provided in this subparagraph in any of the following information related to the sexual predator must be reported as provided in paragraphs (g), (i), and (j): permanent, temporary, or transient residence; name; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home and cellular telephone numbers; employment information; and status at an institution of higher

education.

b. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the department written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

c. If the sexual predator is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual predator shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual predator's enrollment, volunteer, or employment status. The sheriff, the Department of Corrections, or the Department of Juvenile Justice shall promptly notify each institution of higher education of the sexual predator's presence and any change in the sexual predator's enrollment, volunteer, or employment status.

d. A sexual predator shall report <u>to the department through the department's online system or</u> in person to the sheriff's office within 48 hours after any change in vehicles owned to

report those vehicle information changes.

2. Any other information determined necessary by the department, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers when available.

(g)1. Each time a sexual predator's driver license or identification card is subject to renewal, and, without regard to the status of the predator's driver license or identification card, within 48 hours after any change of the predator's residence or change in the predator's name by reason of marriage or other legal process, the predator shall report in person to a driver license office and is subject to the requirements specified in paragraph (f). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles may release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual predators as provided in this section. A sexual predator who is unable to secure or update a driver license or an identification card with the Department of Highway Safety and Motor Vehicles as provided in paragraph (f) and this paragraph shall also report any change of the predator's residence or change in the predator's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the predator resides or is located and provide confirmation that he or she reported such information to the Department of Highway

Safety and Motor Vehicles. The reporting requirements under this subparagraph do not negate the requirement for a sexual predator to obtain a Florida driver license or identification card as required by this section.

2.a. A sexual predator who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall, within 48 hours after vacating the permanent, temporary, or transient residence, report in person to the sheriff's office of the county in which he or she is located. The sexual predator shall specify the date upon which he or she intends to or did vacate such residence. The sexual predator shall provide or update all of the registration information required under paragraph (a). The sexual predator shall provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

b. A sexual predator shall report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The sexual predator must provide the addresses and locations where he or she maintains a transient residence. Each sheriff's office shall establish procedures for reporting transient residence information and provide notice to transient registrants to report transient residence information as required in this sub-subparagraph. Reporting to the sheriff's office as required by this sub-

subparagraph does not exempt registrants from any reregistration requirement. The sheriff may coordinate and enter into agreements with police departments and other governmental entities to facilitate additional reporting sites for transient residence registration required in this sub-subparagraph. The sheriff's office shall, within 2 business days, electronically submit and update all information provided by the sexual predator to the department.

3. A sexual predator who remains at a permanent, temporary, or transient residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the predator indicated he or she would or did vacate such residence, report in person to the sheriff's office to which he or she reported pursuant to subparagraph 2. for the purpose of reporting his or her address at such residence. When the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under subparagraph 2. but fails to make a report as required under this subparagraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. The failure of a sexual predator who maintains a transient residence to report in person to the sheriff's office every 30 days as required by sub-subparagraph 2.b. is punishable as provided in subsection (10).

5.a. A sexual predator shall register all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, with the department through the department's

online system or in person at the sheriff's office within 48 hours after using such electronic mail addresses and Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Corrections before using such electronic mail addresses or Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Juvenile Justice, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Juvenile Justice before using such electronic mail addresses or Internet identifiers.

b. A sexual predator shall register <u>all changes to vehicles owned,</u> all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's online system; in person at the sheriff's office; in person at the Department of Corrections if the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections; or in person at the Department of Juvenile Justice if the sexual predator is in the custody or control, or under the supervision, of the Department of Juvenile Justice. All changes required to be reported in this sub-subparagraph

shall be reported within 48 hours after the change.

c. The department shall establish an online system through which sexual predators may securely access, submit, and update all vehicles owned; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home telephone numbers and cellular telephone numbers; employment information; and institution of higher education information.

(i) A sexual predator who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida or intends to travel outside of the United States shall report in person to the sheriff of the county of current residence at least ~~within~~ 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel ~~if the intended residence of 5 days or more is~~ outside of the United States. Any travel that is not known by the sexual predator 48 hours before he or she intends to establish a residence in another state or jurisdiction or 21 days before the departure date for travel outside of the United States must be reported to the sheriff's office as soon as possible before departure. The sexual predator shall provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual predator shall also provide travel information, including, but not limited to, expected departure and return dates, flight numbers ~~number~~, airports ~~airport~~ of departure and return, cruise ports ~~port~~ of departure and return, or any other means of intended travel. The sheriff

shall promptly provide to the department the information received from the sexual predator. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence or the intended country of travel of the sexual predator's intended residence or intended travel. The failure of a sexual predator to provide his or her intended place of residence or intended travel is punishable as provided in subsection (10).

Section 3. Paragraph (b) of subsection (2), paragraph (e) of subsection (4), subsection (7), and paragraph (b) of subsection (11) of section 943.0435, Florida Statutes, are amended, and paragraph (c) is added to subsection (11) of that section, to read:

943.0435 Sexual offenders required to register with the department; penalty.—

(2) Upon initial registration, a sexual offender shall:

(b) Provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; fingerprints; palm prints; photograph; employment information; address of permanent or legal residence or address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state, address, location or description, and dates of any current or known future temporary residence within the state or out of state; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; home telephone numbers and cellular telephone numbers; electronic mail addresses;

Internet identifiers and each Internet identifier's corresponding website homepage or application software name; date and place of each conviction; and a brief description of the crime or crimes committed by the offender. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has.

1. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide to the department through the sheriff's office written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. If the sexual offender is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each

institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status. The sheriff, the Department of Corrections, or the Department of Juvenile Justice shall promptly notify each institution of higher education of the sexual offender's presence and any change in the sexual offender's enrollment, volunteer, or employment status.

3. A sexual offender shall report <u>to the department through the department's online system or</u> in person to the sheriff's office within 48 hours after any change in vehicles owned to report those vehicle information changes.

When a sexual offender reports at the sheriff's office, the sheriff shall take a photograph, a set of fingerprints, and palm prints of the offender and forward the photographs, palm prints, and fingerprints to the department, along with the information provided by the sexual offender. The sheriff shall promptly provide to the department the information received from the sexual offender.

(4)

(e)1. A sexual offender shall register all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, with the department through the department's online system or in person at the sheriff's office within 48 hours after using such electronic mail addresses and Internet identifiers. If the sexual offender is in the custody or control, or under the supervision, of the Department of Corrections, he or she must report all electronic mail addresses

and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Corrections before using such electronic mail addresses or Internet identifiers. If the sexual offender is in the custody or control, or under the supervision, of the Department of Juvenile Justice, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Juvenile Justice before using such electronic mail addresses or Internet identifiers.

2. A sexual offender shall register <u>all changes to vehicles owned,</u> all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's online system; in person at the sheriff's office; in person at the Department of Corrections if the sexual offender is in the custody or control, or under the supervision, of the Department of Corrections; or in person at the Department of Juvenile Justice if the sexual offender is in the custody or control, or under the supervision, of the Department of Juvenile Justice. All changes required to be reported under this subparagraph must be reported within 48 hours after the change.

3. The department shall establish an online system through which sexual offenders may securely access, submit, and update all changes in status to <u>vehicles owned;</u> electronic mail addresses; Internet identifiers and each Internet identifier's

corresponding website homepage or application software name; home telephone numbers and cellular telephone numbers; employment information; and institution of higher education information.

(7) A sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida or intends to travel outside of the United States shall report in person to the sheriff of the county of current residence at least ~~within~~ 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel ~~if the intended residence of 5 days or more is~~ outside of the United States. Any travel that is not known by the sexual offender 48 hours before he or she intends to establish a residence in another state or jurisdiction or 21 days before the departure date for travel outside of the United States must be reported in person to the sheriff's office as soon as possible before departure. The sexual offender shall provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual offender shall also provide travel information, including, but not limited to, expected departure and return dates, flight numbers ~~number~~, airports ~~airport~~ of departure and return, cruise ports ~~port~~ of departure and return, or any other means of intended travel. The sheriff shall promptly provide to the department the information received from the sexual offender. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence or the

intended country of travel of the sexual offender's intended residence or intended travel. The failure of a sexual offender to provide his or her intended place of residence or intended travel is punishable as provided in subsection (9).

(11) Except as provided in s. 943.04354, a sexual offender shall maintain registration with the department for the duration of his or her life unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that meets the criteria for classifying the person as a sexual offender for purposes of registration. However, a sexual offender shall be considered for removal of the requirement to register as a sexual offender only if the person:

(b) Maintains ~~As defined in sub-subparagraph (1)(h)1.b. must maintain~~ registration with the department as described in sub-subparagraph (1)(h)1.b. for the duration of his or her life until the person provides the department with an order issued by the court that designated the person as a sexual predator or~~, as a~~ sexually violent predator~~,~~ or any other ~~by another~~ sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, ~~and~~ provided that such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(c)1. Is required to register as a sexual offender solely under the requirements of sub-subparagraph (1)(h)1.b. and files

a petition in the circuit court in the jurisdiction in which the person resides or, for a person who no longer resides in this state, the court in the jurisdiction in which the person last resided in this state. The petition must assert that his or her designation as a sexual predator or sexually violent predator or any other sexual offender designation in the state or jurisdiction in which the designation was made is confidential from public disclosure or that such designation, if not imposed by a court, is considered confidential from public disclosure by operation of law or court order in the state or jurisdiction in which the designation was made, provided that such person does not meet the criteria for registration as a sexual offender under the laws of this state.

2. If the person meets the criteria in subparagraph 1., the court may grant the petition and remove the requirement to register as a sexual offender.

3. A petition under this paragraph must document the person's conviction and include a copy of the order issued by the court in the state or jurisdiction which made the designation confidential from public disclosure. If such relief was not granted by court order, the person must demonstrate to the court that his or her registration requirement has been made confidential by operation of law in the state or jurisdiction requiring registration. The state attorney and the department must be given notice at least 21 days before the date of the hearing on the petition and may present evidence in opposition to the requested relief or may otherwise demonstrate why it should be denied.

4. If a person provides to the department a certified copy

of the circuit court's order granting the person removal of the requirement to register as a sexual offender in this state in accordance with this sub-paragraph, the registration requirement does not apply to the person and the department must remove all information about the person from the public registry of sexual offenders and sexual predators maintained by the department.

Section 4. This act shall take effect July 1, 2020.

CourtSmart Tag Report

Room: LL 37 **Case No.:** **Type:**
Caption: Senate Appropriations Subcommittee on Criminal and Civil Justice **Judge:**

Started: 2/25/2020 9:07:13 AM
Ends: 2/25/2020 9:47:44 AM **Length: 00:40:32**

9:07:16 AM Sen. Brandes (Chair)
9:07:52 AM S 1552
9:07:57 AM Sen. Flores
9:08:24 AM Am. 540900
9:08:31 AM Sen. Flores
9:09:07 AM S 1552 (cont.)
9:09:15 AM Barney Bishop, CEO, Florida Smart Justice Alliance (waives in support)
9:09:20 AM Ron Draa, External Affairs Director, Florida Department of Law Enforcement (waives in support)
9:10:23 AM Sen. Bracy (Chair)
9:10:27 AM S 1308
9:10:34 AM Am. 139324
9:10:47 AM Sen. Brandes
9:12:47 AM Am. 291996
9:12:52 AM Sen. Brandes
9:13:42 AM Am. 139324 (cont.)
9:13:58 AM Matt Dunagan, Deputy Director, Florida Sheriffs Association
9:18:38 AM Sen. Brandes
9:18:47 AM M. Dunagan
9:19:00 AM Sen. Brandes
9:19:45 AM M. Dunagan
9:20:07 AM Sen. Brandes
9:20:13 AM M. Dunagan
9:21:00 AM Sen. Brandes
9:21:04 AM M. Dunagan
9:21:13 AM Sen. Rouson
9:21:39 AM M. Dunagan
9:22:14 AM Sen. Rouson
9:22:24 AM M. Dunagan
9:22:59 AM S 1496
9:23:07 AM Sen. Lee
9:25:22 AM Am. 251488
9:25:25 AM Sen. Lee
9:26:29 AM Am. 446302
9:26:35 AM Sen. Brandes
9:27:23 AM Am. 251488 (cont.)
9:27:43 AM Sen. Lee
9:28:35 AM S 1496 (cont.)
9:28:43 AM Roy Clark, Director of Legislative and Cabinet Affairs, Florida Department of Veteran's Affairs
9:28:54 AM Barney Bishop, CEO, Florida Smart Justice Alliance (waives in support)
9:28:58 AM Kristina Wiggins, Executive Director, Florida Public Defender Association (waives in support)
9:29:08 AM Dan Hendrickson, Volunteer, Tallahassee Veterans Legal Collaborative
9:31:29 AM Fred Ingley, Retired, Veterans Treatment Courts
9:34:28 AM James Sigman, Marine Corps League
9:34:47 AM Gail Ernst, American Legion
9:36:57 AM Chelsea Murphy, State Director, Right on Crime (waives in support)
9:37:01 AM Ida Eskamani, Public Policy, Organize Florida and New Florida Majority (waives in support)
9:37:17 AM Sen. Lee
9:39:20 AM S 1308 (cont.)
9:39:27 AM Am. 139324
9:39:37 AM Gary Hester, Government Affairs, Florida Police Chiefs Association (waives in opposition)
9:39:40 AM Jack Campbell, State Attorney, Florida Prosecuting Attorney's Association (waives in opposition)
9:40:06 AM Sen. Brandes

9:41:53 AM S 1308 (cont.)
9:42:07 AM Ida Eskamani, Public Policy, Organize Florida and New Florida Majority
9:42:48 AM Matt Dunagan, Deputy Director, Florida Sheriffs Association (waives in opposition)
9:42:52 AM Kristina Wiggins, Executive Director, Florida Public Defender Association (waives in support)
9:42:57 AM Dan Hendrickson, Volunteer, Tallahassee Veterans Legal Collaborative (waives in support)
9:43:03 AM Barney Bishop, CEO, Florida Smart Justice Alliance (waives in opposition)
9:43:07 AM Chelsea Murphy, State Director, Right on Crime (waives in support)
9:43:09 AM Greg Black, Lobbyist, R Street Institute (waives in support)
9:43:17 AM Sen. Rouson
9:44:35 AM Sen. Brandes
9:46:50 AM Sen. Brandes (Chair)
9:47:36 AM Sen. Gainer