

<b>Tab 1</b>	<b>CS/SB 154 by ED, Thurston;</b> (Compare to H 00105) Human Trafficking Education in Schools					
<b>Tab 2</b>	<b>SB 522 by Gruters;</b> Cruelty to Dogs					
607430	D	S	RCS	CJ, Gruters	Delete everything after	12/10 12:10 PM
<b>Tab 3</b>	<b>SB 550 by Brandes (CO-INTRODUCERS) Perry;</b> Sentencing					
<b>Tab 4</b>	<b>SB 552 by Brandes (CO-INTRODUCERS) Perry;</b> (Compare to H 00227) Sentencing					
146202	A	S	RCS	CJ, Brandes	Delete L.17 - 41:	12/10 12:10 PM
<b>Tab 5</b>	<b>SB 554 by Brandes (CO-INTRODUCERS) Perry;</b> Sentencing					
715730	A	S	RCS	CJ, Brandes	Delete L.39:	12/10 12:10 PM
<b>Tab 6</b>	<b>SB 572 by Brandes (CO-INTRODUCERS) Perry;</b> Extension of Confinement					
244404	A	S	RCS	CJ, Brandes	Delete L.74 - 75:	12/10 12:10 PM
100336	A	S	RCS	CJ, Bracy	Delete L.38 - 69:	12/10 12:10 PM
<b>Tab 7</b>	<b>SB 574 by Brandes (CO-INTRODUCERS) Perry;</b> (Compare to H 00837) Aging Inmate Conditional Release					
488440	D	S	RCS	CJ, Brandes	Delete everything after	12/10 12:10 PM
<b>Tab 8</b>	<b>SB 684 by Pizzo (CO-INTRODUCERS) Taddeo, Book, Perry, Bracy;</b> (Identical to H 00565) Expunction of Criminal History Records					
816426	A	S	RCS	CJ, Pizzo	Delete L.70 - 74:	12/10 12:10 PM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**CRIMINAL JUSTICE**  
**Senator Perry, Chair**  
**Senator Brandes, Vice Chair**

**MEETING DATE:** Tuesday, December 10, 2019

**TIME:** 10:00 a.m.—12:00 noon

**PLACE:** Mallory Horne Committee Room, 37 Senate Building

**MEMBERS:** Senator Perry, Chair; Senator Brandes, Vice Chair; Senators Bracy, Flores, and Pizzo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 154</b> Education / Thurston (Compare H 105)	Human Trafficking Education in Schools; Revising the required health education in public schools to include information regarding the dangers and signs of human trafficking; specifying the minimum requirements of the human trafficking education portion of the comprehensive health education curriculum, etc.  ED 11/12/2019 Fav/CS CJ 12/10/2019 Favorable AP	Favorable Yeas 5 Nays 0
2	<b>SB 522</b> Gruters	Cruelty to Dogs; Prohibiting a person from leaving a dog outside and unattended during certain weather events; providing a criminal penalty; providing a fine, etc.  CJ 12/10/2019 Fav/CS JU RC	Fav/CS Yeas 5 Nays 0
3	<b>SB 550</b> Brandes	Sentencing; Revising the criteria under which certain offenders sentenced after a specified date may be sentenced to a nonstate prison sanction under a prison diversion program, etc.  CJ 12/10/2019 Favorable ACJ AP	Favorable Yeas 5 Nays 0
4	<b>SB 552</b> Brandes (Compare H 227, S 424)	Sentencing; Revising the threshold of total sentence points below which a court must sentence nonviolent felony offenders who commit certain offenses and are sentenced on or after a specified date to a nonstate prison sanction; providing an exception, etc.  CJ 12/10/2019 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, December 10, 2019, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	<b>SB 554</b> Brandes	Sentencing; Revising the mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified, etc.  CJ 12/10/2019 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
6	<b>SB 572</b> Brandes	Extension of Confinement; Specifying that an inmate is not eligible to receive specified incentive gain-time if such gain-time would result in the prisoner's release from the care, custody, supervision, or control of the Department of Corrections; authorizing the department to extend the limits of confinement to allow an inmate to participate in supervised community release, subject to certain requirements, as prescribed by the department by rule; authorizing the department to terminate the inmate's supervised community release under certain circumstances, etc.  CJ 11/12/2019 Not Considered CJ 12/10/2019 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
7	<b>SB 574</b> Brandes (Compare H 837)	Aging Inmate Conditional Release; Establishing the conditional aging inmate release program within the Department of Corrections; requiring that an inmate who meets certain criteria be considered for conditional aging inmate release; providing victim notification requirements under certain circumstances; prohibiting an aging releasee or his or her community-based housing from being counted in the prison system population and the prison capacity figures, respectively, etc.  CJ 12/10/2019 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
8	<b>SB 684</b> Pizzo (Identical H 565)	Expunction of Criminal History Records; Expanding an exception to an eligibility requirement for expunction of a criminal history record to allow prior expunctions of criminal history records granted when the person was a minor, etc.  CJ 12/10/2019 Fav/CS JU RC	Fav/CS Yeas 5 Nays 0
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.)

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

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BILL: CS/SB 154

INTRODUCER: Education Committee and Senator Thurston

SUBJECT: Human Trafficking Education in Schools

DATE: December 9, 2019

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sagues	Sikes	ED	<b>Fav/CS</b>
2. Stokes	Jones	CJ	<b>Favorable</b>
3. _____	_____	AP	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 154 provides that information regarding the dangers and signs of human trafficking must be included in the comprehensive health education instruction that is required to be administered in the public school system.

The bill has no impact on state revenues or expenditures.

The bill takes effect on July 1, 2020.

**II. Present Situation:**

**Human Trafficking**

The federal Victims of Trafficking and Violence Protection Act of 2000<sup>1</sup> defines “sex trafficking” as the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial act. “Severe forms of trafficking in persons” includes:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

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<sup>1</sup> Public Law 106-386, s. 103, 22 U.S.C. s. 7102.



- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>2</sup>

There are approximately 2.5 million victims of human trafficking in the United States. Many victims are lured with false promises of financial or emotional security; instead they are forced or coerced into commercial sex, domestic servitude, or other types of forced labor. Any minor under the age of 18 who is induced to perform a commercial sex act is a victim of human trafficking, regardless of whether there is forced fraud or coercion. Increasingly, criminal organizations such as gangs, are luring children from local schools into commercial sexual exploitation or trafficking. According to the U.S. Department of Justice, every two minutes a child is trafficked for the purpose of sexual exploitation in the United States.<sup>3</sup>

Florida law defines human trafficking as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.<sup>4</sup> Human trafficking is a form of modern-day slavery.<sup>5</sup> Victims of human trafficking are young children, teenagers, and adults; include citizens of the United States and those persons trafficked domestically within the borders of the United States; and are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.<sup>6</sup>

Florida is third in the nation for reported human trafficking cases. In 2018, there were 767 human trafficking cases reported in Florida. Of those cases, 149 were minors. The average ages of trafficked youth are 11-13 years old.<sup>7</sup>

## **Education**

### ***Required Instruction in Schools***

Florida law specifies required coursework and instruction for public school students. Specifically, each district school board must provide all courses required for middle grades promotion, high school graduation, and appropriate instruction designed to ensure that students meet State Board of Education (SBE) adopted standards in the following subject areas: reading and other language arts, mathematics, science, social studies, foreign languages, health and physical education, and the arts.<sup>8</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> Florida Department of Education, *Healthy Schools – Human Trafficking*, available at: <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited December 3, 2019).

<sup>4</sup> Section 787.06(2)(d), F.S.

<sup>5</sup> Section 787.06(1)(a), F.S.

<sup>6</sup> *Id.* Florida law also provides that while many victims of human trafficking are forced to work in prostitution or the sexual entertainment industry, trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work. Section 787.06(1)(b), F.S.

<sup>7</sup> Florida Department of Education, Presentation to the State Board of Education, *Child Trafficking Prevention Education* (Sept. 20, 2019), p.3, available at: <http://www.fldoe.org/core/fileparse.php/5575/urlt/ChildTraffickingPres.pdf> (last visited December 3, 2019).

<sup>8</sup> Section 1003.42(1), F.S.

Instructional staff of public schools, subject to the rules of the SBE and the district school board, must provide instruction in:

- The history and content of the Declaration of Independence.
- The history, meaning, significance, and effect of the provisions of the Constitution of the United States.
- The arguments in support of adopting our republican form of government.
- Flag education, including proper flag display and flag salute.
- The elements of civil government.
- The history of the Holocaust.
- The history of African Americans.
- The elementary principles of agriculture.
- The effects of alcoholic and intoxicating liquors and beverages and narcotics.
- Kindness to animals.
- The history of the state.
- Conservation of natural resources.
- Comprehensive health education.
- The study of Hispanic contributions to the United States.
- The study of women's contributions to the United States.
- The nature and importance of free enterprise to the United States economy.
- A character-development program in kindergarten through grade 12.
- The sacrifices that veterans and Medal of Honor recipients have made serving the country.<sup>9</sup>

Comprehensive health education currently addresses 12 components. Eleven of the components are delivered in kindergarten through grade 12,<sup>10</sup> and include: concepts of community health; consumer health; environmental health; family life, including an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy; mental and emotional health; injury prevention and safety; Internet safety; nutrition; personal health; prevention and control of disease; and substance use and abuse. Instruction related to teen dating violence and abuse must be provided in grades 7-12 only.<sup>11</sup>

Instructional staff of charter schools are exempt from this section of law.<sup>12</sup>

### ***Human Trafficking Instruction and Awareness in Schools***

In September 2019, the SBE adopted a rule addressing Child Trafficking Prevention Education, which requires school districts to annually provide instruction to students in grades K-12 related to child trafficking prevention and awareness using current health education standards. Age appropriate elements must address the following topics:

- Recognition of signs of human trafficking;
- Awareness of resources, including national, state, and local resources;
- Prevention of the abuse of and addiction to alcohol, nicotine, and drugs;

<sup>9</sup> The law encourages the SBE to adopt standards and pursue assessment relating to the required instructional content. Section 1003.42(2), F.S.

<sup>10</sup> Section 1003.42(2)(n), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 1002.33(16), F.S.

- Information of the prevalence, nature, and strategies to reduce the risk of human trafficking, techniques to set healthy boundaries, and how to safely seek assistance; and
- Information on how social media and mobile device applications are used for human trafficking.<sup>13</sup>

By December 1 of each year, each school district must submit a human trafficking instruction implementation plan to the commissioner, and by July 1 of each year, each school district must submit an annual report to verify completion of the instruction.<sup>14</sup> The Florida Department of Education (DOE) has provided human trafficking training and resources for all school personnel via webinars, professional development events, and in-person trainings.<sup>15</sup> Health education teachers are encouraged to attend the annual Statewide Human Trafficking Summit, for which registration is free.<sup>16</sup> The DOE also maintains a human trafficking webpage with information and resources for parents and guardians.<sup>17</sup>

### III. Effect of Proposed Changes:

The bill amends s. 1003.42, F.S., to require the dangers and signs of human trafficking be included in the comprehensive health education instruction provided in the public school system. The bill requires instruction to include, at a minimum:

- Recognition of the signs of human trafficking;
- Awareness of resources, including national, state, and local resources;
- Prevention of the abuse of and addiction to alcohol, nicotine, and drugs;
- Information on the prevalence and nature of human trafficking;
- Strategies to reduce the risk of human trafficking;
- Techniques that may be used in setting healthy boundaries and how to safely seek assistance; and
- Information on how social media and mobile device applications are used for human trafficking.

The human trafficking instruction required by the bill aligns with the Child Trafficking Prevention Education instruction required by State Board of Education (SBE) rule.

The bill takes effect on July 1, 2020.

### IV. Constitutional Issues:

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

None.

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<sup>13</sup> Rule 6A-1.094123(4), F.A.C.

<sup>14</sup> Rule 6A-1.094123(7), F.A.C.

<sup>15</sup> Florida Attorney General, Statewide Council on Human Trafficking, *Annual Report 2018*, p.22, available at: [http://myfloridalegal.com/webfiles.nsf/WF/MVIS-B8JT3C/\\$file/HTAnnualReport2018Web.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MVIS-B8JT3C/$file/HTAnnualReport2018Web.pdf), (last visited December 3, 2019).

<sup>16</sup> Florida Department of Education, *2020 Agency Analysis of SB 154* (Oct. 21, 2019), at 4.

<sup>17</sup> Florida Department of Education, *Human Trafficking*, available at: <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited November 15, 2019).

**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 bill has no impact on state revenues or expenditures.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1003.42 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Education on November 12, 2019:**

The committee substitute requires human trafficking instruction include, at a minimum:

- Recognition of the signs of human trafficking;
- Awareness of resources, including national, state, and local resources;
- Prevention of the abuse of and addiction to alcohol, nicotine, and drugs;
- Information on the prevalence and nature of human trafficking;
- Strategies to reduce the risk of human trafficking;
- Techniques that may be used in setting healthy boundaries and how to safely seek assistance; and
- Information on how social media and mobile device applications are used for human trafficking.

The committee substitute also removes:

- The requirement for the Department of Legal Affairs (DLA) to develop human trafficking awareness campaigns; and
- The provision permitting a student to opt out of the human trafficking instruction by providing the school a written note from his or her parent.

**B. Amendments:**

None.

By the Committee on Education; and Senator Thurston

581-01390-20

2020154c1

A bill to be entitled

An act relating to human trafficking education in schools; amending s. 1003.42, F.S.; revising the required health education in public schools to include information regarding the dangers and signs of human trafficking; specifying the minimum requirements of the human trafficking education portion of the comprehensive health education curriculum; providing an effective date.

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

Section 1. Paragraph (n) of subsection (2) of section 1003.42, Florida Statutes, is amended to read:

1003.42 Required instruction.—

(2) Members of the instructional staff of the public schools, subject to the rules of the State Board of Education and the district school board, shall teach efficiently and faithfully, using the books and materials required that meet the highest standards for professionalism and historical accuracy, following the prescribed courses of study, and employing approved methods of instruction, the following:

(n) Comprehensive health education that addresses concepts of community health; consumer health; environmental health; family life, including an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy; mental and emotional health; injury prevention and safety; Internet safety; the dangers and signs of human trafficking; nutrition; personal health; prevention and

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

581-01390-20

2020154c1

control of disease; and substance use and abuse. The health education curriculum for students in grades 7 through 12 shall include a teen dating violence and abuse component that includes, but is not limited to, the definition of dating violence and abuse, the warning signs of dating violence and abusive behavior, the characteristics of healthy relationships, measures to prevent and stop dating violence and abuse, and community resources available to victims of dating violence and abuse. The human trafficking education portion of the health curriculum must include, at a minimum, recognition of the signs of human trafficking; awareness of resources, including national, state, and local resources; prevention of the abuse of and addiction to alcohol, nicotine, and drugs; information on the prevalence and nature of human trafficking; strategies to reduce the risk of human trafficking; techniques that may be used in setting healthy boundaries and how to safely seek assistance; and information on how social media and mobile device applications are used for human trafficking.

The State Board of Education is encouraged to adopt standards and pursue assessment of the requirements of this subsection. A character development program that incorporates the values of the recipients of the Congressional Medal of Honor and that is offered as part of a social studies, English Language Arts, or other schoolwide character building and veteran awareness initiative meets the requirements of paragraphs (s) and (t).

Section 2. This act shall take effect July 1, 2020.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/19  
Meeting Date

CS SB 154  
Bill Number (if applicable)

Topic HUMAN TRAFFICKING Edu

Amendment Barcode (if applicable)

Name TOM CARRA

Job Title

Address 9737 NW 41 ST # 359  
Street

Phone 305 513 9995

MIAMI FL 33178  
City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing MIAMI-DADE PUBLIC SCHOOLS

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**

December 10, 2019

*Meeting Date*

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

154

*Bill Number (if applicable)*

Topic Human Trafficking Education

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title Chief Executive Officer

Address 2215 Thomasville Road

Phone 850-510-9922

*Street*

Tallahassee

FL

32308

Email Barney@BarneyBishop.com

*City*

*State*

*Zip*

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)



THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/19  
Meeting Date

154  
Bill Number (if applicable)

Topic Human Trafficking Education in Schools

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

Address 104 S. Monroe St

Phone 850-425-1344

Street

Tallahassee

FL

State

32301

Zip

Email Tcglobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU FL

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)

12-10-19

Meeting Date

154

Bill Number (if applicable)

Topic Human Trafficking Ed

Amendment Barcode (if applicable)

Name Barbara DeBore

Job Title Ms

Address 625 E Broadway St

Phone 251-4280

Street

Tallahassee

City

State

Zip

Email barbard@flsen.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

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**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 522

INTRODUCER: Criminal Justice Committee and Senator Gruters

SUBJECT: Cruelty to Dogs

DATE: December 11, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wagoner	Jones	CJ	<b>Fav/CS</b>
2.			JU	
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 522 prohibits a person from leaving a dog outside and unattended by use of a restraint during a natural disaster. Such person would be guilty of animal cruelty, a first degree misdemeanor.

The bill may have a positive indeterminate jail bed impact (an increase in jail beds). *See* Section V. Fiscal Impact Statement.

This bill is effective July 1, 2020.

**II. Present Situation:**

**Animal Cruelty; Generally**

Section 828.12, F.S., prohibits criminal offenses involving cruelty to animals.

Specifically, a person commits animal cruelty if he or she unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal

in a cruel or inhumane manner. Animal cruelty is a first degree misdemeanor, punishable by up to one year in jail and a fine of up to \$5,000.<sup>1</sup>

A person commits aggravated animal cruelty if he or she intentionally commits an act to any animal, or a person who owns or has the custody or control of any animal and fails to act, which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done. Aggravated animal cruelty is a third degree felony, punishable by up to five years in jail and a fine of up to \$10,000.<sup>2</sup>

A person who commits multiple acts of animal cruelty or aggravated animal cruelty against one animal may be charged with a separate offense for each act, or against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.

In addition, s. 828.13, F.S., provides that animal owners who abandon their animal to suffer injury or malnutrition or abandons any animal in a street, road, or public place without providing for the care, sustenance, protection, and shelter of such animal is guilty of a first degree misdemeanor.

Further, s. 828.27, F.S., provides that the governing body of a county or municipality may enact ordinances relating to animal control or cruelty. Violation of such county ordinance is a civil infraction, with a maximum civil penalty not to exceed \$500. Twenty-three counties have ordinances in place prohibiting a dog from being outside or tethered during periods of extreme weather conditions, such as extreme heat, freezing or near-freezing temperatures, during thunderstorms, lightning storms, tornado watches or warnings, or during tropical storm or hurricane watches or warnings.<sup>3</sup>

### **Reporting of Animal Cruelty**

A private citizen may report suspected animal cruelty to a law enforcement officer or an animal control officer.

The Veterinary Medical Practice Act contains a confidentiality provision that prohibits a veterinarian from discussing a patient's medical condition with anyone except the client.<sup>4</sup> However, in any criminal action or situation where a veterinarian suspects a criminal violation, a veterinarian may report such violation to a law enforcement officer, an animal control officer, or an appointed animal protection agent under s. 828.03, F.S., without notice to the client.<sup>5</sup>

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<sup>1</sup> A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000, or any higher amount specifically authorized by statute. Sections 775.082 and 775.083, F.S.

<sup>2</sup> A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine, or any higher amount specifically authorized by statute. Sections 775.082 and 775.083.

<sup>3</sup> Alachua, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Escambia, Franklin, Gilchrist, Hernando, Hillsborough, Lake, Leon, Manatee, Martin, Miami-Dade, Monroe, Nassau, Palm Beach, St. Lucie, Sarasota, and Wakulla County.

<sup>4</sup> Section 474.2165(4), F.S.

<sup>5</sup> *Id.*

### **Dog Safety during Extreme Weather Conditions**

As a dangerous storm approaches, many residents flee to safer areas, and some leave their pets behind. During Hurricane Irma, the Palm Beach County Animal Care and Control director reported that many pets had been left chained to trees and parked cars, as their owner left them behind to “ride out the storm” on their own. At the time of the reporting, 49 dogs and two cats had been rescued by animal control officers.<sup>6</sup>

### **III. Effect of Proposed Changes:**

This bill prohibits a person from leaving a dog outside and unattended by use of a restraint during a natural disaster. Such person would be guilty of animal cruelty, a first degree misdemeanor, punishable by up to one year in jail and a fine of up to \$5,000.<sup>7</sup>

This bill defines “natural disaster” as a situation in which a hurricane, tropical storm, or tornado warning has been issued for a municipality or a county by the National Weather Service, or the municipality or county is under a mandatory or voluntary evacuation order.

This bill defines “restraint” as a chain, a rope, a tether, a leash, a cable, or another device that attaches a dog to a stationary object or trolley system.

This 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.

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<sup>6</sup> See DML NEWS, *Pets Abandoned, Chained on Leashes, as Owners Flee Hurricane Irma*, September 9, 2017, available at <https://dmlnews.com/pets-abandoned-chained-leashes-owners-flee-hurricane-irma/> (last visited November 15, 2019).

<sup>7</sup> A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000, or any higher amount specifically authorized by statute. Sections 775.082 and 775.083, F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference, which provides the final, official estimate of the jail bed impact, if any, has not yet received the bill. However, the bill may have a positive indeterminate jail bed impact (an increase in jail beds) because the bill creates a new misdemeanor offense.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 828.12 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on December 10, 2019:**

The committee substitute prohibits a person from leaving a dog outside and unattended by use of a restraint during a natural disaster. Such person would be guilty of animal cruelty, a first degree misdemeanor, punishable by up to one year in jail and a fine of up to \$5,000.

**B. Amendments:**

None.



607430

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/10/2019	.	
	.	
	.	
	.	

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The Committee on Criminal Justice (Gruters) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present subsection (6) of section 828.12,  
Florida Statutes, is redesignated as subsection (7), and a new  
subsection (6) is added to that section, to read:

828.12 Cruelty to animals.—

(6) A person who leaves a dog outside and unattended by use  
of a restraint during a natural disaster commits animal cruelty,



607430

a misdemeanor of the first degree, punishable as provided in s.  
775.082 or by a fine of not more than \$5,000, or both. As used  
in this subsection, the term:

(a) "Natural disaster" means a situation in which a  
hurricane, tropical storm, or tornado warning has been issued  
for a municipality or a county by the National Weather Service,  
or the municipality or county is under a mandatory or voluntary  
evacuation order.

(b) "Restraint" means a chain, rope, tether, leash, cable,  
or other device that attaches a dog to a stationary object or  
trolley system.

Section 2. This act shall take effect July 1, 2020.

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to cruelty to dogs; amending s.  
828.12, F.S.; prohibiting a person from restraining a  
dog outside and unattended during a natural disaster;  
providing a criminal penalty; providing a fine;  
defining terms; providing an effective date.



By Senator Gruters

23-00194A-20

2020522\_\_

A bill to be entitled

An act relating to cruelty to dogs; amending s.  
828.12, F.S.; prohibiting a person from leaving a dog  
outside and unattended during certain weather events;  
providing a criminal penalty; providing a fine;  
defining the term "restraint"; providing an effective  
date.

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

Section 1. Present subsection (6) of section 828.12,  
Florida Statutes, is redesignated as subsection (7), and a new  
subsection (6) is added to that section, to read:

828.12 Cruelty to animals.—

(6) If the temperature is below 32°F or the National  
Weather Service has issued a severe weather advisory or warning  
and a person leaves a dog outside and unattended, regardless of  
whether the dog has access to an outdoor shelter, the person  
commits a misdemeanor of the first degree, punishable as  
provided in s. 775.082 or by a fine of not more than \$5,000, or  
both. For purposes of this subsection:

(a) A dog is considered to have been left outside and  
unattended if it is left in a securely fenced yard or a kennel  
or is tethered by use of a restraint.

(b) The term "restraint" means a chain, a rope, a tether, a  
leash, a cable, or another device that attaches a dog to a  
stationary object or trolley system.

Section 2. This act shall take effect July 1, 2020.

# Racial/Ethnic Impact Statement

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## SB522

Prepared by  
Florida State University  
College of Criminology & Criminal Justice

For  
The Florida Senate Criminal Justice Committee



## SB522

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### Executive Summary

SB522 amends Florida's existing statute on animal cruelty by adding a section that would prohibit an individual from leaving a dog outside and unattended when the temperature is below 32°F or if the National Weather Service has issued a severe weather advisory or warning. All states have legislation that prohibits animal cruelty and neglect, however, only a limited number of states explicitly prohibit leaving animals outside during inclement weather events. Research has not been conducted that evaluates whether there are racial/ethnic differences in the rates of misdemeanor animal cruelty arrests or associated criminal justice system processing. Using data from the Florida Office of the State Court Administrator, it was found that there are racial disparities in arrests, probation sentences and jail sentences for misdemeanor animal cruelty offenses among Black and White individuals in Florida. Specifically, the rate of arrest and sentences of probation and jail are greater among Black individuals than White individuals.

---

### Bill Summary

SB 522 amends s.828.12, F.S. by adding a section that would prohibit an individual from leaving a dog outside and unattended during certain weather events (below 32°F or if the National Weather Service has issued a severe weather advisory or warning). Violation of the added section would constitute a misdemeanor of the first degree that is punishable according to s.775.082, F.S. (a term of imprisonment not exceeding 1 year), or by a fine up to \$5,000, or both.

### Comparable Legislation and Prior Research

All states have legislation that prohibits animal cruelty and provides sanctions for acts of abuse or neglect committed against animals. However, the specific factors included in the legislation vary considerably. A few states explicitly prohibit leaving animals outside and unattended during certain weather events. For example, California (Code 597), Maine (Statutes 4011, 4015), Montana (Statute 45-8-211), Pennsylvania (Statute 5532), Wyoming (Statute 6-3-203), and Washington, D.C. (Code 22-1001) have legislation that provides for the punishment of individuals who fail to provide protection from the weather for animals in their custody. Statutes tend to categorize animal cruelty offenses as misdemeanors with penalties that include fines up to \$5,000 or short jail sentences (California is the only state that punishes animal cruelty as a felony). In general, the numbers of convictions for animal cruelty offenses across the nation are minimal with a small number of those who are convicted being sentenced to jail or prison.

In addition to state legislation, seven jurisdictions within the state of Florida, namely- Broward County, Clay County, Franklin County, the City of Jacksonville, Leon County, Seminole County, and Okaloosa County, have municipal ordinances that require individuals to protect their animals from severe weather (extreme heat, cold, storms, etc.). Violations for failing to provide protection from the weather can result in the imposition of a fine ranging from \$20 to \$1,000. The City of Jacksonville is unique in that it allows punishment of up to one year in jail.

Importantly, existing animal cruelty statutes and ordinances have not been evaluated or assessed for their impact on racial/ethnic disparity.

## Data and Methods for Racial/Ethnic Impact Analysis

Data from the Florida Office of the State Court Administrator, Offender Based Tracking System were used to prepare this racial/ethnic impact statement. Trend data were compiled for all arrests, probation sentences, and jail sentences for violations of Florida's statute on animal cruelty (s.828.12, F.S.). Rates of arrests and sentences per 1 million Black and White individuals over the ten-year study period (2009-2018) were calculated to assess the racial disparities in arrests, probation sentences, and jail sentences for misdemeanor animal cruelty offenses. The current statute covers a wide range of acts from neglect to overt acts of physical abuse committed against animals.

It is important to note that the data used in this statement includes only cases reported to police that resulted in an arrest and a subsequent sentence; cases of animal cruelty that do not come to the attention of the criminal justice system are not captured by the available data. It is also important to note that changes in weather patterns, including temperatures below freezing and significant weather events, will also likely impact the number and groups of individuals arrested and sentenced for animal cruelty, and are not captured by the available data and current analyses.

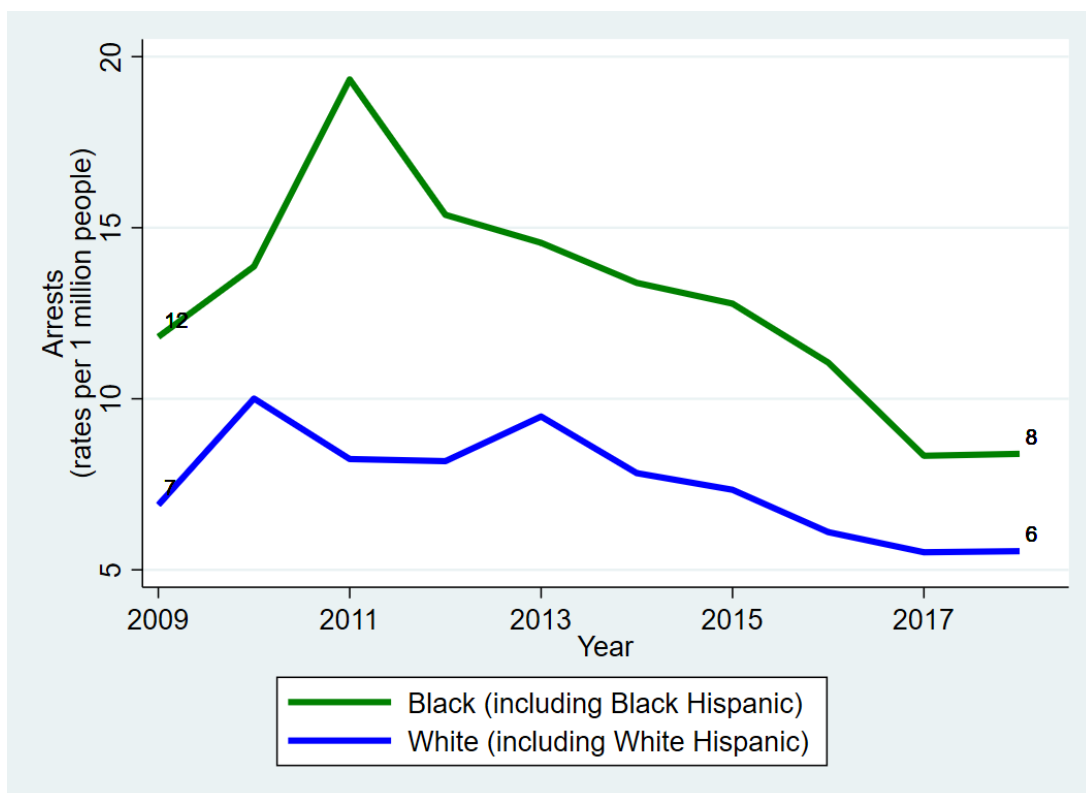
## Analyses

From 2009-2018, there were a total of 3,733 arrests made for violations of Florida's animal cruelty statute. Of those, 1,603 arrests were misdemeanors. Seventy-one percent of Black individuals and 64% of White individuals arrested for animal cruelty were also arrested for another, non-animal cruelty related, charge.

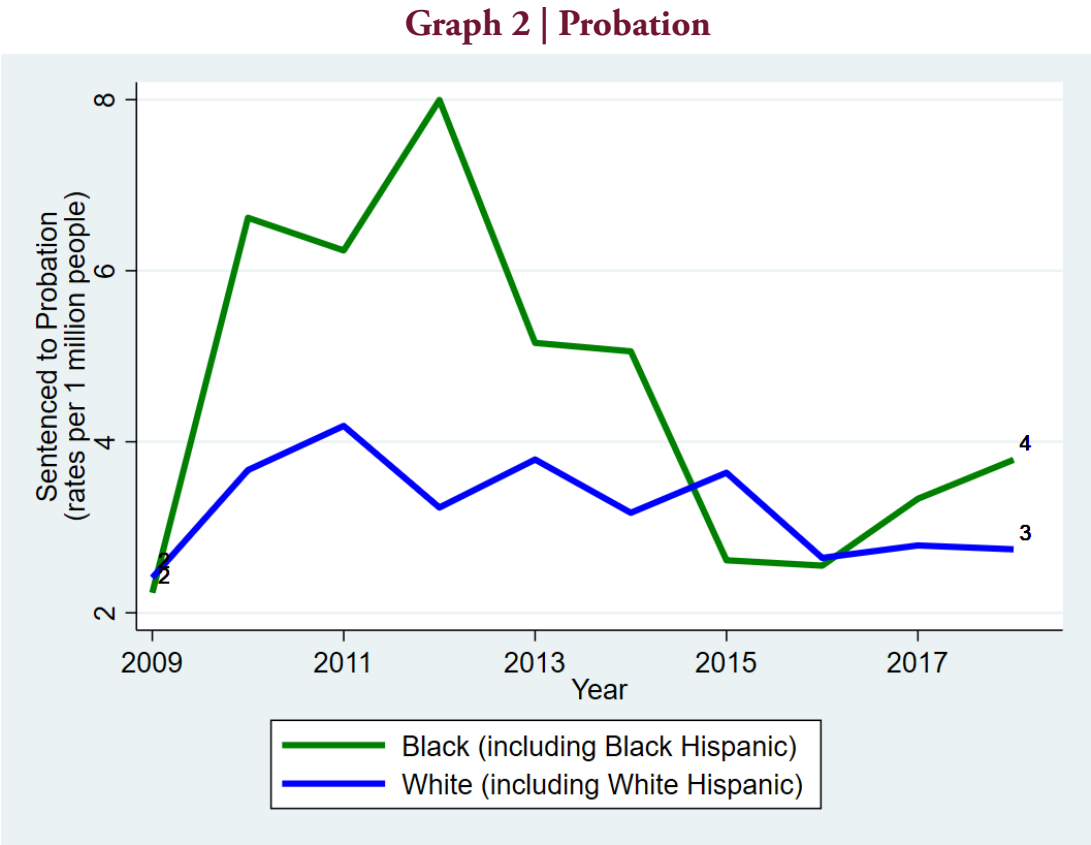
The three graphs below show the disparity between arrests and probation and jail sentences from 2009 through 2018 for misdemeanor animal cruelty offenses among Black and White individuals. Black individuals were arrested and sentenced to probation and jail at higher rates than White individuals.

As shown in Graph 1, in 2018, 8 per 1 million Black versus 6 per 1 million White individuals were arrested for animal cruelty offenses.

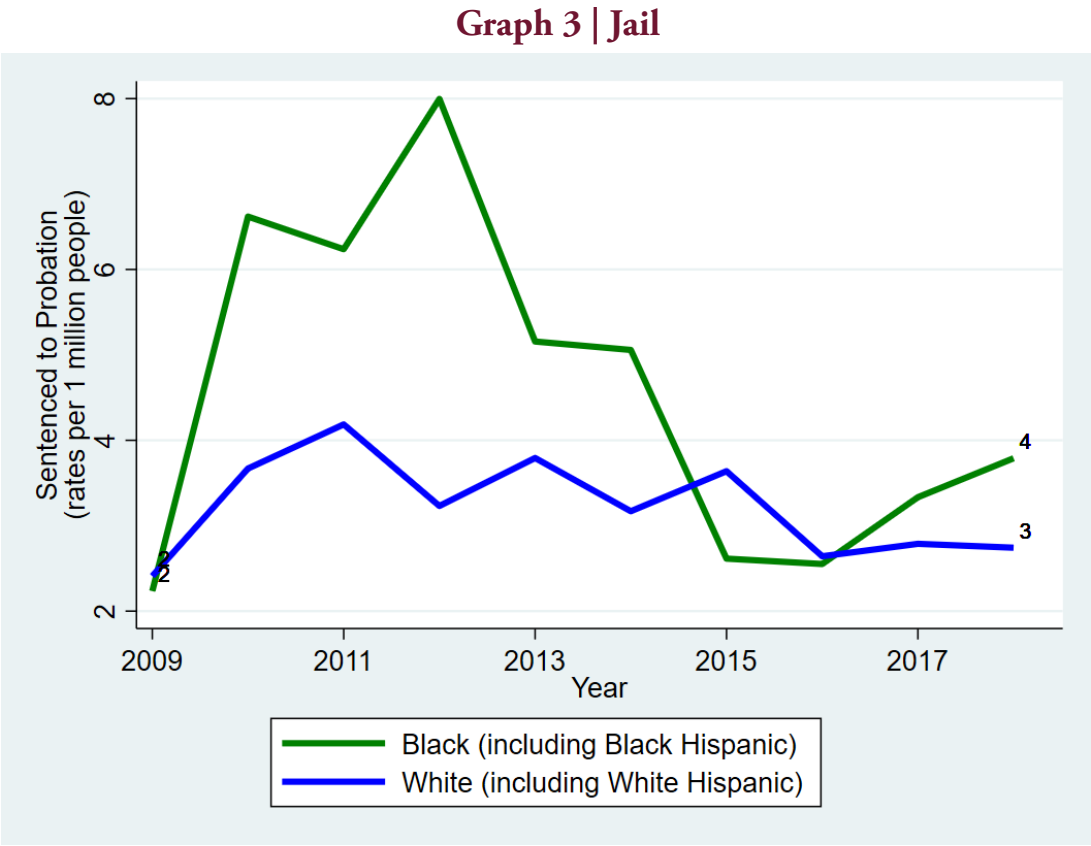
**Graph 1 | Arrests**



As shown in Graph 2, 4 per 1 million Black individuals and 3 per 1 million White individuals were sentenced to probation for animal cruelty offenses.



As shown in Graph 3, 4 per 1 million Black individuals were sentenced to jail and 3 per 1 million White individuals were sentenced to jail for animal cruelty related offenses.



Despite a steady decline and leveling off since 2017 in the rate of Black individuals arrested for animal cruelty offenses, the rates of Black individuals sentenced to probation and jail have increased since 2016.

### **Racial/Ethnic Impact Statement for the Bill**

Although rates of animal cruelty offenses were small, the data shows that there is disparity in the rate of Black versus White individuals arrested and sentenced to probation and jail, according to F.S. 828.12. If enacted, SB522 will increase the number of individuals subject to jail and the imposition of a fine for misdemeanor animal cruelty offenses. If the same racial breakdown in arrests and sentences continues under the new legislation, the racial disparity will likely persist.

---

### **Contributors Racial/Ethnic Impact Statement SB522**

William D. Bales  
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Julie Brancale  
Susan Burton  
Jonathan Caswell  
Cecilia Chouhy  
Natalie Edwards-Heller  
Kaylee Fitzpatrick  
George B. Pesta  
Sonja Siennick  
Nicolas Swagar



**FLORIDA STATE UNIVERSITY**  
COLLEGE OF CRIMINOLOGY & CRIMINAL JUSTICE

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

12-10-19

Meeting Date

522

Bill Number (if applicable)

607430 DE Amended

Amendment Barcode (if applicable)

Topic Animal Abuse

Name Lane Stephens

Job Title \_\_\_\_\_

Address 111 N Calhoun St.

Street

Tallahassee

City

FL

State

32301

Zip

Phone 933-3583

Email lane@scg800.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Southeast Dog Hunters Assoc / Fla Dog Hunters + Sportsmen's Assoc

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)

December 10, 2019

*Meeting Date*

522

*Bill Number (if applicable)*

Topic Cruelty to Dogs

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title Chief Executive Officer

Address 2215 Thomasville Road

Phone 850-510-9922

*Street*

Tallahassee

FL

32308

Email Barney@BarneyBishop.com

*City*

*State*

*Zip*

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)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

12/10/19

Meeting Date

SB 522

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Greg Pound

Job Title \_\_\_\_\_

Address 9166 Sunrise Dr.

Street

Phone \_\_\_\_\_

Largo

City

Fl.

State

33773

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/19

Meeting Date

522

Bill Number (if applicable)

Topic Cruelty to Dogs

Amendment Barcode (if applicable)

Name Kate Macfall

Job Title \_\_\_\_\_

Address 1206 Walter Dr.

Phone 850 508 1001

Street

Tallahassee

FL

32312

City

State

Zip

Email kmacfall@hsus.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Humane Society of the United States

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)

12/10/19

Meeting Date

SB 522

Bill Number (if applicable)

Topic CRUELTY to DOGS

Amendment Barcode (if applicable)

Name TRAVIS MOORE

Job Title \_\_\_\_\_

Address P.O. Box 2020

Phone 727.421.6902

Street

St. Petersburg

FL

33731

City

State

Zip

Email travis@moore-relations.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Animal Legal Defense Fund

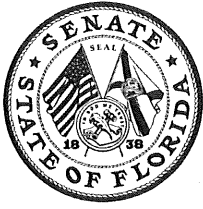
Appearing at request of Chair: ☐ Yes ☒ No

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

Tallahassee, Florida 32399-1100

### COMMITTEES:

Commerce and Tourism, *Chair*  
Finance and Tax, *Vice Chair*  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Banking and Insurance

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

### SENATOR JOE GRUTERS

23rd District

November 25, 2019

The Honorable Keith Perry, Chair  
Committee on Criminal Justice  
510 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Perry:

I am writing to request that Senate Bill 522, Cruelty to Dogs be placed on the agenda of the next Committee on Criminal Justice meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me.  
Thank you for your time and consideration.

Warm regards,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

cc: Lauren Jones, Staff Director  
Sue Arnold, Senior Administrative Assistant

### REPLY TO:

- ☐ 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

BILL GALVANO  
President of the Senate

DAVID SIMMONS  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: SB 550

INTRODUCER: Senators Brandes and Perry

SUBJECT: Sentencing

DATE: December 9, 2019

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	<b>Favorable</b>
2. _____	_____	ACJ	_____
3. _____	_____	AP	_____

---

**I. Summary:**

SB 550 amends s. 921.00241, F.S., which authorizes a court to sentence certain felony offenders to a nonstate prison sanction with mandatory participation in a prison diversion program (if there is a funded, existing program). The bill amends some of the criteria for prison diversion eligibility, which will be applicable to offenders sentenced on or after October 1, 2020, to:

- Include offenders whose primary offense is a second degree felony. Currently, eligibility is limited to offenders whose primary offense is a third degree felony.
- Provide that an offender's total sentence points must be 60 points or fewer, which is an increase in total sentence points specified in current law.

Additional eligibility criteria, which are not amended by the bill, include that the offender has not been convicted or previously convicted of a forcible felony, excluding ch. 810, F.S. (burglary and trespass), and the offender's primary offense does not require a minimum mandatory sentence.

The described changes expand the pool of offenders who may be diverted from prison under s. 921.00241, F.S.

The Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds).

The effective date of the bill is October 1, 2020.

## II. Present Situation:

### Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code<sup>1</sup> (Code) as “Florida’s primary sentencing policy.”<sup>2</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>3</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.<sup>4</sup> Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. Absent mitigation,<sup>5</sup> the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.<sup>6</sup>

### Prison Diversion for Certain Nonviolent Third Degree Felony Offenders

Notwithstanding the Code, s. 921.00241, F.S., authorizes a court to sentence an offender to a nonstate prison sanction if the offender committed his or her offense on or after July 1, 2009, and meets all of the following criteria:

- The offender’s primary offense is a third degree felony.
- The offender’s total sentence points score, as provided in s. 921.0024, F.S. (Code scoresheet), is not more than 48 points, or the offender’s total sentence points score is 54 points and 6 of those points are for a violation of probation, community control, or other community supervision, and do not involve a new violation of law.
- The offender has not been convicted or previously convicted of a forcible felony,<sup>7</sup> excluding any third degree felony violation under ch. 810, F.S. (burglary and trespass).
- The offender’s primary offense does not require a mandatory minimum sentence.<sup>8</sup>

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

<sup>2</sup> *Florida’s Criminal Punishment Code: A Comparative Assessment* (September 2018), Florida Department of Corrections, available at [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_code.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_code.pdf) (last visited on Nov. 6, 2019).

<sup>3</sup> Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

<sup>4</sup> Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

<sup>5</sup> The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

<sup>6</sup> If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment.

<sup>7</sup> Section 776.08, F.S., defines a “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

<sup>8</sup> Section 921.00241(1), F.S.

If the court elects to impose a sentence as provided in this section, then the court must sentence the offender to a term of probation, community control, or community supervision with mandatory participation in a Department of Corrections prison diversion program if such program is funded and exists in the judicial circuit in which the offender is sentenced. The prison diversion program must be designed to meet the unique needs of each judicial circuit and of the offender population of that circuit.<sup>9</sup>

The program may require:

- Residential, nonresidential, or day-reporting requirements;
- Substance abuse treatment;
- Employment;
- Restitution;
- Academic or vocational opportunities; or
- Community service work.<sup>10</sup>

A court sentencing an offender pursuant to this section must make written findings that the offender meets the previously-described criteria. The sentencing order must indicate that the offender was sentenced to the prison diversion program. The court may order the offender to pay all or a portion of the costs related to the program if the court determines that the offender has the ability to pay.<sup>11</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 921.00241, F.S., which authorizes a court to sentence certain felony offenders to a nonstate prison sanction with mandatory participation in a prison diversion program (if there is a funded, existing program). The bill amends some of the criteria for prison diversion eligibility, which will be applicable to offenders sentenced on or after October 1, 2020, to:

- Include offenders whose primary offense is a second degree felony. Currently, eligibility is limited to offenders whose primary offense is a third degree felony.
- Provide that an offender's total sentence points must be 60 points or fewer, which is an increase in total sentence points specified in current law.

Additional eligibility criteria, which are not amended by the bill, include that the offender has not been convicted or previously convicted of a forcible felony, excluding ch. 810, F.S. (burglary and trespass), and the offender's primary offense does not require a minimum mandatory sentence.

The described changes expand the pool of offenders who may be diverted from prison under s. 921.00241, F.S.<sup>12</sup>

The effective date of the bill is October 1, 2020.

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<sup>9</sup> Section 921.00241(2), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 921.00241(3), F.S.

<sup>12</sup> In addition to offenders whose offense was committed on or after October 1, 2020, and who are sentenced after that date, the bill should apply to offenders whose offense was committed before October 1, 2020, provided the sentence is imposed on or after October 1, 2020.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that 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:

Per DOC, there were 10,311 admitted to prison in FY 17-18 who fit the criteria outlined in the amended statute. It should be noted that a certain proportion of this number received prison sentences while eligible under the current statute, so while this bill would likely decrease prison sentences for offenders with 2nd degree felonies/higher sentence points, it should also do the same for offenders currently eligible who received prison sentences. Additionally, those offenders who would remain ineligible for prison diversion with sentencing points greater than 60 could see a decrease in prison admissions for similar reasons. Historical data from DOC has shown that following the initial creation of the prison



diversion program, those who were between 54 and 60 sentence points, yet fitting all other eligibility requirements, also saw a decrease in prison sentences. Due to this apparent balancing of overall sentencing practices to adjust to [a] new statute for a cohort of similar offenders, the prison bed impact cannot be quantified. However, given the large number of eligible offenders sentenced to prison and the adjustments to sentencing for both eligible and ineligible offenders, the impact is expected to be significant.<sup>13</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 921.00241 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>13</sup> The preliminary EDR estimate is on file with the Senate Committee on Criminal Justice.

By Senator Brandes

24-00770-20

2020550\_\_

A bill to be entitled

An act relating to sentencing; amending s. 921.00241, F.S.; revising the criteria under which certain offenders sentenced after a specified date may be sentenced to a nonstate prison sanction under a prison diversion program; providing an effective date.

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

Section 1. Section 921.00241, Florida Statutes, is amended to read:

921.00241 Prison diversion program.-

(1) Notwithstanding s. 921.0024 and effective for offenders sentenced on or after October 1, 2020 ~~offenses committed on or after July 1, 2009~~, a court may divert from the state correctional system an offender who would otherwise be sentenced to a state facility by sentencing the offender to a nonstate prison sanction as provided in subsection (2). An offender may be sentenced to a nonstate prison sanction if the offender meets all of the following criteria:

(a) The offender's primary offense is a felony of the third degree or a felony of the second degree.

(b) The offender's total sentence points score, as provided in s. 921.0024, is 60 points or fewer ~~not more than 48 points, or the offender's total sentence points score is 54 points and 6 of those points are for a violation of probation, community control, or other community supervision, and do not involve a new violation of law.~~

(c) The offender has not been convicted or previously

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00770-20

2020550\_\_

convicted of a forcible felony as defined in s. 776.08, but excluding any third degree felony violation under chapter 810.

(d) The offender's primary offense does not require a minimum mandatory sentence.

(2) If the court elects to impose a sentence as provided in this section, the court must ~~shall~~ sentence the offender to a term of probation, community control, or community supervision with mandatory participation in a prison diversion program of the Department of Corrections if such program is funded and exists in the judicial circuit in which the offender is sentenced. The prison diversion program shall be designed to meet the unique needs of each judicial circuit and of the offender population of that circuit. The program may require residential, nonresidential, or day-reporting requirements; substance abuse treatment; employment; restitution; academic or vocational opportunities; or community service work.

(3) The court that sentences a defendant to a nonstate prison sanction pursuant to subsection (2) shall make written findings that the defendant meets the criteria in subsection (1); and the sentencing order must indicate that the offender was sentenced to the prison diversion program pursuant to subsection (2). The court may order the offender to pay all or a portion of the costs related to the prison diversion program if the court determines that the offender has the ability to pay.

Section 2. This act shall take effect October 1, 2020.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

# Racial/Ethnic Impact Statement

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## SB550

Prepared by  
Florida State University  
College of Criminology & Criminal Justice

For  
The Florida Senate Criminal Justice Committee



## Executive Summary

SB550 revises the current criteria under which certain offenders may be sentenced to a nonstate prison sanction by diverting them from the state correctional system. There is a limited amount of empirical research available on the racial/ethnic impact of prison diversion programs. However, according to the available research, minority offenders tend to be less likely than White offenders to receive diversionary intermediate sanctions versus jail and prison sentences. Data from the Florida Department of Corrections were used to assess the racial/ethnic differences among sentenced offenders eligible for diversion in Florida. Currently, offenders who score 48 points or below are eligible for diversion; under the proposed new legislation, offenders who score 60 points or fewer would be eligible. White individuals are more likely than Hispanic and Black individuals to be eligible for diversion under both the current and proposed regulation.

---

## Bill Summary

SB550 amends s.921.00241, F.S. by revising the criteria under which certain offenders sentenced on or after October 1, 2020 may be sentenced to a nonstate prison sanction by diverting them from the state correctional system. Diversion from the state correctional system is permissible if the following conditions are met:

1. The offender's primary offense is a felony of the third degree or a felony of the second degree.
2. The offender's total sentence point score, as provided in s.921.0024, is 60 points or fewer (the bill proposes an increase from 48 points).
3. The offender has not been convicted or previously convicted of a forcible felony as defined in s.776.08, excluding any third degree felony violation under chapter 810.
4. The offender's primary offense does not require a minimum mandatory sentence.

## Comparable Legislation and Prior Research

New York and Washington have statutes that provide for the establishment of diversion programs similar to Florida's proposed SB 550; however, they have not been evaluated or assessed for racial/ethnic disparities.

New York's Criminal Procedure, Article 216: Section 216.05 allows eligible defendants who have entered guilty pleas and have alcohol or substance abuse problems to undergo an evaluation to be placed in alcohol or substance abuse treatment in lieu of incarceration. Eligible defendants are those who have been charged with specified drug or property offenses. Defendants are not eligible if, within the last ten years, they have been convicted of selected felonies.

The Revised Code of Washington, Title 9, Chapter 9.94A, Section 9.94A.650, allows the sentencing court to waive the imposition of a sentence within a standard sentence range and impose a sentence which may include up to 90 days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The court may impose up to six months of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed one year. Eligible offenders are those who have not been previously convicted of a felony and have never participated in a program of deferred prosecution for selected felonies.

In general, there is limited empirical research on the racial/ethnic impact of prison diversion programs. Nicosia, MacDonald, and Pacula (2017) assessed the racial impact of California's Proposition 36. Proposition 36 required the automatic sentencing to probation with drug treatment instead of either probation without treatment or incarceration for adult non-violent offenders charged with simple drug possession, drug use, or the transport of illicit drugs for personal use. The authors compared similar Black and White male offenders charged with drug-related offenses to estimate the effect that California's Proposition 36 had on racial disparities in dispositions for prison and drug treatment. They found substantial reductions in the probability of a prison sentence after the policy change. However, Black offenders remained more likely to go to prison than White offenders after the policy was passed, although the policy did lead to more referrals to treatment for Black offenders. This study concluded that racial disparities among Black and White individuals in prison commitments remained after the sentencing law change.

Johnson and Dipietro (2012) investigated the use of alternative sanctions as sentencing options for felony and misdemeanor cases in Pennsylvania from 1998 through 2000. The study explored the use of alternative sanctions, which consisted of probation, intermediate punishments (community service, drug testing, drug and alcohol outpatient programs, house arrest, electronic monitoring, halfway houses, drug and alcohol inpatient programs, intensive supervision, boot camps, and work release), jail, and prison. The authors concluded that the overall use of intermediate punishments in Pennsylvania during the study period was rare. Male and minority offenders were the least likely to receive intermediate sanctions relative to both jail and prison. Importantly, the probability of receiving an intermediate sanction varied significantly across judges and court contexts and was related to county-level funding for the programs.

## **Data and Methods for Racial/Ethnic Impact Forecast**

Sentencing Guidelines data from the Florida Department of Corrections were used to prepare this racial/ethnic impact statement. Race and ethnicity are not included in the Sentencing Guidelines database; therefore, in order to obtain racial/ethnic information, the individual records were combined with FDC data, which contains demographic information for all offenders sentenced to state prison or probation. Consequently, individuals who did not have current or prior state prison or state probation sentences under the custody of the FDC were excluded from the analyses because their demographic data was not available (83.3% of sentenced cases from 2008-2017 were included in the analyses for this reason).

To assess the impact of bill SB550, a three-step process was used. First, trend data from 2008 through 2017 was compiled to calculate the number and percentage of convicted offenders who were eligible for diversion under existing law. Second, the impact of the proposed legislation was estimated by retrospectively applying its criteria over the same timeframe, 2008-2017, in order to quantify, by race/ethnicity, the larger number and percentage of convicted offenders that would have qualified for diversion, had the proposed legislation been passed prior to 2008. Third, the racial/ethnic impact of the proposed change in law was assessed by comparing the percent of convicted offenders that qualified for diversion under the existing law to the percent of convicted offenders that would have qualified for diversion if the proposed legislation had been passed prior to 2008. The trend data described above was used to estimate the future impact of both the existing law and the proposed legislation, by race/ethnicity.

It is important to note that since SB550 addresses only eligibility for diversion, our analysis is also limited to eligibility for diversion and does not address potential racial/ethnic disparities in which offenders are actually diverted from prison based upon judicial decisions.

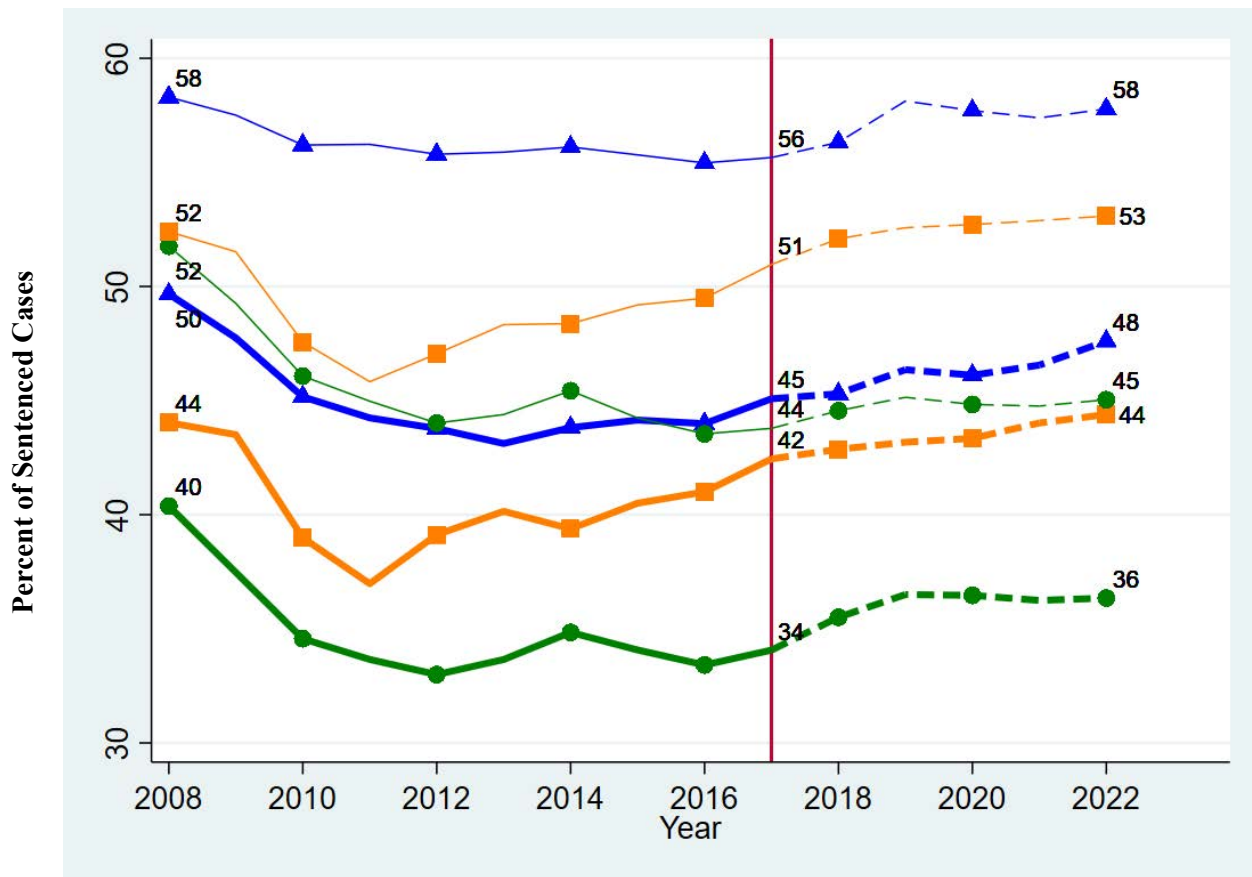
The results presented below represent conservative estimates in the percentages of individuals eligible for diversion from prison. Race and ethnicity are not collected in the Sentencing Guidelines database; therefore, in order to obtain racial/ethnic information, the individual records were combined with FDC data that contains demographic information for all offenders sentenced to state prison or probation. Therefore, individuals who did not have current or prior state prison or state probation sentences under the custody of the FDC were excluded from the analyses because their demographic data was not available.

## Results

As shown in Graph 1, if passed, the percent of offenders eligible for diversion from state prison would increase across all racial/ethnic groups. The thick lines in Graph 1 show the trend and projected forecasts in the percent of offenders eligible for diversion that scored 48 points or fewer; the thin lines represent the trends and projected forecasts of eligible offenders who scored 60 points or fewer.

White individuals are more likely than Hispanic and Black individuals to be eligible for diversion under both the current regulation and the proposed regulation. Specifically, in 2017, 45% of White, 42% of Hispanic, and 44% of Black individuals were eligible for diversion because they had scored 48 or fewer points. In 2017, 56% of White, 51% of Hispanic, and 44% of Black individuals would have been eligible for diversion, had the legislation already been in effect, because they had scored 60 or fewer points.

**Trends and forecast of current and proposed regulations by race/ethnicity 2008-2022**



**Blue Triangles: White Non-Hispanic | Orange Squares: Hispanic | Green Circles: Black Non-Hispanic**  
**Thick lines: Old regulation (48 points)**  
**Thin lines: New regulation (60 points)**

## Racial/Ethnic Impact Statement for the Bill

SB550 proposes to revise the criteria under which certain offenders may be sentenced to a nonstate prison sanction by diverting them from the state correctional system. The new legislation would permit diversion if the offender scores 60 points or fewer. The percent of offenders eligible for diversion would increase if SB550 is passed. However, the observed disparity would remain among eligible White, Black, and Hispanic offenders. Specifically, a greater percentage of White offenders would be eligible for diversion followed by Hispanic and Black offenders respectively.

## References

Johnson, B. D. and Dipietro, S. M. (2012). The power of diversion: Intermediate sanctions and sentencing disparity under presumptive guidelines. *Criminology*, 50(3), pp. 811-850.

Nicosia, N., MacDonald, J. M., and Pacula, R. L. (2017). Does mandatory diversion to drug treatment eliminate racial disparities in the incarceration of drug offenders? An examination of California's proposition 36. *Journal of Quantitative Criminology*, 33, pp. 179-205.

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### **Contributors** **Racial/Ethnic Impact Statement** **SB574**

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**FLORIDA STATE UNIVERSITY**  
COLLEGE OF CRIMINOLOGY & CRIMINAL JUSTICE

## **SB 550 – Sentencing**

This bill amends s. 921.00241, F.S., expanding the number of offenders eligible for a prison diversion program to include those with a 2<sup>nd</sup> degree felony and those with total sentence points that are 60 points or fewer. Currently, those eligible for receiving a nonstate prison sanction under the prison diversion program are those with a primary offense that is a 3<sup>rd</sup> degree felony and with total sentence points that are not more than 48 points, or as high as 54 points with 6 of those points for a probation/community control/other community supervision violation and do not involve a new violation of law. The requirements that the current or prior offense cannot be a forcible felony (excluding a 3<sup>rd</sup> degree felony under chapter 810) and that it does not require a minimum mandatory sentence still remain. This would apply to offenders sentenced on or after October 1, 2020.

Per DOC, there were 10,311 admitted to prison in FY 17-18 who fit the criteria outlined in the amended statute. It should be noted that a certain proportion of this number received prison sentences while eligible under the current statute, so while this bill would likely decrease prison sentences for offenders with 2<sup>nd</sup> degree felonies/higher sentence points, it should also do the same for offenders currently eligible who received prison sentences. Additionally, those offenders who would remain ineligible for prison diversion with sentencing points greater than 60 could see a decrease in prison admissions for similar reasons. Historical data from DOC has shown that following the initial creation of the prison diversion program, those who were between 54 and 60 sentence points, yet fitting all other eligibility requirements, also saw a decrease in prison sentences. Due to this apparent balancing of overall sentencing practices to adjust to new statute for a cohort of similar offenders, the prison bed impact cannot be quantified. However, given the large number of eligible offenders sentenced to prison and the adjustments to sentencing for both eligible and ineligible offenders, the impact is expected to be significant.

**EDR PROPOSED ESTIMATE: Negative Significant**

**Requested by: Senate**



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

12/10/19

*Meeting Date*

550

*Bill Number (if applicable)*

Topic Criminal Punishment Code

*Amendment Barcode (if applicable)*

Name Nancy Daniels

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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

*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)

12/10/19  
Meeting Date

550  
Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

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

Representing ACLU FL

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)

12/10/2019

Meeting Date

550

Bill Number (if applicable)

Topic

Sentencing

Amendment Barcode (if applicable)

Name

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Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

New Florida Majority + Organize Florida

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☐

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/19.  
Meeting Date

550  
Bill Number (if applicable)

Topic CJ

Amendment Barcode (if applicable)

Name Chelsea Murphy.

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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**

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

12/10/2019

*Meeting Date*

550

*Bill Number (if applicable)*

Topic Criminal Justice

*Amendment Barcode (if applicable)*

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

Representing The James Madison Institute

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)

12/16/19

Meeting Date

550

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Newburn

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing FAMM

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

## Committee Agenda Request

**To:** Senator Keith Perry  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** November 1, 2019

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I respectfully request that **Senate Bill #550**, relating to **Sentencing**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

A handwritten signature in dark ink, appearing to read "Jeff Brandes", is written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 24

**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: CS/SB 552

INTRODUCER: Criminal Justice Committee and Senators Brandes and Perry

SUBJECT: Sentencing

DATE: December 10, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	<b>Fav/CS</b>
2.			ACJ	
3.			AP	

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 552 amends s. 775.082(10), F.S., which authorizes a court to sentence certain nonviolent felony offenders to a nonstate prison sanction, to increase total sentence points applicable to prison diversion under this subsection from 22 points or fewer to 44 points or fewer. This change, which is applicable to certain offenders sentenced on or after October 1, 2020, expands the pool of offenders who may be eligible for prison diversion under s. 775.082(10), F.S.

The Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds).

The effective date of the bill is October 1, 2020.



## II. Present Situation:

### Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code<sup>1</sup> (Code) as “Florida’s primary sentencing policy.”<sup>2</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>3</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.<sup>4</sup> Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.

Absent mitigation,<sup>5</sup> the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.<sup>6</sup> However, if the offender’s offense has a mandatory minimum term that is greater than the scored lowest permissible sentence, the mandatory minimum term supersedes the lowest permissible sentence scored.<sup>7</sup> Further, some offenders may qualify for prison diversion under various sections of the Florida Statutes.<sup>8</sup>

### Prison Diversion (s. 775.082(10), F.S.)

Section 775.082(10), F.S., provides that, if a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third degree felony but not a forcible felony as defined in s. 776.08, F.S.,<sup>9</sup> and excluding any third degree felony violation under ch. 810, F.S., and if the total sentence points pursuant to s. 921.0024, F.S. (of the Code), are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction.

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

<sup>2</sup> *Florida’s Criminal Punishment Code: A Comparative Assessment* (September 2018), Florida Department of Corrections, available at [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_code.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_code.pdf) (last visited on Nov. 6, 2019).

<sup>3</sup> Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

<sup>4</sup> Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

<sup>5</sup> The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

<sup>6</sup> If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment.

<sup>7</sup> Fla. R. Crim. P. 3.704(d)(26).

<sup>8</sup> See e.g., s. 775.082(10), F.S. (prison diversion for an offender whose offense is a nonviolent third degree felony and whose total sentence points are 22 points or fewer); s. 921.00241, F.S. (diversion into a Department of Corrections’ prison diversion program for certain nonviolent third degree felony offenders); and s. 948.01, F.S. (diversion into a postadjudicatory treatment-based drug court program for certain nonviolent felony offenders).

<sup>9</sup> Section 776.08, F.S., defines a “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

This subsection further states that, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to s. 775.082, F.S.

### **III. Effect of Proposed Changes:**

The bill amends s. 775.082(10), F.S., which authorizes a court to sentence certain nonviolent felony offenders to a nonstate prison sanction, to increase total sentence points applicable to prison diversion under this subsection from 22 points or fewer to 44 points or fewer. This change, which is applicable to certain offenders sentenced on or after October 1, 2020, expands the pool of offenders who may be eligible for prison diversion under s. 775.082(10), F.S.<sup>10</sup>

The effective date of the bill is October 1, 2020.

### **IV. Constitutional Issues:**

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

None.

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

None.

#### **C. Trust Funds Restrictions:**

None.

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

None.

#### **E. Other Constitutional Issues:**

None identified.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

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<sup>10</sup> In addition to offenders whose offense was committed on or after October 1, 2020, and who are sentenced after that date, the bill should apply to offenders whose offense was committed before October 1, 2020, the effective date of the bill, provided sentence is imposed on or after October 1, 2020.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that 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:

Per DOC, in FY 17-18, 3,788 admissions fell between the 22 and 44 points thresholds where a third degree violation was committed that was not a forcible felony (excluding Chapter 810), with incarceration rates for this group at 10.1% in FY 17-18. It should be noted that while prison sentences dropped for those below 22 points following prior legislation requiring a nonstate prison sanction, from a high of 6.4% in FY 10-11 (offense prior to passage of 22-point diversion) to 1.3% in FY 17-18 (offense after passage of 22-point diversion), it does not mean that the same declines will occur for this new cohort.

Without knowing decision making of the jury and the court moving forward, the prison bed impact cannot be quantified. However, given the large numbers of offenders admitted to prison between 22 and 44 points, even a small decrease in prison sentences would have a significant impact on admissions and the resulting prison population.<sup>11</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 775.082 of the Florida Statutes.

---

<sup>11</sup> The EDR's preliminary estimate is on file with the Senate Committee on Criminal Justice.

**IX. Additional Information:**

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

**CS by Criminal Justice on December 10, 2019:**

The committee substitute deletes a new provision specifying how a dangerousness finding, an exception to sentencing under s. 775.082(10), F.S., is to be made in jury cases and cases in which the defendant pleads guilty or nolo contendere.

- B. **Amendments:**

None.



146202

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/10/2019	.	
	.	
	.	
	.	

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The Committee on Criminal Justice (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 17 - 41  
and insert:

(10) If a defendant is sentenced ~~for an offense committed~~  
on or after October 1, 2020, for an offense that ~~July 1, 2009,~~  
~~which~~ is a third degree felony but not a forcible felony as  
defined in s. 776.08, and excluding any third degree felony  
violation under chapter 810, and if the total sentence points  
pursuant to s. 921.0024 are 44 ~~22~~ points or fewer, the court



146202

must sentence the offender to a nonstate prison sanction.  
However, if the court makes written findings that a nonstate  
prison sanction could present a danger to the public, the court  
may sentence the offender to a state correctional facility  
pursuant to this section.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 7

and insert:

prison sanction; providing an

By Senator Brandes

24-00769-20

2020552\_\_

A bill to be entitled

An act relating to sentencing; amending s. 775.082, F.S.; revising the threshold of total sentence points below which a court must sentence nonviolent felony offenders who commit certain offenses and are sentenced on or after a specified date to a nonstate prison sanction; providing an exception; providing an effective date.

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

Section 1. Subsection (10) 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.—

(10)(a) If a defendant is sentenced ~~for an offense committed on or after October 1, 2020, for an offense that July 1, 2009, which~~ is a third degree felony but not a forcible felony as defined in s. 776.08, and excluding any third degree felony violation under chapter 810, and if the total sentence points pursuant to s. 921.0024 are 44 ~~22~~ points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the jury makes written findings or the court makes written findings as provided in paragraph (b) that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to this section.

(b)1. A defendant described in paragraph (a) who pleads

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

24-00769-20

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guilty or nolo contendere may be sentenced to a nonstate prison sanction under paragraph (a) if:

a. The defendant consents to the court determining whether sentencing him or her to a nonstate prison sanction pursuant to this subsection could present a danger to the public; and  
b. The court does not make written findings that sentencing the defendant to a nonstate prison sanction pursuant to this subsection could present a danger to the public.

2. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to this section.

Section 2. This act shall take effect October 1, 2020.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

## SB 552 –Sentencing

This bill amends s. 775.082(10), F.S., increasing total sentence points for when the court must sentence the offender to a nonstate prison sanction from 22 points or fewer to 44 points or fewer. This applies to those who are sentenced “on or after October 1, 2020, for an offense that is a third degree felony but not a forcible felony as defined in s. 776.08, F.S. and excluding any third degree felony violation under chapter 810.” Where currently if the offender is determined a danger to the public by the jury, a prison sentence can be imposed, this bill adds that the “jury must make written findings” as well as elaborating how a court can make written findings, outlining the following:

“(b)1. A defendant described in paragraph (a) who pleads guilty or nolo contendere may be sentenced to a nonstate prison sanction under paragraph (a) if:

- a. The defendant consents to the court determining whether sentencing him or her to a nonstate prison sanction pursuant to this subsection could present a danger to the public; and
  - b. The court does not make written findings that sentencing the defendant to a nonstate prison sanction pursuant to this subsection could present a danger to the public.
2. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to this section.”

Per DOC, in FY 17-18, 3,788 admissions fell between the 22 and 44 points thresholds where a third degree violation was committed that was not a forcible felony (excluding Chapter 810), with incarceration rates for this group at 10.1% in FY 17-18.<sup>1</sup> It should be noted that while prison sentences dropped for those below 22 points following prior legislation requiring a nonstate prison sanction, from a high of 6.4% in FY 10-11 (offense prior to passage of 22-point diversion) to 1.3% in FY 17-18 (offense after passage of 22-point diversion), it does not mean that the same declines will occur for this new cohort.

Without knowing decision making of the jury and the court moving forward, the prison bed impact cannot be quantified. However, given the large numbers of offenders admitted to prison between 22 and 44 points, even a small decrease in prison sentences would have a significant impact on admissions and the resulting prison population.

**EDR PROPOSED ESTIMATE: Negative Significant**

**Requested by: Senate**

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<sup>1</sup> FY 18-19 sentencing data is not available.



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

12/10/19

Meeting Date

552

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Newburn

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Gainesville FL

City State Zip

Email gnewburn@famm-ocg

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FAMM

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)

12/10/19  
Meeting Date

552  
Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

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Street

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Tallahassee FL 32301  
City State Zip

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU FL

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)

12/10/19

*Meeting Date*

552

*Bill Number (if applicable)*

Topic Criminal Punishment Code

*Amendment Barcode (if applicable)*

Name Nancy Daniels

Job Title Legislative Consultant

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32301

Email ndaniels@flpda.org

*City*

*State*

*Zip*

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

12/10/19

Meeting Date

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

552

Bill Number (if applicable)

Topic

Sentencing

Amendment Barcode (if applicable)

Name

Ida V. Eskamani

Job Title

Address

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Phone

Street

Orlando

FL

32801

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

New Florida Majority + Organize Florida

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

12/10/2019

*Meeting Date*

552

*Bill Number (if applicable)*

Topic Criminal Justice

*Amendment Barcode (if applicable)*

Name Sal Nuzzo

Job Title Vice President of Policy

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32301

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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 The James Madison Institute

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

## Committee Agenda Request

**To:** Senator Keith Perry  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** November 1, 2019

---

I respectfully request that **Senate Bill #552**, relating to **Sentencing**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

\_\_\_\_\_  
Senator Jeff Brandes  
Florida Senate, District 24

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 554

INTRODUCER: Criminal Justice Committee and Senators Brandes and Perry

SUBJECT: Sentencing

DATE: December 10, 2019      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

---

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 554 creates two new circumstances for mitigating (reducing) a sentence under the Criminal Punishment Code:

- For defendants sentenced on or after October 1, 2020, the defendant requires specialized treatment for substance abuse or addiction, a mental disorder, or a physical disability.
- The defendant's offense is a nonviolent felony, total sentence points are 60 points or fewer, and the defendant is sentenced for the offense on or after October 1, 2020.

The new mitigating circumstance relating to specialized treatment for substance abuse or addiction, a mental disorder, or a physical disability is substituted for two current mitigating circumstances:

- The defendant's offense is a nonviolent felony, the defendant's total sentence points are 60 points or fewer, and the defendant is amenable to and qualified to participate in a post-adjudicatory treatment-based drug court program.
- The defendant requires specialized treatment for a mental disorder unrelated to substance abuse or addiction or for a physical disability.

The bill also removes language that restricts mitigation based upon substance abuse or addiction, including intoxication at the time of the offense.

The Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds).

The effective date of the bill is October 1, 2020.

## **II. Present Situation:**

### **Criminal Punishment Code**

In 1997, the Legislature enacted the Criminal Punishment Code<sup>1</sup> (Code) as "Florida's primary sentencing policy."<sup>2</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>3</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.<sup>4</sup> Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.

Absent mitigation (see discussion, *supra*), 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.<sup>5</sup> However, if the offender's offense has a mandatory minimum term that is greater than the scored lowest permissible sentence, the mandatory minimum term supersedes the lowest permissible sentence scored.<sup>6</sup> Further, some offenders may qualify for prison diversion under various sections of the Florida Statutes.<sup>7</sup>

### **Sentence Mitigating Circumstances**

As previously noted, the permissible sentencing range under the Code is generally the scored lowest permissible sentence up to and including the maximum penalty provided under s. 775.082, F.S. However, the court may "depart downward" from the scored lowest permissible

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

<sup>2</sup> *Florida's Criminal Punishment Code: A Comparative Assessment* (September 2018), Florida Department of Corrections, available at [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_code.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_code.pdf) (last visited on Nov. 6, 2019).

<sup>3</sup> Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

<sup>4</sup> Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

<sup>5</sup> If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment.

<sup>6</sup> Fla. R. Crim. P. 3.704(d)(26).

<sup>7</sup> See e.g., s. 775.082(10), F.S. (prison diversion for an offender whose offense is a nonviolent third degree felony and whose total sentence points are 22 points or fewer); s. 921.00241, F.S. (diversion into a Department of Corrections' prison diversion program for certain nonviolent third degree felony offenders); and s. 948.01, F.S. (diversion into a postadjudicatory treatment-based drug court program for certain nonviolent felony offenders).



sentence if the court finds there is a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.<sup>8</sup>

Relevant to the bill, pre-Code sentencing guidelines provided for the following mitigating circumstance: “The defendant requires specialized treatment for addiction, mental disorder, or physical disability, and the defendant is amenable to treatment.”<sup>9</sup>

With the enactment of the Code, this mitigating circumstance was modified.<sup>10</sup> As modified, the mitigating circumstance read: “The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.”<sup>11</sup> The Code also specified that the defendant’s “substance abuse or addiction, including intoxication,<sup>12</sup> at the time of the offense” was not a mitigating factor and did “not, under any circumstance, justify a downward departure from the permissible sentencing range.”<sup>13</sup>

In 2009, the Legislature created a mitigating circumstance in which substance abuse or addiction could be considered: “The defendant’s offense is a nonviolent felony, the defendant’s Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 52 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence.”<sup>14</sup> The only subsequent change to this mitigating circumstance occurred in 2011 when the Legislature increased total sentence points from 52 points to 60 points.<sup>15</sup> Further, since the 2009 change, the law specifies that, except for this mitigating circumstance, the defendant’s substance abuse or addiction, including intoxication, is not a mitigating factor.<sup>16</sup>

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<sup>8</sup> Section 921.0026(4)(d), F.S., specifies that mitigating circumstances include, but are not limited to, the mitigating circumstances specified in that section.

<sup>9</sup> Section 921.0016, F.S. (1996). In 1993, the Legislature codified this mitigating factor which was created by the Florida Supreme Court in 1987. Chapter 93-406, s. 13, L.O.F.; *Barbera v. State*, 505 So.2d 413 (Fla. 1987). In *Barbera*, the court was persuaded that intoxication and drug dependency could mitigate a sentence because the defense of intoxication could be used by a jury to justify convicting a defendant of a lesser offense. In 1999, the Legislature eliminated the voluntary intoxication defense. Chapter 99-174, L.O.F.; s. 775.051, F.S.

<sup>10</sup> Chapter 97-194, s. 8, L.O.F.

<sup>11</sup> Section 921.0026(2)(d), F.S. (1997).

<sup>12</sup> While s. 775.051, F.S., provides that voluntary intoxication resulting from the consumption, injection, or other use of alcohol or other controlled substances (except those legally prescribed) is not a defense to any offense, this does not necessarily preclude the Legislature from addressing substance abuse or addiction, including intoxication, as a mitigating circumstance. For example, while a defendant may not raise as a defense that the victim was a willing participant in the crime, the Legislature has authorized mitigation of a Code sentence based on this circumstance. Section 921.0026(2)(f), F.S.; *State v. Rife*, 789 So.2d 288 (Fla. 2001).

<sup>13</sup> Section 921.0026(3), F.S. (1997).

<sup>14</sup> Section 921.0026(2)(m) and (3), F.S.; ch. 2009-64, s. 2, L.O.F. The term “nonviolent felony” has the same meaning as provided in s. 948.08(6), F.S., which defines “nonviolent felony” as a third degree felony violation of ch. 810, F.S., or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.

<sup>15</sup> Chapter 2011-33, s. 2, L.O.F.

<sup>16</sup> Section 921.0026(3), F.S. Further, while current law provides for a mitigating circumstance based on the defendant requiring specialized treatment for a mental disorder if the defendant is amenable to treatment, that mental disorder cannot be related to substance abuse or addiction or for a physical disability. Section 921.0026(2)(d), F.S.

### **III. Effect of Proposed Changes:**

The bill amends s. 921.0026, F.S., relating to circumstances for mitigating (reducing) a Code sentence, to create two new circumstances for mitigating (reducing) a sentence under the Criminal Punishment Code:

- For defendants sentenced on or after October 1, 2020, the defendant requires specialized treatment for substance abuse or addiction, a mental disorder, or a physical disability.
- The defendant's offense is a nonviolent felony, total sentence points are 60 points or fewer, and the defendant is sentenced for the offense on or after October 1, 2020.

The new mitigating circumstance relating to specialized treatment for substance abuse or addiction, a mental disorder, or a physical disability is substituted for two current mitigating circumstances:

- The defendant's offense is a nonviolent felony, the defendant's total sentence points are 60 points or fewer, and the defendant is amenable to and qualified to participate in a post-adjudicatory treatment-based drug court program.
- The defendant requires specialized treatment for a mental disorder unrelated to substance abuse or addiction or for a physical disability.

The bill also removes language that restricts mitigation based upon substance abuse or addiction, including intoxication at the time of the offense.

The bill also reenacts ss. 775.08435, 921.002, and 921.00265, F.S., all relating to mitigating circumstances, to incorporate amendments made to s. 921.0026, F.S.

The effective date of the bill is October 1, 2020.

### **IV. Constitutional Issues:**

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

None.

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

None.

#### **C. Trust Funds Restrictions:**

None.

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

None.

#### **E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds). The EDR provided the following information regarding its estimate:

... [S]pecialized treatment for substance abuse and addiction as a mitigating factor can apply to an expanded pool of offenders while having committed a nonviolent felony with total sentence points that are 60 or fewer can be used as a mitigating circumstance as well. These changes would permit a larger number of downward departures for inmates eligible under these criteria.

Per DOC, on June 30th, 2019, roughly 60% of the inmate population had a substance abuse problem. It is not known how many of these people fit the criteria for mitigating circumstances. With FY 18-19 data unavailable, FY 17-18 data show that there were 92,033 (adj.) offenders sentenced for nonviolent offenses with 60 or fewer sentence points, and 12,163 (adj.) were sentenced to prison (mean sentence length=25.1 m, incarceration rate: 13.2% adj.-13.2% unadj.). While it is not known how many of these also had drug abuse problems, the inclusion of drug offenses in the nonviolent category likely creates significant overlap, and perhaps a higher percentage [for] those with substance abuse problems than the general population. Furthermore, although it is not known how often judges will use these new opportunities for mitigating circumstances, nor is it known who is eligible within the population receiving prison that had not received a downward departure for other mitigating circumstances, this pool is very large, so this bill would be expected to have a significant impact on both prison sentences and the length of prison sentences.<sup>17</sup>

**VI. Technical Deficiencies:**

None.

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<sup>17</sup> The preliminary EDR estimate is on file with the Senate Committee on Criminal Justice.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 921.0026 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 775.08435, 921.002, and 921.00265.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on December 10, 2019:**

The committee substitute substitutes the word “defendants” for the word “offenders.”

**B. Amendments:**

None.



715730

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/10/2019	.	
	.	
	.	
	.	

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The Committee on Criminal Justice (Brandes) recommended the following:

**Senate Amendment**

Delete line 39

and insert:

(d) For defendants sentenced on or after October 1, 2020,

By Senator Brandes

24-00767-20

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A bill to be entitled

An act relating to sentencing; amending s. 921.0026, F.S.; revising the mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified; conforming a provision to changes made by the act; reenacting ss. 775.08435(1)(b), (c), and (d), 921.002(3), and 921.00265(1), F.S., all relating to mitigating circumstances, to incorporate the amendment made to s. 921.0026, F.S., in references thereto; providing an effective date.

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

Section 1. Section 921.0026, Florida Statutes, is amended to read:

921.0026 Mitigating circumstances.—This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

(1) A downward departure from the lowest permissible sentence, as calculated according to the total sentence points pursuant to s. 921.0024, is prohibited unless there are circumstances or factors that reasonably justify the downward departure. Mitigating factors to be considered include, but are not limited to, those listed in subsection (2). The imposition of a sentence below the lowest permissible sentence is subject to appellate review under chapter 924, but the extent of downward departure is not subject to appellate review.

(2) Mitigating circumstances under which a departure from

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the lowest permissible sentence is reasonably justified include, but are not limited to:

(a) The departure results from a legitimate, uncoerced plea bargain.

(b) The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.

(c) The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.

(d) For offenders sentenced on or after October 1, 2020, the defendant requires specialized treatment for substance abuse or addiction, a mental disorder, or a physical disability ~~The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability,~~ and the defendant is amenable to treatment.

(e) The need for payment of restitution to the victim outweighs the need for a prison sentence.

(f) The victim was an initiator, willing participant, aggressor, or provoker of the incident.

(g) The defendant acted under extreme duress or under the domination of another person.

(h) Before the identity of the defendant was determined, the victim was substantially compensated.

(i) The defendant cooperated with the state to resolve the current offense or any other offense.

(j) The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.

(k) At the time of the offense the defendant was too young

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to appreciate the consequences of the offense.

(l) The defendant is to be sentenced as a youthful offender.

(m) The defendant's offense is a nonviolent felony, the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 60 points or fewer, and the defendant is sentenced for the offense on or after October 1, 2020 ~~the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence.~~ For purposes of this paragraph, the term "nonviolent felony" has the same meaning as provided in s. 948.08(6).

(n) The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

~~(3) Except as provided in paragraph (2)(m), the defendant's substance abuse or addiction, including intoxication at the time of the offense, is not a mitigating factor under subsection (2) and does not, under any circumstances, justify a downward departure from the permissible sentencing range.~~

Section 2. For the purpose of incorporating the amendment made by this act to section 921.0026, Florida Statutes, in references thereto, paragraphs (b), (c), and (d) of subsection (1) of section 775.08435, Florida Statutes, are reenacted to read:

775.08435 Prohibition on withholding adjudication in felony cases.—

(1) Notwithstanding the provisions of s. 948.01, the court

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may not withhold adjudication of guilt upon the defendant for:

(b) A second degree felony offense unless:

1. The state attorney requests in writing that adjudication be withheld; or

2. The court makes written findings that the withholding of adjudication is reasonably justified based on circumstances or factors in accordance with those set forth in s. 921.0026.

Notwithstanding any provision of this section, no adjudication of guilt shall be withheld for a second degree felony offense if the defendant has a prior withholding of adjudication for a felony that did not arise from the same transaction as the current felony offense.

(c) A third degree felony that is a crime of domestic violence as defined in s. 741.28, unless:

1. The state attorney requests in writing that adjudication be withheld; or

2. The court makes written findings that the withholding of adjudication is reasonably justified based on circumstances or factors in accordance with s. 921.0026.

(d) A third degree felony offense if the defendant has a prior withholding of adjudication for a felony offense that did not arise from the same transaction as the current felony offense unless:

1. The state attorney requests in writing that adjudication be withheld; or

2. The court makes written findings that the withholding of adjudication is reasonably justified based on circumstances or factors in accordance with those set forth in s. 921.0026.

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117  
118 Notwithstanding any provision of this section, no adjudication  
119 of guilt shall be withheld for a third degree felony offense if  
120 the defendant has two or more prior withholdings of adjudication  
121 for a felony that did not arise from the same transaction as the  
122 current felony offense.

123 Section 3. For the purpose of incorporating the amendment  
124 made by this act to section 921.0026, Florida Statutes, in a  
125 reference thereto, subsection (3) of section 921.002, Florida  
126 Statutes, is reenacted to read:

127 921.002 The Criminal Punishment Code.—The Criminal  
128 Punishment Code shall apply to all felony offenses, except  
129 capital felonies, committed on or after October 1, 1998.

130 (3) A court may impose a departure below the lowest  
131 permissible sentence based upon circumstances or factors that  
132 reasonably justify the mitigation of the sentence in accordance  
133 with s. 921.0026. The level of proof necessary to establish  
134 facts supporting the mitigation of a sentence is a preponderance  
135 of the evidence. When multiple reasons exist to support the  
136 mitigation, the mitigation shall be upheld when at least one  
137 circumstance or factor justifies the mitigation regardless of  
138 the presence of other circumstances or factors found not to  
139 justify mitigation. Any sentence imposed below the lowest  
140 permissible sentence must be explained in writing by the trial  
141 court judge.

142 Section 4. For the purpose of incorporating the amendment  
143 made by this act to section 921.0026, Florida Statutes, in a  
144 reference thereto, subsection (1) of section 921.00265, Florida  
145 Statutes, is reenacted to read:

Page 5 of 6

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00767-20

2020554\_\_

146 921.00265 Recommended sentences; departure sentences;  
147 mandatory minimum sentences.—This section applies to any felony  
148 offense, except any capital felony, committed on or after  
149 October 1, 1998.

150 (1) The lowest permissible sentence provided by  
151 calculations from the total sentence points pursuant to s.  
152 921.0024(2) is assumed to be the lowest appropriate sentence for  
153 the offender being sentenced. A departure sentence is prohibited  
154 unless there are mitigating circumstances or factors present as  
155 provided in s. 921.0026 which reasonably justify a departure.

156 Section 5. This act shall take effect October 1, 2020.

Page 6 of 6

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



# Racial/Ethnic Impact Statement

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## SB554

Prepared by  
Florida State University  
College of Criminology & Criminal Justice

For  
The Florida Senate Criminal Justice Committee



### Executive Summary

SB 554 proposes to revise the mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified. Specifically, the bill adds a justification for departures from the lowest permissible sentence for individuals who require and are amenable to specialized treatment for substance abuse or addiction. Although the available empirical literature is limited on the racial/ethnic differences in downward departures for substance use or dependency, the research generally finds that there is racial disparity in sentencing, with minorities more likely to receive longer sentences than Whites. Using data provided by the Florida Department of Corrections, it was found that a greater percentage of Black offenders received downward departures than Hispanic and White offenders. In addition, over the next five years, a greater percentage of Black offenders are forecast to receive downward departures than White and Hispanic offenders. Specifically, Black offenders have had, and are forecast to have, a higher percentage of sentence length departures and departures from prison than Hispanic and White offenders.

---

### Bill Summary

SB 554 amends s.921.0026, F.S. by revising the mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified for offenders sentenced on or after October 1, 2020. Specifically, the bill adds a justification for departures from the lowest permissible sentence for individuals who require and are amenable to specialized treatment for substance abuse or addiction.

### Comparable Legislation and Prior Research

States allowing downward departures from mandatory minimum sentencing for the presence of mitigating circumstances can be grouped into two primary categories, those with mitigating factors specifically defined in statute and those without. Most states have a list of specific mitigating factors that can be considered for a downward departure in sentencing whereas other states allow factors to be introduced and proven during the sentencing phase of the trial. Several states and the federal government include specific factors related to substance use or dependency as mitigating factors. For example, the federal government (U.S. Code § 994) and Iowa (§ 811.12) expressly indicate that drug addiction can be considered to be a mitigating factor. Arizona (§ 13-701(E)(1)-(6)) does not list drug addiction or dependency as a mitigating factor, but it does allow “impairment” to be considered as a mitigating factor. California (Cal. Rules of Court, rule 4.423) does not name drug abuse or addiction as a mitigating factor, though it could be argued under their “other factors” allowance.

Empirical research has not explored racial/ethnic differences in the application of mitigating circumstances and downward departures for substance abuse or drug-related factors. Although the research is limited, studies have been conducted on racial/ethnic disparities in rates of substance use. For example, a 2016 study of 1,829 youth found that non-Hispanic White youth had a higher prevalence of substance abuse disorders (SUDs) than Black youth and Hispanic youth (Welty et al. 2016). Furthermore, non-Hispanic White youth were more likely to have marijuana-use disorder, alcohol-use disorder, and cocaine-use disorder compared to Black and Hispanic youth.

### Data and Methods for Racial/Ethnic Impact Forecast

Sentencing Guidelines data from the Florida Department of Corrections were used to prepare this racial/ethnic impact statement. Race and ethnicity are not included in the Sentencing Guidelines database; therefore, in order to obtain racial/ethnic information, the individual records were combined with FDC data, which contains demographic information for all offenders sentenced to state prison or probation. As a result, individuals who did not have current or prior state prison or state probation sentences under the custody of the FDC were excluded from the analyses because their demographic data were not available (83.3% of sentenced cases from 2008-2017 were included in the analyses for this reason).

Although SB554 focuses on substance abuse and addiction as a mitigating circumstance, existing data available does not include information on offenders’ substance use at the time of sentencing. Consequently, our analyses address the broader purpose of the law, which is the use of downward departures during sentencing. More specifically, our analyses address whether there are racial/ethnic differences in the use of downward departures during sentencing.

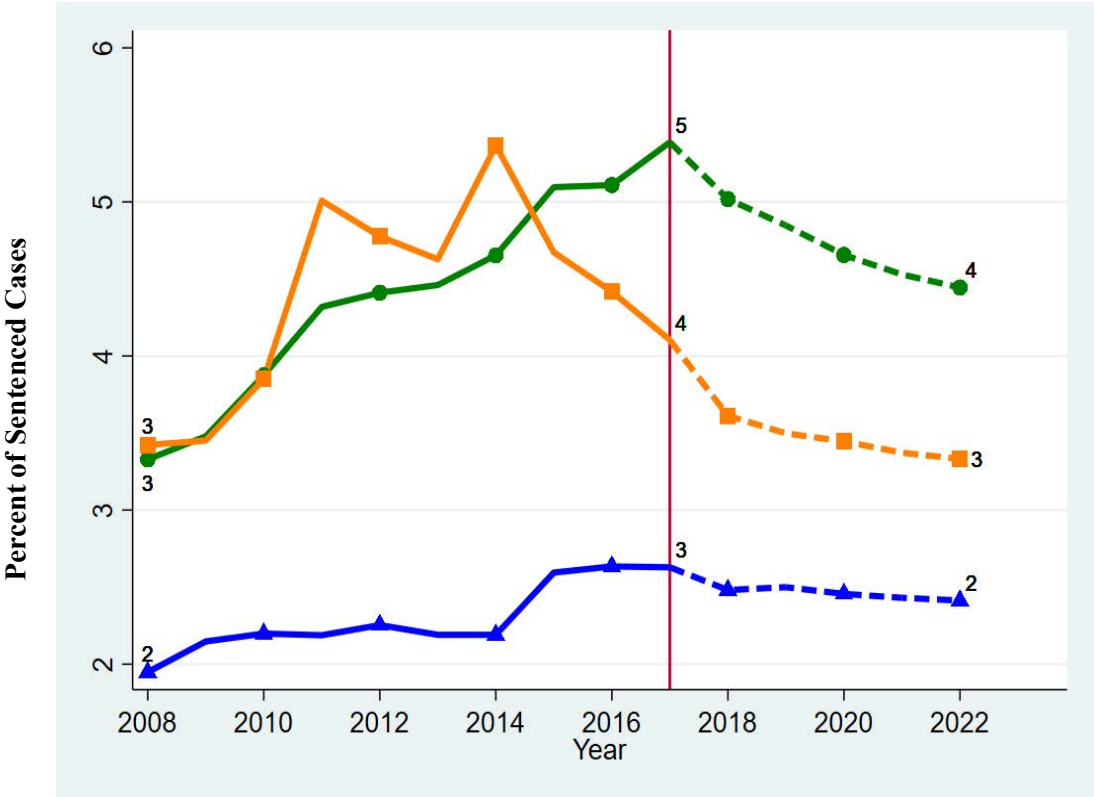
In order to assess the potential racial/ethnic impact of bill SB554, two different analyses were conducted. First, trend data from 2008 through 2017 were compiled to calculate the number of convicted individuals, by race/ethnicity, who were recommended to receive a prison sentence according to the sentencing guidelines, but instead were given a non-prison sentence. These numbers were then converted to percentages with the denominator being the total number of convicted offenders by race/ethnicity.

Second, trend data from 2008 through 2017 were compiled to calculate the number of convicted individuals, by race/ethnicity, who were sentenced to prison for substantially fewer months (identified as twelve or more months) than recommended by the sentencing guidelines. These numbers were then converted to percentages with the denominator being the total number of convicted offenders by race/ethnicity.

Results

There is racial and ethnic disparity in the trends and forecasts of the percent of sentenced offenders who receive downward departures. As shown in Graph 1, the percent of offenders who received a downward departure of 12 months or more in their prison sentence is greatest among Black offenders, followed by White and Hispanic offenders. Specifically, in 2017, 5% of eligible Black offenders, 4% of eligible Hispanic offenders, and 3% of eligible White offenders received a downward departure in sentence length of 12 months or more. In other words, the prison sentences for these offenders were at least 12 months less than what was specified in the sentencing guidelines. The percent of offenders who will receive a downward departure in sentence length of 12 months or more is forecast to decline for all racial/ethnic groups over the next five years.

Graph 1  
Trends and forecasts in the percent of sentenced offenders receiving a downward departure of 12 months or more

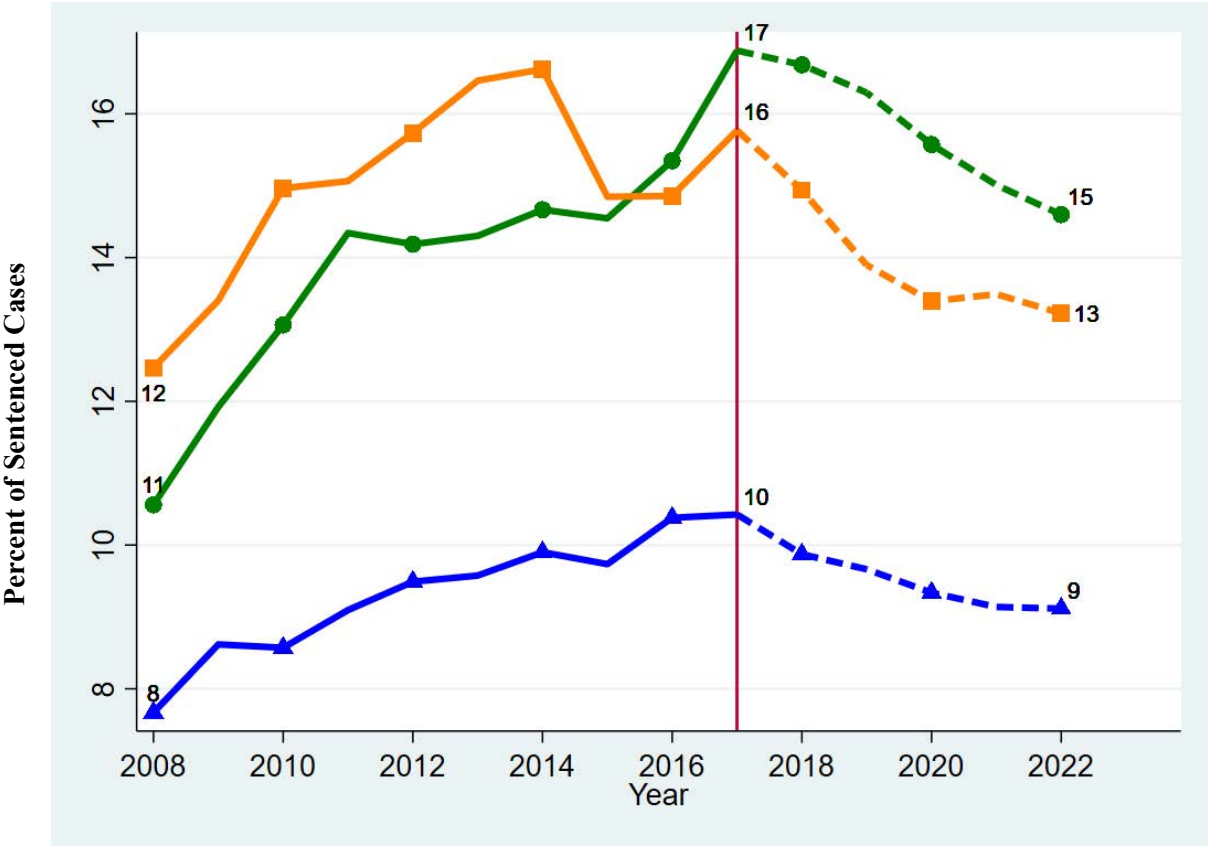


Blue Triangles: White Non-Hispanic | Orange Squares: Hispanic | Green Circles: Black Non-Hispanic

As shown in Graph 2, the percent of offenders who received a downward departure of a nonprison sentence is greatest among Black offenders, followed by Hispanic offenders, and White offenders. Specifically, 17% of eligible Black offenders, 16% of eligible Hispanic offenders, and 10% of eligible White offenders were sentenced to a nonprison sentence, despite prison being the specified sentence in the sentencing guidelines. Although there were increases in the percent of offenders receiving downward departures from prison between 2008 and 2017, the percent of offenders who will receive a downward departure is forecast to decline over the next five years for all racial/ethnic groups.

**Graph 2**

**Trends and forecasts in the percent of sentenced offenders receiving a downward departure from prison to a nonprison option**



**Blue Triangles: White Non-Hispanic | Orange Squares: Hispanic | Green Circles: Black Non-Hispanic**

**Racial/Ethnic Impact Statement for the Bill**

SB 554 proposes to revise the mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified. Specifically, the bill adds a justification for departures from the lowest permissible sentence for individuals who require and are amenable to specialized treatment for substance abuse or addiction. There are differences in trends and forecasts of the percent of Black, White, and Hispanic offenders who receive downward departures. A greater percentage of Black offenders receive sentence length departures and departures from prison than do Hispanic and White offenders. The observed differences between racial and ethnic groups in the percent of downward departures are forecast to remain over the next five years, with Black offenders more likely to receive a downward departure.

## References

- Cassidy, M., & Rydberg, J. (2018). Analyzing variation in prior record penalties across conviction offenses. *Crime & Delinquency*, 64(7), 831-855.
- Crow, M. S. (2008). The complexities of prior record, race, ethnicity, and policy: Interactive effects in sentencing. *Criminal Justice Review*, 33(4), 502-523.
- Lee, K. H. and Hines, L. D. (2014). Racial disparity: Substance dependency and psychological health problems among welfare recipients. *Social Work in Public Health*, 29, 207-219.
- Welty, L. J., Harrison, A. J., Abram, K. M., Olson, N. D., Aaby, D. A., McCoy, K. P., Washburn, J. J., and Teplin, L. A. (2016). Health disparities in drug- and alcohol-use disorders: A 12-year longitudinal study of youths after detention. *American Journal of Public Health*, 106(5), 872-880.

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### **Contributors** **Racial/Ethnic Impact Statement** **SB574**

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**FLORIDA STATE UNIVERSITY**  
**COLLEGE OF CRIMINOLOGY & CRIMINAL JUSTICE**

## **SB 554 – Sentencing**

This bill amends s. 921.0026(2)(d), F.S., adding the following for mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified: “For offenders sentenced on or after October 1, 2020, the defendant requires specialized treatment for substance abuse or addiction, a mental disorder, or a physical disability, and the defendant is amenable to treatment.” Under current law, a mental disorder should be unrelated to substance abuse or addiction and “the defendant’s substance abuse or addiction, including intoxication at the time of the offense, is not a mitigating factor.” This language would no longer apply for offenses committed on or after October 1, 2020.

This bill also amends s. 921.0026(2)(m), F.S., deleting that a court should determine that a “defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence” as part of the mitigating circumstance for those with an offense that is a nonviolent felony with total sentence points that are 60 points or fewer. This is also structured so that such sentences begin on or after October 1, 2020.

With these two changes to the statute, specialized treatment for substance abuse and addiction as a mitigating factor can apply to an expanded pool of offenders while having committed a nonviolent felony with total sentence points that are 60 or fewer can be used as a mitigating circumstance as well. These changes would permit a larger number of downward departures for inmates eligible under these criteria.

Per DOC, on June 30<sup>th</sup>, 2019, roughly 60% of the inmate population had a substance abuse problem. It is not known how many of these people fit the criteria for mitigating circumstances. With FY 18-19 data unavailable, FY 17-18 data show that there were 92,033 (adj.) offenders sentenced for nonviolent offenses with 60 or fewer sentence points, and 12,163 (adj.) were sentenced to prison (mean sentence length=25.1 m, incarceration rate: 13.2% adj.-13.2% unadj.). While it is not known how many of these also had drug abuse problems, the inclusion of drug offenses in the nonviolent category likely creates significant overlap, and perhaps a higher percentage those with substance abuse problems than the general population. Furthermore, although it is not known how often judges will use these new opportunities for mitigating circumstances, nor is it known who is eligible within the population receiving prison that had not received a downward departure for other mitigating circumstances, this pool is very large, so this bill would be expected to have a significant impact on both prison sentences and the length of prison sentences.

**EDR PROPOSED ESTIMATE: Negative Significant**

**Requested by: Senate**

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

12/10/19

*Meeting Date*

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

554

*Bill Number (if applicable)*

Topic Sentencing

*Amendment Barcode (if applicable)*

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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)

12/10/14

Meeting Date

554

Bill Number (if applicable)

Topic

Sentencing

Amendment Barcode (if applicable)

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☒

In Support

☐

Against

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New Florida Majority + Organize Florida

Appearing at request of Chair:

☐

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☒

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)



THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/19

Meeting Date

554

Bill Number (if applicable)

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Right on Crime

Appearing at request of Chair:

☐

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☐

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Lobbyist registered with Legislature:

☒

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☐

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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)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

12/10/19  
Meeting Date

554  
Bill Number (if applicable)

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Amendment Barcode (if applicable)

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*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)

12/10/2019

*Meeting Date*

554

*Bill Number (if applicable)*

Topic Criminal Justice

*Amendment Barcode (if applicable)*

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*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)

12/10/19

Meeting Date

SS 554

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

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*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

## Committee Agenda Request

**To:** Senator Keith Perry  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** November 1, 2019

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I respectfully request that **Senate Bill #554**, relating to **Sentencing**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", is written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 24

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 572

INTRODUCER: Criminal Justice Committee and Senators Brandes and Perry

SUBJECT: Release from Imprisonment

DATE: December 11, 2019      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 572 amends s. 944.275, F.S., to increase monthly incentive gain-time awards that the Department of Corrections (DOC) may grant from up to 10 days to up to 20 days for offenders sentenced for offenses regardless of when the offense was committed. This increase applies both prospectively and retroactively. The bill also provides that any gain-time cannot reduce sentences of these offenders below 65 percent of time served if the offense is a nonviolent felony or 85 percent of time served if the offense is not a nonviolent felony.

The bill also amends s. 945.091, F.S., authorizing the DOC to allow an inmate to participate in a supervised community release program (Program) up to 365 days before the inmate's tentative release date as an extension of the inmate's confinement. An inmate is only eligible for such Program if he or she is sentenced to a term of imprisonment of two or more years. The DOC must also administer a risk assessment tool to determine eligibility for this program. The Program may include active electronic monitoring and community control as defined in s. 948.001, F.S.

An inmate's participation in the Program may be terminated by the DOC if the inmate fails to comply with any of the terms of the Program as proscribed by rule. If an inmate is terminated from the supervision, he or she must be recommitted to the DOC.

If there are reasonable grounds to believe that the inmate violated his or her supervised community release, the bill authorizes a law enforcement officer or probation officer to arrest the

inmate in accordance with s. 948.06, F.S. An alleged violation of the conditions of the Program must be reported to the supervising probation office or the DOC's emergency action center for disposition of disciplinary charges.

The bill also amends s. 944.275(4)(f), F.S., providing that time spent participating in a program authorized by s. 945.091, F.S., even if such program allows the inmate to not be released from prison on some form of community supervision, must be credited toward satisfaction of the 85 percent rule.

The Criminal Justice Estimating Conference (CJIC) has not heard the bill at this time. The CJIC heard SB 642 (2019), which, in part, included the provision of the bill that allows inmates convicted of certain nonviolent felonies to earn an increased amount of gain-time and reduces the requirement to serve a certain percentage of the term of imprisonment from 85 percent to 65 percent. The CJIC found that this provision of the bill will result in a negative indeterminate prison bed impact (i.e. an unquantifiable decrease in prison beds).

The DOC reports that the provisions of the bill related to extension of confinement will likely have a negative indeterminate fiscal impact on the DOC. The DOC reports it will require one full-time equivalent position, entitled Correctional Programs Consultant, to provide statewide implementation and oversight of the Program. The DOC reports it will also need one additional FTE position at a Correctional Services Assistant Consultant level. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2020.

## **II. Present Situation:**

The Criminal Punishment Code<sup>1</sup> (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.<sup>2</sup> The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence as determined by the Code to the statutory maximum for the primary offense. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is five years.<sup>3</sup>

The sentence imposed by the sentencing judge reflects the length of actual time to be served, lessened only by the application of gain-time, and may not be reduced in an amount that results in the defendant serving less than 85 percent of his or her term of imprisonment.<sup>4</sup>

### **Gain-time and the “85 Percent” Requirement**

Section 921.002(1)(e), F.S., of the Criminal Punishment Code provides that for noncapital felony offenses committed on or after October 1, 1998, the sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and

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<sup>1</sup> Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F.

<sup>2</sup> Section 921.0022(1), F.S.

<sup>3</sup> Section 775.082(3)(b), (d), and (e), F.S.

<sup>4</sup> Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.

meritorious gain-time as provided by law.<sup>5</sup> Gain-time awards, which result in deductions to the court-ordered sentences of specified eligible inmates, are used to encourage satisfactory prisoner behavior or to provide incentives for prisoners to participate in productive activities while incarcerated.<sup>6</sup> An inmate is not eligible to earn or receive gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.<sup>7</sup>

Basic gain-time, which automatically reduced an inmate's sentence by a designated amount each month, was eliminated for offenses committed on or after January 1, 1994.<sup>8</sup> The only forms of gain-time that can currently be earned are:

- Incentive gain-time;<sup>9</sup>
- Meritorious gain-time;<sup>10</sup> and
- Educational achievement gain-time.<sup>11</sup>

The procedure for applying gain-time awards to an inmate's sentence is dependent upon the calculation of a "maximum sentence expiration date" and a "tentative release date." The tentative release date may not be later than the maximum sentence expiration date.<sup>12</sup> The maximum sentence expiration date represents the date when the sentence or combined sentences imposed on a prisoner will expire. To calculate the maximum sentence expiration date, the DOC reduces the total time to be served by any time lawfully credited.<sup>13</sup>

The tentative release is the date projected for the prisoner's release from custody after gain-time is granted or forfeited in accordance with s. 944.275, F.S.<sup>14</sup> Gain-time is applied when granted or restored to make the tentative release date proportionately earlier and forfeitures of gain-time, when ordered, are applied to make the tentative release date proportionately later.<sup>15</sup>

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<sup>5</sup> Persons sentenced for offenses committed prior to October 1, 1995 are not subject to the 85 percent requirement. *See Frequently Asked Questions Regarding Gaintime*, DOC, available at [https://www.floridasupremecourt.org/content/download/242696/2141005/Johnson%2013-711\(1\).pdf](https://www.floridasupremecourt.org/content/download/242696/2141005/Johnson%2013-711(1).pdf) (last visited on December 10, 2019).

<sup>6</sup> Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further provides that an inmate serving a life sentence is not able to earn gain-time. Additionally, an inmate serving the portion of his or her sentence that is included in an imposed mandatory minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

<sup>7</sup> Section 944.275(4)(f), F.S.

<sup>8</sup> Chapter 93-406, L.O.F.

<sup>9</sup> Section 944.275(4)(b)3., 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.

<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> Section 944.275(3)(c), F.S.

<sup>13</sup> Section 944.275(2)(a), F.S.

<sup>14</sup> Section 944.275(3)(a), F.S.

<sup>15</sup> *Id.* See also s. 944.275(4)(b), F.S.



However, for sentences imposed for offenses committed on or after October 1, 1995, no prisoner is eligible to earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85 percent of the sentence imposed. Credits awarded by the court for time physically incarcerated shall be credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by s. 944.275, F.S., a prisoner shall not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted pardon or clemency.<sup>16</sup>

### **Extension on the Limits of Confinement**

There are a limited number of instances where an inmate who is in the custody of the DOC may continue serving his or her sentence outside the physical walls of a prison. When a reasonable belief exists that an inmate will adhere to conditions placed upon him or her, s. 945.091, F.S., authorizes the DOC to allow an inmate to leave the confines of a physical facility unaccompanied for a specified period of time to:

- Visit a:
  - Dying relative or attend a funeral of a relative;
  - Specified location to arrange for employment or for a suitable residence for use upon release;
  - Specified place to aide in the successful transition back into the community;
  - Specifically designated location for any other compelling reason;<sup>17</sup>
- Work at paid employment;<sup>18</sup>
- Participate in an educational or training program;<sup>19</sup>
- Voluntarily serve a public or nonprofit agency or faith-based service group in the community;<sup>20</sup> or
- Participate in a residential or nonresidential rehabilitative program.<sup>21</sup>

<sup>16</sup> Section 944.275(4)(b)3., F.S.

<sup>17</sup> Section 945.091(1)(a), F.S. An inmate released from the custody of a facility under this subsection must return to the same or another facility as designated by the DOC. *See also* the DOC, *Senate Bill 338 (2019) Analysis*, at p. 2 (January 31, 2019) (on file with the Senate Committee on Criminal Justice) [hereinafter cited as "The DOC SB 338 (2019) Analysis"]. SB 338 (2019) was substantially similar to this bill.

<sup>18</sup> This provision is commonly referred to as "Work Release." Section 945.091(1)(b), F.S., further provides that this form of release occurs while the inmate continues as an inmate of the institution or facility in which the inmate is confined. The only time in which the inmate is released unaccompanied is during the hours of his or her employment, education, training, or service and traveling to and from such approved activity. An inmate is permitted to travel to and from the place of employment, education, or training by walking, bicycling, or using public transportation or transportation that is provided by a family member or employer.

<sup>19</sup> Section 945.091(1)(b), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Section 945.091(1)(c), F.S. The treatment program must be operated by a public or private nonprofit agency, including faith-based service groups, with which the DOC has contracted for the treatment of such inmate. The provisions of ss. 216.311 and 287.057, F.S., must apply to all contracts considered under this provision. The DOC must ensure each agency provides appropriate supervision of inmates participating in such program.

The DOC must perform an investigation to determine whether the inmate is suitable for consideration of extension of his or her confinement prior to being approved for one of the provisions described above.<sup>22</sup>

Prior to July 1, 1996, a fourth provision, known as the Supervised Community Release Program, existed that allowed inmates to be released on an extension of confinement to participate in a rehabilitative community reentry program on conditional release.<sup>23</sup> This release was for a period of no more than 90 days prior to the termination of his or her confinement. The inmate was released and placed on community supervision, but was not considered to be in the custody or care of the DOC or in confinement. If the inmate did not demonstrate sufficient progress with the reentry program, the DOC was able to terminate the inmate's participation and return the inmate to the prior institution or a new facility as designated by the DOC.<sup>24</sup>

The DOC's adopted rules related to the extension of confinement are that to be eligible for consideration he or she may not have convictions for certain offenses<sup>25</sup> and be classified as community custody in accordance with Rule 33-601.210, F.A.C., or have a recommendation for community custody currently under review.<sup>26</sup> Additionally, the DOC will also consider the following factors to ensure community release placement is appropriate:

- Arrest history, with particular attention to violent offenses or offenses in which the circumstances reflect that a sex act was intended, attempted, or completed;
- Pending outside charges;
- Disciplinary history, with particular attention to violence, escape risk, substance abuse, or sexual deviancy;
- Substance abuse history;
- Program needs, including re-entry;
- Victim concerns; and

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<sup>22</sup> Section 945.091(1), F.S.

<sup>23</sup> Section 945.091(1)(d), F.S. (1995). This paragraph was repealed in ch. 96-312, L.O.F.

<sup>24</sup> *Id.*

<sup>25</sup> Rule 33-601.602(2)(b), F.A.C., prohibits inmates with the following convictions to participate in a program or release authorized under s. 945.091, F.S.: Certain current or prior sex offense convictions; Current or prior conviction for murder or attempted murder under s. 782.04, F.S.; Current or prior conviction for aggravated manslaughter of an elderly person or disabled adult or attempted manslaughter of an elderly person or disabled adult under s. 782.07(2), F.S.; Current or prior conviction for aggravated manslaughter of a child or attempted aggravated manslaughter of a child under s. 782.07(3), F.S.; Current or prior conviction for aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic or attempted aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic under s. 782.07(4), F.S.; Current or prior conviction for murder of an unborn child or attempted murder of an unborn child under s. 782.09(1), F.S.; Current or prior conviction for attempted murder of a law enforcement officer under s. 784.07(3), F.S.; Current or prior conviction for making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person or for attempted making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person under s. 790.161(4), F.S.; Current or prior conviction for assisting self-murder or for attempted assisting self-murder under s. 782.08, F.S.; A guilty finding on any disciplinary report for escape or attempted escape within the last five years; A current or prior conviction for escape covered by s. 945.092, F.S.; A felony, Immigration and Customs Enforcement, or misdemeanor (other than child support) warrant or detainer; or A misdemeanor detainer for child support, unless it can be established by the inmate's classification officer that the detainer would be withdrawn upon payment of restitution, fines, or court ordered obligations and it appears that the inmate will earn sufficient funds to pay the obligation that has caused the detainer.

<sup>26</sup> Rule 33-601.602(2)(d), F.A.C.

- The inmate's skills, physical ability, and overall compatibility with the requested community release program.<sup>27</sup>

### Community Control

Section 948.001(3), F.S., defines "community control" to mean a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.<sup>28</sup> The community control program is rigidly structured and designed to accommodate offenders who, in the absence of such a program, will be committed to the custody of the DOC or a county jail.<sup>29</sup>

A person on community control (controlee) has an individualized program and is restricted to his or her home or noninstitutional residential placement, unless working, attending school, performing public service hours, participating in treatment or another special activity that has been approved in advance by his or her parole and probation officer.<sup>30</sup>

Conditions of community control are determined by the court when the offender is placed on such supervision. However, there are standard conditions of community control that all controlees must comply with, including, but not limited to:

- 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;
- Supervision by the DOC through an electronic monitoring device or system; and
- The standard conditions of probation<sup>31</sup> set forth in s. 948.03, F.S.<sup>32</sup>

A person may be placed on additional terms of supervision as part of his or her community control sentence.<sup>33</sup>

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<sup>27</sup> Rule 33-601.602(2)(e), F.A.C.

<sup>28</sup> Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

<sup>29</sup> Section 948.10(1), F.S.

<sup>30</sup> *Id.* See also DOC, *Succeeding on Community Control*, available at <http://www.dc.state.fl.us/cc/ccforms/Succeeding-on-Community-Control.pdf> (last visited on November 4, 2019). A Community Control Offender Schedule and Daily Activity Log must be submitted weekly with a proposed schedule for the week and the parolee's officer reviews such schedule and either approves or denies the schedule. Additionally, a person is required to provide an hourly accounting of his or her whereabouts for the previous week to verify any deviations from the pre-approved schedule.

<sup>31</sup> Section 948.001(9), F.S., defines "probation" to mean a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S. Some of the standard conditions of probation provided for in s. 948.03, F.S., include, but are not limited to, for the offender to report to the probation officer as directed, permit the probation officer to visit him or her at his or her home or elsewhere, work at suitable employment, live without violating any law, and make restitution to the aggrieved party for the damage or loss caused by his or her offense as determined by the court.

<sup>32</sup> Section 948.101(1), F.S.

<sup>33</sup> Section 948.101(2), F.S.

## Violations of Probation or Community Control

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.<sup>34</sup> A violation of probation (VOP) or violation of community control (VOCC) can be the result of a new violation of law or a technical violation of the conditions imposed. If reasonable grounds exist to believe that an offender on probation or community control has violated his or her terms of supervision in a material respect, an offender may be arrested without a warrant by a:

- Law enforcement officer who is aware of the inmate's supervised community release status;
- Probation officer; or
- County or municipal law enforcement officer upon request by a probation officer.<sup>35</sup>

The offender must be returned to the court granting such probation or community control.<sup>36</sup> Additionally, the committing court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the offender.<sup>37</sup>

## Arrest Authority

Section 901.15, F.S., provides that a law enforcement officer may arrest a person without a warrant under specified circumstances, including, but not limited to, when:

- The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer.
- A felony has been committed and the officer reasonably believes that the person committed it.
- The officer reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.
- A warrant for the arrest has been issued and is held by another peace officer for execution.
- A violation of ch. 316, F.S. (state uniform traffic control), has been committed in the presence of the officer.
- There is probable cause to believe that the person has violated s. 790.233, F.S. (possession of firearms by a convicted felon), s. 741.31, F.S. (possession of prohibited ammunition), a protective injunction order, or a specified foreign protection order.
- There is probable cause to believe that the person has committed an act of domestic violence or dating violence.

Additionally, a probation officer is authorized to issue an arrest warrant or arrest an offender in limited circumstances. Section 944.405(1), F.S., authorizes the DOC to issue an arrest warrant for a person who has “absconded from a rehabilitative community reentry program before the offender has satisfied his or her sentence or combined sentences.”

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<sup>34</sup> Section 948.10(3), F.S.

<sup>35</sup> Section 948.06(1)(a), F.S.

<sup>36</sup> *Id.*

<sup>37</sup> Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the offender 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.

Section 948.06(1), F.S., also authorizes probation officers or law enforcement officers to arrest probationers and community controlees without a written warrant based on a reasonable belief the offender has violated terms of supervision in a material respect.

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

Risk and needs assessment instruments (RAIs) measure a defendant's criminal risk factors and specific needs that, if addressed, will reduce the likelihood of future criminal activity.<sup>38</sup> RAIs consist of a set of questions that guide interviews with a defendant, intended to evaluate behaviors and attitudes that research shows are related to criminal reoffending. The questioner typically supplements the interview with an official records check, including prior arrests and incarcerations. Responses are statistically weighted, based on research that shows how strongly each item correlates with recidivism. The RAI then calculates an overall score that classifies a defendant as being at high, moderate, or low risk for reoffending.<sup>39</sup>

Research has identified both static and dynamic risk factors that are related to criminal behavior. Static risk factors do not change, while dynamic risk factors can either change on their own or be changed through an intervention. Some examples of static factors considered include age at first arrest, gender, past problems with substance or alcohol abuse, prior mental health problems, or a past history of violating terms of supervision.<sup>40</sup> Dynamic risk factors, also called “criminogenic<sup>41</sup> needs,” can be affected through interventions and include factors such as current age, education level, or marital status; being currently employed or in substance or alcohol abuse treatment; and having a stable residence.<sup>42</sup>

The Risk-Needs-Responsivity (RNR) model has become the dominant paradigm in risk and needs assessment. The risk principle states that high-risk offenders need to be placed in programs that provide more intensive treatment and services while low-risk offenders should receive minimal or even no intervention. The need principle states that effective treatment should focus on addressing needs that contribute to criminal behavior. The responsivity principle states that rehabilitative programming should be delivered in a style and mode that is consistent with the ability and learning style of the offender.<sup>43</sup>

In general, research suggests that the most commonly used assessment instruments can, with a moderate level of accuracy, predict who is at risk for violent recidivism. It also suggests that no single instrument is superior to any other when it comes to predictive validity.<sup>44</sup>

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<sup>38</sup> The Congressional Research Service, *Risk and Needs Assessment in the Federal Prison System*, Nathan James, p. 3 (July 10, 2018), available at <https://fas.org/sgp/crs/misc/R44087.pdf> (last visited November 4, 2019) (hereinafter cited as “The CRS Report”).

<sup>39</sup> *Id.*

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

<sup>41</sup> “Criminogenic” is commonly understood to mean factors that can contribute to criminal behavior. The CRS Report, p. 3, n. 16.

<sup>42</sup> The CRS Report, p. 3.

<sup>43</sup> The CRS Report, Summary Page.

<sup>44</sup> The CRS Report, p. 4.

### *Use of Risk Assessment Instruments by the Department of Corrections*

The DOC has created a RAI, known as Spectrum, which is administered to an inmate at reception through motivational interviewing techniques.<sup>45</sup> Spectrum, as well as its predecessor, the Corrections Integrated Needs Assessment System, is based on the RNR model and contains responsivity elements.<sup>46</sup> Spectrum has been independently verified through the School of Criminology at the Florida State University.<sup>47</sup>

Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education.<sup>48</sup> Spectrum calculates an individual's overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains<sup>49</sup> and three core program areas.<sup>50</sup>

The DOC utilizes the results from the Spectrum assessment to create an evidence-driven performance plan that matches the inmate's needs with services and programming offered in the DOC. Data collected during the administration of Spectrum is also used to assist with transitioning an inmate back into the community upon release through relaying the information to reentry service providers in the local community and community corrections.<sup>51</sup> Spectrum was completed in September, 2016, and subsequently deployed throughout the state.<sup>52</sup>

### **III. Effect of Proposed Changes:**

#### **Gain-Time**

The bill amends s. 944.275, F.S., to increase monthly incentive gain-time awards that the DOC may grant from up to 10 days to up to 20 days for offenders sentenced for offenses regardless of when the offense was committed. This increase applies both prospectively and retroactively.

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<sup>45</sup> The DOC, Spectrum Video, available at <https://www.youtube.com/watch?v=F1sQsOE6BgM> (last visited November 4, 2019) (hereinafter cited as "Spectrum Video"); The DOC, *Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED* (on file with the Senate Criminal Justice Committee) (hereinafter cited as "DOC Program Information").

<sup>46</sup> Email from Jared Torres, the DOC, Director of Legislative Affairs (January 25, 2018) (on file with Senate Criminal Justice Committee).

<sup>47</sup> Letter from Dr. William D. Bales and Jennifer M. Brown to the DOC Secretary, Julie Jones, (January 19, 2018) (on file with the Senate Criminal Justice Committee). Dr. Bales provides that Spectrum "produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States."

<sup>48</sup> The DOC Program Information.

<sup>49</sup> The criminogenic domains include social awareness (antisocial personality); criminal associates; substance abuse history; family and marital relationships; wellness; criminal thinking or attitude; and employment and education history. Spectrum Video.

<sup>50</sup> The three core program areas include GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors. Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018) (on file with the Senate Criminal Justice Committee).

<sup>51</sup> *Id.*

<sup>52</sup> See WFSU, *Florida Prison Officials Go Statewide With New Program To Better Help Rehabilitate Inmates*, Sarah Corder, September 23, 2016, available at <http://news.wfsu.org/post/florida-prison-officials-go-statewide-new-program-better-help-rehabilitate-inmates> (last visited November 4, 2019).

The bill provides that gain-time of whatever form cannot reduce sentences of these offenders below 65 percent of time served if the offense is a nonviolent felony or 85 percent of time served if the offense is not a nonviolent felony. The bill specifies that “nonviolent felony” has the same meaning as provided in s. 948.08(6), F.S. Section 948.08(6), F.S., defines “nonviolent felony” as a third degree felony violation of ch. 810, F.S., or any other felony offense that is not a forcible felony.<sup>53</sup>

The bill also amends s. 921.002, F.S., to make conforming changes that reference the changes to s. 944.275, F.S., to indicate that gain-time of whatever form cannot reduce sentences of these offenders below 65 percent of time served if the offense is a nonviolent felony or 85 percent of time served if the offense is not a nonviolent felony.

### **Extension on Confinement**

The bill amends s. 945.091, F.S., to allow an inmate who has a sentence of two years or more to participate in a supervised community release program (Program) as an extension of the inmate’s confinement, similar to the former Supervised Community Release Program discussed above. The Program release term may begin 365 days before the inmate’s provisional or tentative release date and may include active electronic monitoring and community control as defined in s. 948.001, F.S. An inmate participating in such Program is considered to be in the custody, care, supervision, and control of the DOC for purposes of gain-time awards and the 85 percent rule.

The bill requires the DOC to administer a RAI to determine an inmate’s eligibility for this Program. The bill provides that participation in and conditions of the Program will be as proscribed in department rule.

The DOC is authorized to terminate the inmate’s participation in the Program if he or she fails to comply with any of the terms of the Program as proscribed by rule. If an inmate is terminated from the supervision, he or she must be recommitted to the same institution or another institution designated by the DOC.

The bill allows a law enforcement officer or probation officer to arrest an inmate without a warrant in accordance with s. 948.06(1), F.S., if there are reasonable grounds to believe the inmate violated the terms of the Program. A law enforcement officer that arrests an inmate for a violation of the conditions of the Program is required to report the inmate’s alleged violations to the supervising probation office or the DOC’s emergency action center for disposition of disciplinary charges as proscribed in the DOC rules.

The bill provides that an inmate released on the Program in accordance with this provision is eligible to earn and lose gain-time as proscribed in law and rule.<sup>54</sup> However, the bill provides the inmate is not counted as part of the inmate population and the approved community-based housing in which the inmate lives is not counted in capacity figures for the prison system.

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<sup>53</sup> A “forcible felony” is: treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

<sup>54</sup> See s. 944.275(4)(f), F.S.

The bill also amends s. 944.275(4)(f), F.S., providing that time spent participating in a program authorized by s. 945.091, F.S., even if such program allows the inmate to not be released from prison on some form of community supervision, must be credited toward satisfaction of the 85 percent rule as a result of the inmate being considered in the care, custody, supervision, or control of the DOC.

The bill reenacts ss. 775.084, 921.002, and 946.053, F.S., incorporating the changes made by the act.

The bill is effective October 1, 2020.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes the DOC to release a specified inmate into the community on supervised release up to 365 days before the end of his or her sentence. This will provide private companies the opportunity to hire an inmate earlier than without the act.



### C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not reviewed the bill at this time.

#### **Gain-Time and 85 Percent**

The CJIC heard SB 642 (2019), which, in part, included the provision of the bill that allows inmates convicted of certain nonviolent felonies to earn an increased amount of gain-time and reduces the requirement to serve a certain percentage of the term of imprisonment from 85 percent to 65 percent. The CJIC found that this provision of the bill will result in a negative indeterminate prison bed impact. Additionally, the CJIC reported that this provision will result in a reduction of over 9,000 prison beds, or over \$860 million, in the next five years.<sup>55</sup>

#### **Extension on Confinement**

The DOC reports that this section of the bill would likely result in a negative indeterminate prison bed impact (i.e., an indeterminate decrease in prison beds). The DOC stated that the number is indeterminate for several reasons, including not being able to quantify how many inmates would be interested in the Program and, of those inmates, how many could obtain proper housing placements to warrant release.<sup>56</sup>

The DOC reports that as of October 22, 2019, there are 4,390 inmates who are in community custody and are within 365 days of their tentative release date. Of those, 3,143 are currently at work release centers. The remaining are approved for work release and are awaiting bed space. The DOC further reports that it anticipates that there will be an additional 2,159 inmates meeting the criteria of community custody and being within 365 days of their tentative release date within the next 6 months. The DOC states that the bill may reduce populations at reentry centers, work camps, and work release centers because inmates currently housed in these facilities would be eligible for the Program and may elect to participate in the program.<sup>57</sup>

SB 338 (2019) had similar provisions to the extension of confinement provisions of this bill. In the SB 338 (2019) Analysis, the DOC further reported that the fiscal impact of such provisions will vary based on the number of released inmates placed on active electronic monitoring, the rate at which electronic monitoring costs are paid, and the type of facility from which Program participants are released. The DOC would likely pay the electronic monitoring per diem rate, rather than the variable per diem rate, for the inmates released to this Program on electronic monitoring. The electronic monitoring per diem rate would be paid for the designated number of days with which the inmate was out in the community instead of housed in an institution, which could result in a cost savings to

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<sup>55</sup> The CJIC, Economic and Demographic Research, *CS/CS/SB 642 (2019) Conference Impact Results*, p. 13 and 21, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSCSSB642.pdf> (last visited December 10, 2019).

<sup>56</sup> The DOC, *SB 572 Agency Analysis*, at p. 5 (December 3, 2019) (on file with the Senate Committee on Criminal Justice) [hereinafter cited as “The DOC SB 572 Analysis”]. See also the DOC SB 338 (2019) Analysis, at p. 4.

<sup>57</sup> The DOC SB 572 Analysis, p. 5.

the DOC.<sup>58</sup> SB 572 allows for certain inmates to be released in the Program 365 days prior to the tentative or provisional release date, rather than 180 days as provided in SB 338 (2019). Therefore, it is expected that this bill will have a similar, potentially more significant, negative indeterminate fiscal impact than reported by the DOC in the SB 338 (2019) Analysis.

The DOC reports that the bill will result in the need for one additional full-time equivalent position in the Bureau of Classification Management to oversee, provide guidance, and coordinate the implementation and administration of the Program statewide.<sup>59</sup> The DOC reports it will also need one additional FTE position at a Correctional Services Assistant Consultant level to handle violators and absconders.<sup>60</sup>

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

None.

## **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 921.002, 944.275, and 945.091.

This bill reenacts the following sections of the Florida Statutes: 775.084, 921.002, and 946.503.

## **IX. Additional Information:**

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

#### **CS by Criminal Justice on December 10, 2019:**

The committee substitute:

- Increases monthly incentive gain-time awards that the DOC may grant from up to 10 days to up to 20 days for offenders sentenced for offenses committed on or after October 1, 1995;
- Reduces the amount of a sentence that must be served by a prisoner convicted of a nonviolent felony from no less than 85 percent to no less than 65 percent;
- Maintains the provision that requires a prisoner to serve no less than 85 percent of his or her sentence if convicted of a violent felony; and

<sup>58</sup> The DOC SB 338 (2019) Analysis, at p. 4

<sup>59</sup> The DOC SB 572 Analysis, at p. 5. The DOC reported in the SB 338 (2019) Analysis that it will be requesting funding for the position in the amount of \$69,949 recurring General Revenue, \$4,429 nonrecurring General Revenue funds and salary rate of 45,943.

<sup>60</sup> The DOC SB 572, at p. 5.

- Deletes the provision that the inmate cannot earn gain-time in an amount that would result in the prisoner's release from the DOC's care, custody, supervision, or control prior to 85 percent.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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244404

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/10/2019	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 74 - 75  
and insert:  
end, or terminate, or that would result in a prisoner's release,

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete lines 3 - 9

and insert:



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11 s. 944.275, F.S.; providing that an inmate is  
12 considered in the care, custody, supervision, or  
13 control of the Department of Corrections when  
14 participating in specified programs and may receive  
15 credit towards specified portions of a sentence for  
16 such participation;



100336

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/10/2019	.	
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The Committee on Criminal Justice (Bracy) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 38 - 69

and insert:

Section 1. Paragraph (e) of subsection (1) of section 921.002, Florida Statutes, is amended to read:

921.002 The Criminal Punishment Code.—The Criminal Punishment Code shall apply to all felony offenses, except capital felonies, committed on or after October 1, 1998.

(1) The provision of criminal penalties and of limitations



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upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the Legislature. The Legislature, in the exercise of its authority and responsibility to establish sentencing criteria, to provide for the imposition of criminal penalties, and to make the best use of state prisons so that violent criminal offenders are appropriately incarcerated, has determined that it is in the best interest of the state to develop, implement, and revise a sentencing policy. The Criminal Punishment Code embodies the principles that:

(e) The sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law, and may not be shortened if the defendant would consequently serve less than 65 percent of his or her term of imprisonment as provided in s. 944.275(4)(b)3.a. or less than 85 percent of his or her term of imprisonment as provided in s. 944.275(4) or s. 944.275(4)(b)3.b. The provisions of chapter 947, relating to parole, shall not apply to persons sentenced under the Criminal Punishment Code.

Section 2. Paragraphs (b) and (f) of subsection (4) of section 944.275, Florida Statutes, are amended to read:

944.275 Gain-time.—

(4)

(b) For each month in which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities, the department may grant incentive gain-time in accordance with this paragraph. The rate of incentive gain-time in effect on the date the inmate



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committed the offense that ~~which~~ resulted in his or her incarceration shall be the inmate's rate of eligibility to earn incentive gain-time throughout the period of incarceration and may ~~shall~~ not be altered by a subsequent change in the severity level of the offense for which the inmate was sentenced.

1. For sentences imposed for offenses committed before ~~prior to~~ January 1, 1994, up to 20 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

2. For sentences imposed for offenses committed on or after January 1, 1994, and before October 1, 1995:

a. For offenses ranked in offense severity levels 1 through 7, under former s. 921.0012 or former s. 921.0013, up to 25 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

b. For offenses ranked in offense severity levels 8, 9, and 10, under former s. 921.0012 or former s. 921.0013, up to 20 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

3. For sentences imposed for offenses, regardless of the date committed, the department may grant up to 20 days per month of incentive gain-time, except that:

a. If the offense is a nonviolent felony, as defined in s. 948.08(6), the prisoner is not eligible to earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, before he or she serves a minimum of 65 percent of the sentence imposed. For purposes of this sub-subparagraph, credits awarded by the court for time physically incarcerated must be credited





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toward satisfaction of 65 percent of the sentence imposed. A  
prisoner who is granted incentive gain-time pursuant to this  
sub-subparagraph may not accumulate further gain-time awards at  
any point when the tentative release date is the same as that  
date at which the prisoner will have served 65 percent of the  
sentence imposed. State prisoners sentenced to life imprisonment  
must be incarcerated for the rest of their natural lives, unless  
granted pardon or clemency.

b. If the offense is not a nonviolent felony, as defined in  
s. 948.08(6), the prisoner is not eligible to earn any type of  
gain-time in an amount that would cause a sentence to expire,  
end, or terminate, or that would result in a prisoner's release,  
before he or she serves a minimum of 85 percent of the sentence  
imposed. For purposes of this sub-subparagraph, credits awarded  
by the court for time physically incarcerated must be credited  
toward satisfaction of 85 percent of the sentence imposed. A  
prisoner who is granted incentive gain-time pursuant to this  
sub-subparagraph may not accumulate further gain-time awards at  
any point when the tentative release date is the same as that  
date at which the prisoner will have served 85 percent of the  
sentence imposed. State prisoners sentenced to life imprisonment  
must be incarcerated for the rest of their natural lives, unless  
granted pardon or clemency ~~For sentences imposed for offenses  
committed on or after October 1, 1995, the department may grant  
up to 10 days per month of incentive gain-time.~~

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete lines 2 - 3



100336

and insert:

An act relating to release from imprisonment; amending  
s. 921.002, F.S.; revising a principle of the Criminal  
Punishment Code relating to a prisoner's required  
minimum term of imprisonment; amending s. 944.275,  
F.S.; revising the incentive gain-time that the  
Department of Corrections may grant a prisoner;  
providing exceptions; specifying that an inmate is not

By Senator Brandes

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1 A bill to be entitled  
 2 An act relating to extension of confinement; amending  
 3 s. 944.275, F.S.; specifying that an inmate is not  
 4 eligible to receive specified incentive gain-time if  
 5 such gain-time would result in the prisoner's release  
 6 from the care, custody, supervision, or control of the  
 7 Department of Corrections; requiring that  
 8 participation in specified programs be credited toward  
 9 satisfaction of specified portions of a sentence;  
 10 amending s. 945.091, F.S.; authorizing the department  
 11 to extend the limits of confinement to allow an inmate  
 12 to participate in supervised community release,  
 13 subject to certain requirements, as prescribed by the  
 14 department by rule; providing that an inmate  
 15 participating in such supervised community release is  
 16 considered to be in the custody, care, supervision,  
 17 and control of the department; authorizing the  
 18 department to terminate the inmate's supervised  
 19 community release under certain circumstances;  
 20 providing that an inmate participating in supervised  
 21 community release is eligible to earn or lose gain-  
 22 time, subject to certain restrictions; prohibiting the  
 23 inmate from being counted in the population of the  
 24 prison system; prohibiting the inmate's approved  
 25 community-based housing location from being counted in  
 26 the capacity figures for the prison system; reenacting  
 27 ss. 775.084(4)(k) and 921.002(1)(e), F.S., relating to  
 28 violent criminals and habitual offenders and the  
 29 Criminal Punishment Code, respectively, to incorporate

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 the amendment made to s. 944.275, F.S., in references  
 31 thereto; reenacting s. 946.503(2), F.S., relating to  
 32 the definition of the term "correctional work program"  
 33 to incorporate the amendment made to s. 945.091, F.S.,  
 34 in a reference thereto; providing an effective date.  
 35

36 Be It Enacted by the Legislature of the State of Florida:  
 37

38 Section 1. Paragraph (f) of subsection (4) of section  
 39 944.275, Florida Statutes, is amended, and paragraph (b) of that  
 40 subsection is republished, to read:

41 944.275 Gain-time.—

42 (4)

43 (b) For each month in which an inmate works diligently,  
 44 participates in training, uses time constructively, or otherwise  
 45 engages in positive activities, the department may grant  
 46 incentive gain-time in accordance with this paragraph. The rate  
 47 of incentive gain-time in effect on the date the inmate  
 48 committed the offense which resulted in his or her incarceration  
 49 shall be the inmate's rate of eligibility to earn incentive  
 50 gain-time throughout the period of incarceration and shall not  
 51 be altered by a subsequent change in the severity level of the  
 52 offense for which the inmate was sentenced.

53 1. For sentences imposed for offenses committed prior to  
 54 January 1, 1994, up to 20 days of incentive gain-time may be  
 55 granted. If granted, such gain-time shall be credited and  
 56 applied monthly.

57 2. For sentences imposed for offenses committed on or after  
 58 January 1, 1994, and before October 1, 1995:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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a. For offenses ranked in offense severity levels 1 through 7, under former s. 921.0012 or former s. 921.0013, up to 25 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

b. For offenses ranked in offense severity levels 8, 9, and 10, under former s. 921.0012 or former s. 921.0013, up to 20 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

3. For sentences imposed for offenses committed on or after October 1, 1995, the department may grant up to 10 days per month of incentive gain-time.

(f) An inmate who is subject to subparagraph (b)3. is not eligible to earn or receive gain-time under paragraph (a), paragraph (b), paragraph (c), or paragraph (d) or any other type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release from the department's care, custody, supervision, or control, prior to serving a minimum of 85 percent of the sentence imposed. For purposes of this paragraph, credits awarded by the court for time physically incarcerated or time spent in the department's care, custody, supervision, or control through participation in a program under s. 945.091 shall be credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by this section, a prisoner may not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted

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pardon or clemency.

Section 2. Paragraph (d) is added to subsection (1) of section 945.091, Florida Statutes, to read:

945.091 Extension of the limits of confinement; restitution by employed inmates.—

(1) The department may adopt rules permitting the extension of the limits of the place of confinement of an inmate as to whom there is reasonable cause to believe that the inmate will honor his or her trust by authorizing the inmate, under prescribed conditions and following investigation and approval by the secretary, or the secretary's designee, who shall maintain a written record of such action, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to:

(d) Participate in supervised community release as prescribed by the department by rule. An inmate who has a sentence of 2 years or more may begin participation in supervised community release 365 days before his or her provisional or tentative release date. The supervised community release may include active electronic monitoring and community control as defined in s. 948.001. An inmate participating in such supervised community release is considered to be in the custody, care, supervision, and control of the department for purposes of ss. 921.002 and 944.275 and must be assigned to the caseload of a community control officer. The department must administer a risk assessment instrument to appropriately determine an inmate's ability to be released pursuant to this paragraph.

1. If a participating inmate fails to comply with the

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conditions prescribed in the department's rule for supervised community release, the department may terminate the inmate's supervised community release and return him or her to the same or another institution designated by the department. A law enforcement officer or a probation officer may arrest the inmate without a warrant in accordance with s. 948.06, if there are reasonable grounds to believe he or she has violated the terms and conditions of supervised community release. The law enforcement officer must report the inmate's alleged violations to the supervising probation office or the department's emergency action center for disposition of disciplinary charges as prescribed by the department by rule.

2. An inmate participating in supervised community release under this paragraph remains eligible to earn or lose gain-time in accordance with s. 944.275 and department rule, but may not receive gain-time or other sentence credit in an amount that would cause his or her sentence to expire, end, or terminate, or that would result in his or her release before serving a minimum of 85 percent of the sentence imposed. The inmate may not be counted in the population of the prison system, and the inmate's approved community-based housing location may not be counted in the capacity figures for the prison system.

Section 3. For the purpose of incorporating the amendment made by this act to section 944.275, Florida Statutes, in a reference thereto, paragraph (k) of subsection (4) of section 775.084, Florida Statutes, is reenacted to read:

775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or

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mandatory minimum prison terms.—

(4)

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

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

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

Section 4. For the purpose of incorporating the amendment made by this act to section 944.275, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 921.002, Florida Statutes, is reenacted to read:

921.002 The Criminal Punishment Code.—The Criminal Punishment Code shall apply to all felony offenses, except capital felonies, committed on or after October 1, 1998.

(1) The provision of criminal penalties and of limitations upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the Legislature. The Legislature, in the exercise of its authority and responsibility to establish sentencing criteria, to provide for the imposition of criminal penalties,

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and to make the best use of state prisons so that violent criminal offenders are appropriately incarcerated, has determined that it is in the best interest of the state to develop, implement, and revise a sentencing policy. The Criminal Punishment Code embodies the principles that:

(e) The sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law, and may not be shortened if the defendant would consequently serve less than 85 percent of his or her term of imprisonment as provided in s. 944.275(4). The provisions of chapter 947, relating to parole, shall not apply to persons sentenced under the Criminal Punishment Code.

Section 5. For the purpose of incorporating the amendment made by this act to section 945.091, Florida Statutes, in a reference thereto, subsection (2) of section 946.503, Florida Statutes, is reenacted to read:

946.503 Definitions to be used with respect to correctional work programs.—As used in this part, the term:

(2) "Correctional work program" means any program presently a part of the prison industries program operated by the department or any other correctional work program carried on at any state correctional facility presently or in the future, but the term does not include any program authorized by s. 945.091 or s. 946.40.

Section 6. This act shall take effect October 1, 2020.



## 2019 AGENCY LEGISLATIVE BILL ANALYSIS

**AGENCY: Department of Corrections**

### BILL INFORMATION

<b>BILL NUMBER:</b>	SB 338
<b>BILL TITLE:</b>	Extension of Confinement
<b>BILL SPONSOR:</b>	Senator Brandes
<b>EFFECTIVE DATE:</b>	October 1, 2019

### COMMITTEES OF REFERENCE

- 1) Criminal Justice
- 2) Appropriations Subcommittee on Criminal and Civil Justice
- 3) Appropriations
- 4)
- 5)

### CURRENT COMMITTEE

### SIMILAR BILLS

<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

### PREVIOUS LEGISLATION

<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	
<b>YEAR:</b>	
<b>LAST ACTION:</b>	

### IDENTICAL BILLS

<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

**Is this bill part of an agency package?**

### BILL ANALYSIS INFORMATION

<b>DATE OF ANALYSIS:</b>	January 31, 2019
<b>LEAD AGENCY ANALYST:</b>	Joe Winkler
<b>ADDITIONAL ANALYST(S):</b>	Gregory Roberts, Sibyle Walker, Lee Adams
<b>LEGAL ANALYST:</b>	Philip Fowler
<b>FISCAL ANALYST:</b>	Suzanne Hamilton

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## POLICY ANALYSIS

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### 1. EXECUTIVE SUMMARY

The bill amends s. 945.091 F.S., authorizes the Florida Department of Corrections (FDC or Department) to extend the limits of confinement of an inmate in the last 180 days of a sentence to participate in supervised community supervision.

### 2. SUBSTANTIVE BILL ANALYSIS

#### 1. PRESENT SITUATION:

##### Extended Limits of Confinement

Subsection 945.091(1)(a), F.S., allows for the extension of the limits of confinement by allowing trusted inmates under prescribed conditions to leave direct Department supervision. With Department approval, inmates may visit a dying relative, attend a funeral of a relative, or arrange for employment or residence for use when released. Inmates may also be released for specified periods to designated places if it will otherwise aid in their rehabilitation or successful transition back into the community.

Subsection 945.091(1)(b), F.S., provides that an inmate may participate in paid employment, an education or training program, or voluntarily serve a public or nonprofit agency or faith-based service group in the community, while still being confined by the Department, with exception of the hours served in any of the above activities. Section 945.091(c), F.S., states that an inmate may participate in a residential or nonresidential rehabilitative program operated by a public or private nonprofit agency, including faith-based groups. The Department may contract with agencies to provide treatment to the inmate.

##### Community Work Release

Currently under s. 945.091 F.S., inmates are allowed to work at paid employment in the community through the community work release program. Community Work Release (CWR) is a portion of the Community Release Program that allows selected inmates to work at paid employment in the community during the last months of their confinement. Work Release provides an inmate with a gradual reintegration back into the community, gainful employment, accumulation of savings from paid employment, and preservation of family and community ties. Within two weeks of admission to the community work release program, a written Personalized Program Plan is developed for each inmate. This plan incorporates the inmate's individual needs and provides a positive framework for program participation (i.e., orientation and intake, employment, furloughs, personal budget, substance abuse counseling, academic and vocational education, mental health, and medical rehabilitative programs). The plan includes program objectives to be accomplished while an inmate is assigned to the community work release program. Measurable criteria are established in determining completion of the objectives, along with a reasonable time schedule to achieve each goal and a progress review for evaluating progress toward objectives. Inmates are allowed to work in the community without Department supervision but must reside in a Community Release Center during the period they are not at work. As of January 25, 2019, there are 3,247 inmates in Community Work Release Centers.

##### Community Release Centers

Community Release Centers (CRC): No sex offenders may be assigned to community release centers. Facilities that house two categories of community custody inmates, those who are participating in community work release and work at paid employment in the community, those who work in a support capacity for the center (CWA). Inmates must be within 6 to 36 months of their release date, depending on their assignment.

Those assigned to CWA perform such tasks as: food service, maintenance of the center, or assignment to work squads. There are no perimeter fences and inmates must remain at the CRC when they are not working or attending programs outside the CRC.

##### Custody Level

The Department uses custody level as the fundamental determinant of an inmate's trustworthiness as required by statute. To be assigned to a community work release center an inmate must be classified as "community" custody. The following will prevent an inmate from being classified as community custody:



1. Current or prior sex offense convictions;
2. Current or prior conviction for murder or attempted murder under s. 782.04, F.S.;
3. Current or prior conviction for aggravated manslaughter of an elderly person or disabled adult or attempted manslaughter of an elderly person or disabled adult under ss. 782.07(2), F.S.;
4. Current or prior conviction for aggravated manslaughter of a child or attempted aggravated manslaughter of a child under ss. 782.07(3), F.S.;
5. Current or prior conviction for aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic or attempted aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic under ss. 782.07(4), F.S.;
6. Current or prior conviction for murder of an unborn child or attempted murder of an unborn child under ss. 782.09(1), F.S.;
7. Current or prior conviction for attempted murder of a law enforcement officer under ss. 784.07(3), F.S.;
8. Current or prior conviction for making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person or for attempted making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person under ss. 790.161(4), F.S.;
9. Current or prior conviction for assisting self-murder or for attempted assisting self-murder under s. 782.08, F.S.
10. A guilty finding on any disciplinary report for escape or attempted escape within the last five years;
11. A current or prior conviction for escape covered by ss. 945.092, F.S.;
12. A felony, Immigration and Customs Enforcement, or misdemeanor (for other than child support) warrant or detainer;
13. A misdemeanor detainer for child support, unless it can be established by the inmate's classification officer that the detainer would be withdrawn upon payment of restitution, fines, or court ordered obligations and it appears that the inmate will earn sufficient funds to pay the obligation that has caused the detainer.

#### Community Control

In ss. 948.001(3), F.S., it defines community control as "a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or non-institutional residential placement and specific sanctions are imposed and enforced."

s. 948.10, F.S., provides that "community control" programs are to "focus on the provision of home confinement subject to an authorized level of limited freedom and special conditions that are commensurate with the seriousness of the crime. The program shall offer the courts and the Florida Commission on Offender Review an alternative, community-based method to punish an offender in lieu of incarceration and shall provide intensive supervision to closely monitor compliance with restrictions and special conditions, including, but not limited to, treatment or rehabilitative programs."

#### Arrest/Warrant Authority

In ss. 944.405, F.S., it authorizes the Department to issue an arrest warrant for a person who has "absconded from a rehabilitative community reentry program before the offender has satisfied his or her sentence or combined sentences." S. 948.06(1), F.S., authorizes probation officers or law enforcement officers to arrest probationers and community controlees without written warrant based on a belief the offender has violated terms of supervision.

#### Escape

In ss. 945.091(4), F.S., it provides that the willful failure of an inmate to remain within the extended limits of his or her confinement or to return within the time prescribed to the place of confinement designated by the Department shall be deemed as an escape from the custody of the Department and shall be punishable as prescribed by law.

## **2. EFFECT OF THE BILL:**

The bill requires the Department to administer a risk assessment instrument to appropriately determine an inmate's ability to be released. The department currently uses custody level when determining eligibility for inmate placed on community work release.

S. 945.091(1)(b) authorizes participation in paid employment in the community to inmates "as to whom there is reasonable cause to believe that the inmate will honor his or her trust". It requires the Department to administer a

risk assessment instrument to appropriately determine an inmate's ability to be released. The custody classification system is the instrument by which the department determines if an inmate meets this standard.

The bill is similar to a program in effect under s.945.091, F.S. from 1986 to 1996 called Supervised Community Release Program (SCRCP). This program was limited to inmates within the last 90 days of sentence who were assigned to a community release center, or who were medically unable to participate in work release. SCRCP participants were not considered to be inmates but were able to earn gain time and were under the disciplinary rules of the Department.

The bill expands on the current concept of the "extension of the limits of confinement" under s.945.091, F.S. to create another step in the transition process by allowing an inmate, regardless of where he/she is assigned, to continue serving his/her state prison sentence while under custodial supervision in the community during the last 180 days of the sentence. Since the inmate remains in service of the court-imposed sentence while participating in the program, and the Department maintains the calculation of the release date in accordance with s.944.275, F.S. program participation remains consistent with the requirement that inmate serve 85% of the sentence. To allow an inmate to participate there must be "reasonable cause to believe that the inmate will honor his or her trust". The bill authorizes the Department to impose community control standards of supervision as well as electronic monitoring tracking technology, and provides the Department authority to establish standards for assessing progress in the program and for termination for failure to meet those standards. Program participants remain eligible to earn and forfeit gain time under Department rules.

As of December 31, 2018, there were about 479 inmates that were 180 days out from their release date that had served at least 85% of their sentence. Within the next 6 months there will be about 2508 additional inmates falling within this criterion.

Since the program would expose participating inmates to disciplinary penalties including loss of gain time, to avoid ex post facto violations participation would have to be voluntary as to crimes committed before the statutory change. Inmates sentenced for crimes committed after the statute changed could be required to participate; however, that may not be prudent considering the level of trust needed for inmates assigned in a community setting. If the inmate does not want to be in the program it may be best to allow for refusal. Also, a number of inmates would likely rather serve slightly more time in prison than be under community supervision, especially if that includes electronic monitoring (EM), risking return to prison for additional time if they violate. Finally, it is unknown as whether how many inmates in the pool have a suitable employment or residence to release to. Thus, the bed impact of the bill is indeterminate. Further, the fiscal impact of the bill will also vary based on the number of released inmates placed on electronic monitoring, and the rate at which they pay the EM costs, as well as the type of facility from which program participants were released (based on the different per diems between community release facilities, major institutions, and work camps). Finally, depending on the number of participants in the program, there could be a need for additional correctional probation officer positions.

The bill also provides authority for warrantless arrest by probation officers and law enforcement officers, similar to the authority currently under ss. 948.06(1), F.S.

Additionally, please note to implement the provisions of the bill, the Department will likely have to promulgate rules and/or amend existing rules and procedures.

Furthermore, when the 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, the current cost of supervision via electronic monitoring device is \$3.90 per day for contracted facilities and \$5.29 for department operated facilities.

The Department is requesting 1 (Correctional Programs Consultant) position to be located in the Bureau of Classification Management to oversee, provide guidance, and coordinate the implementation and administration of the SCR program statewide. Duties would include, but not be limited to: 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 SCR program. Provide statewide training, coordination, and implementation of the operation of the SCR program.

**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:	Rulemaking will be necessary to effectuate the implementation of the bill.
Is the change consistent with the agency's core mission?	<b>Y <input checked="" type="checkbox"/> N <input type="checkbox"/></b>
Rule(s) impacted (provide references to F.A.C., etc.):	Addition of a rule for Supervised Community Release. Rule adjustments (additions and deletions for gain time application, disciplinary procedures, escape policies for absconders, conditions of supervision with DC form for instructions and signature by the inmate, specification as to who shall be responsible for carrying out the provisions of this bill (warden, probation officer, central office staff, etc.), specifications of the amount of the handling of inmate trust fund accounts, release gratuity, 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):	

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**FISCAL ANALYSIS**

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**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.	
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:	The overall inmate and community supervision population fiscal impact is indeterminate																																																																												
Expenditures:	<p>The overall inmate and community supervision population fiscal impact is indeterminate.</p> <p>The cost associated with 1 Correctional Program Consultant is as follows:</p> <table border="1"> <thead> <tr> <th>Class Title</th> <th>Class Code</th> <th>Salary &amp; Benefits</th> <th>FTE</th> <th colspan="2">FY 19-20 Annual Costs</th> </tr> </thead> <tbody> <tr> <td>Correctional Program Consultant</td> <td>8094</td> <td>\$ 66,242</td> <td>1</td> <td>\$</td> <td>66,242</td> </tr> <tr> <td><b>Total salaries &amp; benefits</b></td> <td></td> <td></td> <td>1</td> <td>\$</td> <td>66,242</td> </tr> <tr> <td>Recurring expense - Professional</td> <td></td> <td>\$ 3,378</td> <td></td> <td></td> <td>3,378</td> </tr> <tr> <td>Non-recurring expense - Professional</td> <td></td> <td>\$ 4,429</td> <td></td> <td></td> <td>4,429</td> </tr> <tr> <td><b>Total expenses</b></td> <td></td> <td></td> <td></td> <td>\$</td> <td>7,807</td> </tr> <tr> <td>Human Resource Services</td> <td></td> <td>\$ 329</td> <td></td> <td>\$</td> <td>329</td> </tr> <tr> <td><b>Total Operating</b></td> <td></td> <td></td> <td>1</td> <td>\$</td> <td>74,378</td> </tr> <tr> <td>Summary of Costs</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td>Recurring</td> <td></td> <td>\$</td> <td>69,949</td> </tr> <tr> <td></td> <td></td> <td>Non-recurring</td> <td></td> <td></td> <td>4,429</td> </tr> <tr> <td></td> <td></td> <td><b>Total</b></td> <td></td> <td>\$</td> <td>74,378</td> </tr> </tbody> </table>					Class Title	Class Code	Salary & Benefits	FTE	FY 19-20 Annual Costs		Correctional Program Consultant	8094	\$ 66,242	1	\$	66,242	<b>Total salaries &amp; benefits</b>			1	\$	66,242	Recurring expense - Professional		\$ 3,378			3,378	Non-recurring expense - Professional		\$ 4,429			4,429	<b>Total expenses</b>				\$	7,807	Human Resource Services		\$ 329		\$	329	<b>Total Operating</b>			1	\$	74,378	Summary of Costs								Recurring		\$	69,949			Non-recurring			4,429			<b>Total</b>		\$	74,378
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		Recurring		\$	69,949																																																																								
		Non-recurring			4,429																																																																								
		<b>Total</b>		\$	74,378																																																																								
Does the legislation contain a State Government appropriation?																																																																													
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:	

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**TECHNOLOGY IMPACT**

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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.

The technology systems impact is significant, but indeterminate. There would likely be a significant technology impact due to the need for updating and additional programming on both the Institutions and Community Corrections sentence structure screens.

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**FEDERAL IMPACT**

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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.

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**ADDITIONAL COMMENTS**

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N/A

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**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

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Issues/concerns/comments:

As referenced in the Policy analysis above, rulemaking by FDC will be necessary to effectuate the intent of the bill.

### **Compass 100**

Compass 100 meets the statutory requirement that, “each inmate released from incarceration by the department must complete a 100-hour comprehensive transition course that covers job readiness and life management skills.” Compass 100 integrates a comprehensive, standardized program of career, life and community readiness skills into the existing academic and vocational programs already offered by the Florida Department of Corrections (FDC). Individuals who do not have an academic or vocational need will be enrolled in a hybrid section that contains a combination of self-directed instruction and weekly meetings with the Bureau of Programs’ staff to track progress and offer assistance.

To effectively deliver career and community readiness skills, the Compass 100 curriculum contains a modular system of lessons and supporting materials. In addition to the modules, participants will engage in lessons, assignments and discussions on a variety of life and career readiness skills. They include topics such as punctuality, workplace etiquette, interpersonal communication and problem solving, to name a few.

Compass 100 participants will be required to complete the *Thinking for a Change* (T4C) program. T4C is a nationally recognized cognitive-behavioral intervention course specifically designed to assist incarcerated individuals, by changing their thinking and providing skills to effectively communicate and solve problems. For those who cannot complete T4C, there will be an alternate module of lessons to satisfy in order to receive the 24 points/hours. Throughout the program participants will build a *Readiness Portfolio* which will contain items such as well-developed plans/goals, resume, current community resources, scheduled community appointments, program completion certificates and other pertinent documents that will assist in transition back into the community.

### **Spectrum**

Spectrum is an advanced evidence-driven assessment and screening system designed to follow an inmate from community supervision, through institutions and back to the community. This enables FDC to provide data-driven, informed decisions regarding the continuum of care for an individual within our custody. Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education. Spectrum calculates an individual’s overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains and 3 core program areas. Through motivational interviewing and individualized case planning, FDC maps resources to identified needs to reduce an individual’s risk of recidivism.

### **Academic and Workforce education/GED**

Programs encompasses 3 areas:

1. Core Programs

Florida Department of Corrections

Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED

- a. Literacy
  - b. Academic/workforce education
  - c. Substance abuse treatment
- 2. Domain Programs
  - a. Cognitive Behavioral Treatment, i.e. Thinking for a Change
- 3. Elective Programs
  - a. A wide array of evidence driven, promising programs that influence pro-social behavior and support FDC curriculum
    - i. Labs that support Cognitive Behavioral Treatment coursework, i.e. Babies to Brains for Parenting module of Thinking for a Change
    - ii. Dog training
    - iii. Volunteer support programs, i.e. Toast Masters





## Cox, Ryan

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**From:** Torres, Jared <Jared.Torres@fdc.myflorida.com>  
**Sent:** Thursday, January 25, 2018 4:58 PM  
**To:** Cox, Ryan  
**Cc:** Vaughan, Scotti  
**Subject:** Re: Spectrum

Ryan,

Please find below Department staff:

Spectrum, as well as its predecessor CINAS, is based on the Risk – Needs – Responsivity (RNR) model and they both contain responsivity elements.

Core programming refers to GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors.

On Jan 25, 2018, at 3:27 PM, Cox, Ryan <[Cox.Ryan@flsenate.gov](mailto:Cox.Ryan@flsenate.gov)> wrote:

Hey guys – one more thing from Abe...

I saw this sentence on your Program information background document – “Spectrum calculates an individual’s overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains and 3 core program areas”

What are the three core program areas? Is this the Risk-Needs-Responsivity Model I was asking about earlier?

Sincerely,

*Ryan C. Cox*

Senior Attorney  
Senate Committee on Criminal Justice  
(850) 487-5192

**From:** Cox, Ryan  
**Sent:** Thursday, January 25, 2018 2:50 PM  
**To:** 'Torres, Jared' <[Jared.Torres@fdc.myflorida.com](mailto:Jared.Torres@fdc.myflorida.com)>; 'Vaughan, Scotti' <[Scotti.Vaughan@fdc.myflorida.com](mailto:Scotti.Vaughan@fdc.myflorida.com)>  
**Subject:** Spectrum

Can you also send me an email about who independently verified Spectrum risk assessment tool? Thanks!

Sincerely,



FLORIDA STATE UNIVERSITY  
COLLEGE OF CRIMINOLOGY & CRIMINAL JUSTICE

January 19, 2018

Secretary Julie L. Jones  
Florida Department of Corrections  
501 South Calhoun Street  
Tallahassee, FL 32399-2500

Dear Secretary Jones,

The purpose of this letter is to communicate the findings from our independent assessment of the Department's Corrections Integrated Needs Assessment System (CINAS). The primary function of CINAS is to empirically determine an inmate's post-release risk of recidivism so the Department can prioritize high-risk inmates for programming.

Our validation report finds that the components of CINAS are performing as intended. Specifically, CINAS produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States. We hope the findings and recommendations provided in the attached report will be helpful in the transition to the Department's revised risk assessment system—Spectrum.

We wish to express our gratitude to the following individuals for sharing their tremendous knowledge of the development and implementation of CINAS: Abe Uccello, Patrick Mahoney, Brad Locke, Kerensa Lockwood, and others in the Division of Development as well as Rusty McLaughlin in the Bureau of Classification Management. We also wish to extend our gratitude to David Ensley, Dena French, Lori Nolting, and Jami Dunsford in the Bureau of Research and Data Analysis for providing us with the requisite data and valuable insights regarding the construction of the system data and algorithm. By our estimates, these individuals and others have contributed significant time and effort to the internal design, development, and implementation of CINAS. Our report concludes that their efforts have produced commendable results.

If you or your team has questions or needs clarification on the information provided in the attached report, please do not hesitate to contact us.

Sincerely,

William D. Bales, Ph.D.

Jennifer M. Brown, ABD

## Cox, Ryan

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**From:** Torres, Jared <Jared.Torres@fdc.myflorida.com>  
**Sent:** Thursday, January 25, 2018 4:52 PM  
**To:** Cox, Ryan  
**Cc:** Vaughan, Scotti  
**Subject:** Per request - Spectrum Verification of Risk Assessment Tool  
**Attachments:** Letter to FDC Secretary Julie Jones.pdf; ATT00001.txt

Per request. Regarding: Independent verification of risk assessment tool. Thanks!

Our Vision: "Inspiring success by transforming one life at a time."



## 2020 AGENCY LEGISLATIVE BILL ANALYSIS

### AGENCY: Department of Corrections

<b><u>BILL INFORMATION</u></b>	
<b>BILL NUMBER:</b>	<u>SB 572</u>
<b>BILL TITLE:</b>	<u>Extension of Confinement</u>
<b>BILL SPONSOR:</b>	Senator Brandes
<b>EFFECTIVE DATE:</b>	<u>October 1, 2020</u>

<b><u>COMMITTEES OF REFERENCE</u></b>
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

<b><u>PREVIOUS LEGISLATION</u></b>	
<b>BILL NUMBER:</b>	SB 338
<b>SPONSOR:</b>	Senator Brandes
<b>YEAR:</b>	2019
<b>LAST ACTION:</b>	Failed to pass final committee of reference

<b><u>CURRENT COMMITTEE</u></b>

<b><u>SIMILAR BILLS</u></b>	
<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

<b><u>IDENTICAL BILLS</u></b>	
<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

<b>Is this bill part of an agency package?</b>
No

<b><u>BILL ANALYSIS INFORMATION</u></b>	
<b>DATE OF ANALYSIS:</b>	December 3, 2019
<b>LEAD AGENCY ANALYST:</b>	Rusty McLaughlin
<b>ADDITIONAL ANALYST(S):</b>	Joe Winkler, Michelle Palmer, Greg Roberts, Sibyle Walker, Shana Lasseter
<b>LEGAL ANALYST:</b>	Philip A. Fowler; Beverly Brewster
<b>FISCAL ANALYST:</b>	Sharon McNeal

## POLICY ANALYSIS

### 1. EXECUTIVE SUMMARY

The bill amends s. 945.091, F.S., by authorizing the Florida Department of Corrections (FDC or department) to extend the limits of confinement of an inmate in the last 365 days of a sentence to participate in supervised community release under certain conditions.

### 2. SUBSTANTIVE BILL ANALYSIS

#### 1. **PRESENT SITUATION:**

##### **Extended Limits of Confinement**

S. 945.091(1)(a), F.S., states the department may adopt rules permitting the extension of the limits of the place of confinement of an inmate as to whom there is reasonable cause to believe that the inmate will honor his or her trust by authorizing the inmate, under prescribed conditions and following investigation and approval by the secretary, or the secretary's designee, who shall maintain a written record of such action, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to:

Visit, for a specified period, a specifically designated place or places:

1. For the purpose of visiting a dying relative, attending the funeral of a relative, or arranging for employment or for a suitable residence for use when released;
2. To otherwise aid in the rehabilitation of the inmate and his or her successful transition into the community; or
3. For another compelling reason consistent with the public interest.

S. 945.091(1)(b), F.S., states that inmates may work at paid employment, participate in an education or a training program, or voluntarily serve a public or nonprofit agency or faith-based service group in the community, while continuing as an inmate of the institution or facility in which the inmate is confined, except during the hours of his or her employment, education, training, or service and traveling thereto and therefrom.

S. 945.091(3), F.S., maintains that the department may adopt regulations as to the eligibility of inmates for the extension of confinement, the disbursement of any earnings of these inmates, or the entering into of agreements between itself and any city or county or federal agency for the housing of these inmates in a local place of confinement. However, no person convicted of sexual battery pursuant to s. 794.011 is eligible for any extension of the limits of confinement under this section.

In accordance with Chapter 945, F.S., the department's adopted regulations as to the eligibility of inmates for the extension of confinement are delineated in Rule 33-601.602(2)(b), (2)(d) and (2)(e), Florida Administrative Code (F.A.C.): Community Release Programs. Eligibility requirements are as follows:

##### (2) Eligibility and Ineligibility Criteria.

(b) An inmate is ineligible for any community release program if he has:

1. Current or prior sex offense convictions;
2. Current or prior conviction for murder or attempted murder under s. 782.04, F.S.;
3. Current or prior conviction for aggravated manslaughter of an elderly person or disabled adult or attempted manslaughter of an elderly person or disabled adult under s. 782.07(2), F.S.;
4. Current or prior conviction for aggravated manslaughter of a child or attempted aggravated manslaughter of a child under s. 782.07(3), F.S.;
5. Current or prior conviction for aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic or attempted aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic under s. 782.07(4), F.S.;
6. Current or prior conviction for murder of an unborn child or attempted murder of an unborn child under s. 782.09(1), F.S.;
7. Current or prior conviction for attempted murder of a law enforcement officer under s. 784.07(3), F.S.;
8. Current or prior conviction for making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person or for attempted making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person under s. 790.161(4), F.S.;
9. Current or prior conviction for assisting self-murder or for attempted assisting self-murder under s. 782.08, F.S.;
10. A guilty finding on any disciplinary report for escape or attempted escape within the last five years;
11. A current or prior conviction for escape covered by s. 945.092, F.S.;

12. A felony, Immigration and Customs Enforcement, or misdemeanor (other than child support) warrant or detainer;
13. A misdemeanor detainer for child support, unless it can be established by the inmate's classification officer that the detainer would be withdrawn upon payment of restitution, fines, or court ordered obligations and it appears that the inmate will earn sufficient funds to pay the obligation that has caused the detainer.

(d) In order to be eligible for consideration for placement in a community release program, an inmate must:

1. Be community custody in accordance with rule 33-601.210, F.A.C., or have a recommendation for community custody currently under review;

(e) If an inmate is otherwise eligible for a community release program, the Department will also consider the following factors to ensure community release placement is appropriate:

1. Arrest history, with particular attention to violent offenses or offenses in which the circumstances reflect that a sex act was intended, attempted, or completed;
2. Pending outside charges;
3. Disciplinary history, with particular attention to violence, escape risk, substance abuse, or sexual deviancy;
4. Substance abuse history;
5. Program needs, including re-entry;
6. Victim concerns;
7. The inmate's skills, physical ability, overall compatibility with the requested community release program.

### **Community Release Centers (CRC)**

These facilities house two categories of community custody inmates: (1) Community Work Release (CWR) inmates are those who are participating in community work release, work at paid employment in the community and are within 14 months of their release date; and (2) Community Work Assignment (CWA) are those inmates who work in a support capacity for the center, do not work in paid employment in the community and are within 19 months of their release date. CWA inmates perform such tasks as food service, maintenance of the center, or assignment to work squads. There are no perimeter fences and inmates must remain at the CRC when they are not working or attending programs outside the CRC.

The department uses custody level as the fundamental determinant of an inmate's trustworthiness as required by statute. To be assigned to a community work release center an inmate must be classified as "community" custody. The following will prevent an inmate from being classified as community custody:

### **Escape**

S. 945.091(4), F.S., provides that the willful failure of an inmate to remain within the extended limits of his or her confinement or to return within the time prescribed to the place of confinement designated by the department shall be deemed as an escape from the custody of the department and shall be punishable as prescribed by law.

### **Community Corrections**

At present, all forms of community supervision are granted by either the court or the Florida Commission on Offender Review (FCOR). These entities are responsible for establishing the terms and conditions of supervision and for disposing of violations. Upon disposition of violations of supervision, the court or FCOR provide an order to the county jail for the inmate to either be released from their custody and returned to supervision or to be transported back to state prison.

## **2. EFFECT OF THE BILL:**

The bill is similar to a program in effect under s. 945.091, F.S., from 1986 to 1996 called Supervised Community Release Program (SCRCP). This program was limited to inmates within the last 90 days of sentence who were assigned to a community release center, or who were medically unable to participate in work release. SCRCP participants were not considered to be inmates but were able to earn gain time and were under the disciplinary rules of the department. The distinct difference in the new program being created is the that individual is still an inmate continuing to serve his/her sentence in a community supervised setting.

The current bill expands on the concept of the "extension of the limits of confinement" under s. 945.091, F.S., to create another step in the transition process by allowing an inmate with a sentence of two years or more to continue serving his/her state prison sentence while under custodial supervision in the community during the last 365 days of the sentence. To allow an inmate to participate there must be "reasonable cause to believe that the inmate will honor the trust bestowed upon them". The bill authorizes the department to impose community control standards of supervision as well as electronic monitoring tracking technology and provides the department authority to

establish standards for assessing progress in the program and for termination for failure to meet those standards. Program participants remain eligible to earn and forfeit gain time under department rules.

As written, the proposed legislation will have a significant impact on the following areas within the department:

1. Bureau of Classification Management
2. Bureau of Admission and Release
3. Bureau of Population Management
4. Bureau of Security Operations
5. Community Corrections

## **SECTION 1**

Amends s. 944.275(4)(f), F.S., and republishes 944.275(4)(b), F.S., related to Gain-Time (Lines 38 through 88). This section amends existing text which describes that an inmate whose offense was committed on or after October 1, 1995 may earn up to 10 days per month of incentive gain-time unless the award would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release from the department's care, custody, supervision or control prior, to serving a minimum of 85 percent of the sentence imposed.

The section is further amended by stating that credits awarded by the court for time physically incarcerated or time spent in the department's care, custody, supervision or control through participation in a program under s. 945.091, F.S., shall be credited toward satisfaction of 85 percent of the sentence imposed. This will allow inmates who have not yet met their 85 percent minimum service requirement to continue service of their sentence outside a secure setting.

## **SECTION 2**

Amends s. 945.091, F.S., (Lines 102 through 138) by adding paragraph (d) which creates a new category of extension of confinement named supervised community release. An inmate who has a sentence of 2 years or more may begin participation in supervised community release 365 days before his or her provisional or tentative release date.

Lines 106 through 107 state that the supervised community release may include active electronic monitoring and community control, defined in s. 948.001(3), F.S., as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or non-institutional residential placement and specific sanctions are imposed and enforced. Community control is the department's most restrictive type of supervision with an officer to offender ratio of 30:1, with the officer holding a position of Correctional Probation Senior Officer or higher.

The bill is silent as to the criteria for placement on electronic monitoring and community control. Accordingly, the imposition of one or both conditions of supervision would be at the discretion of the department based upon criteria yet to be developed.

Lines 108 through 112 are confusing because they state that an inmate participating in such supervised community release is considered to be in the custody, care, supervision and control of the department for purposes of ss 921.002, F.S., and 944.275, F.S., and must be assigned to a community control officer, even though earlier in the bill it says an inmate's supervised community release may include community control.

Lines 112 through 115 require the department to administer a risk assessment instrument to appropriately determine an inmate's eligibility for this type of release. The department currently uses custody level when determining risk and eligibility for inmate placement into community release programs. The department's validated custody system, Custody Assessment and Reclassification System (CARS), is built to take into account factors that are directly relevant to suitability for community release participation and remains the best tool for determining eligibility. Since the concept of the "extension of the limits of confinement" is predicated upon determining "trustworthiness", the department would be hesitant to substitute custody for another measure of that standard.

S. 945.091(1)(b), F.S., authorizes participation in paid employment in the community to inmates "as to whom there is reasonable cause to believe that the inmate will honor the trust bestowed upon them". The custody classification system is the instrument by which the department determines if an inmate meets this standard. If an inmate is not assigned to "community" custody, the department does not have reason to believe he/she is sufficiently trustworthy for a paid job in the community or to be housed in a non-secure facility.

As of October 22, 2019 there are 4,390 inmates who are community custody and are within 365 days of their tentative release date (TRD). Of those, 3,143 are currently at work release centers. The balance of 1,247 inmates are approved for work release and awaiting bed space. It is anticipated that, within the next 6 months, there will be an additional 2,159 inmates meeting the criteria of community custody and being within 365 days of their TRD.

Passage of this legislation would severely reduce populations at reentry centers, work camps and work release centers in that inmates currently housed in these facilities would be eligible for the proposed new supervision program and would, more likely than not, elect to participate in the program.

The Bureau of Classification Management will require one additional Correctional Program Consultant position located in central office to oversee, provide guidance, and coordinate the implementation and administration of the supervised community release program statewide. 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 SCR program. Provide statewide training, coordination, and implementation of the operation of the SCR program.

The bill would have some impact to the Bureau of Admission & Release, depending on how rules and procedures are written. Release management work load will be minimal after the initial wave of inmates are released to the program; however, the bureau will need one additional FTE position at a Correctional Services Assistant Consultant level to handle violators and absconders.

There are concerns regarding how the violation process will work and how the inmate will be returned to the department's custody. The bill also provides authority for warrantless arrest by probation officers and law enforcement officers, similar to the authority currently under ss. 948.06(1), F.S.; however, this gives rise to questions regarding what courses of action would be necessary for the inmate to be retaken by the department. It does not appear that s. 948.06, F.S., would provide authority for arrest and return of the inmate. S. 948.06, F.S., applies to offenders that have reached the end of their prison sentence and are under court ordered supervision only.

There will be an impact on the department's Fugitive/Revocation Unit and/or Community Corrections as it relates to violators/absconders. Under the former supervised community release program, Community Corrections was responsible for initiating the disciplinary process. This would certainly be an additional workload for Community Corrections staff and would warrant significant training given that very few, if any, of the current correctional probation officer pool were employed during the time the former program was in effect.

Since the program would expose participating inmates to disciplinary penalties including loss of gain time, to avoid ex post facto violations participation would have to be voluntary as to crimes committed before the statutory change. Inmates sentenced for crimes committed after the statute changed could be required to participate; however, that may not be prudent considering the level of trust needed for inmates assigned in a community setting. If the inmate does not want to be in the program it may be best to allow for refusal. Also, a number of inmates would likely rather serve slightly more time in prison than be under community supervision, especially if that includes electronic monitoring (EM), risking return to prison for additional time if they violate.

Finally, it is unknown how many inmates in the pool have a suitable employment or residence to release to. Thus, the bed savings impact of the bill is indeterminate. Further, the fiscal impact of the bill will also vary based on the number of released inmates placed on electronic monitoring, as well as the type of facility from which program participants were released (based on the different per diems between community release facilities, major institutions).

At a minimum, compliance with this bill would require:

1. Substantial revisions and additions to Chapter 33, F.A.C.
2. Creation of department policies, procedures and technical manuals related to this program.
3. Indeterminate number of additional institutional classification staff in addition to 2 additional central office FTE positions at a Correctional Program Consultant level and a Correctional Services Assistant Consultant level.
4. Approximately 146 additional correctional probation officers based upon the current number of inmates who appear to meet eligibility requirements for this program.
5. One additional FTE position at a Correctional Services Assistant Consultant level in the Bureau of Admission and Release to handle violators and absconders.



6. Program changes to the department's Offender Based Information System (OBIS) with respect to tracking and monitoring of inmate eligibility, oversight of compliance with conditions of supervision and processes for violations and revocations of supervision.

### **SECTION 3**

Reenacts section 775.084(4)(k), F.S. (Lines 139 through 161).

### **SECTION 4**

Reenacts section 921.002(1)(e), F.S. (Lines 162 through 187).

### **SECTION 5**

Reenacts section 946.503(2), F.S. (Lines 188 through 199).

### **SECTION 6**

Establishes the effective date of the bill as October 1, 2020 (Line 200).

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:	The bill allows for the creation of administrative rules to facilitate this new type of community supervision program.
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	At a minimum, the following administrative rules will require revisions: 33-601.100 33-601.101 33-601.303 33-601.304 33-601.314 33-601.602

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 ☐

Revenue s:	Unknown																																																																																																										
Expendit ures:	<p>If this bill is passed, the overall fiscal impact to the inmate population is indeterminate. However, the department projects additional workload costs for community supervision, classification and OIT as follows:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th colspan="2">Correctional Probation Officers</th> <th colspan="2">Correctional Program Consultant</th> <th colspan="2">Correctional Services Assistant Consultant</th> <th colspan="2">Total</th> </tr> <tr> <th></th> <th>FTE's</th> <th>Costs</th> <th>FTE's</th> <th>Costs</th> <th>FTE's</th> <th>Costs</th> <th>FTE's</th> <th>Costs</th> </tr> </thead> <tbody> <tr> <td><b>Workload Impact</b></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Salaries and Benefits</td> <td>146</td> <td>8,926,294</td> <td>1</td> <td>66,242</td> <td>2</td> <td>106,326</td> <td>149</td> <td>9,098,862</td> </tr> <tr> <td>Expenses-Recurring</td> <td></td> <td>1,234,430</td> <td></td> <td>3,378</td> <td></td> <td>6,756</td> <td></td> <td>1,244,564</td> </tr> <tr> <td>Expenses-Nonrecurring</td> <td></td> <td>870,014</td> <td></td> <td>4,429</td> <td></td> <td>8,858</td> <td></td> <td>883,301</td> </tr> <tr> <td>Human Resource Fee</td> <td></td> <td>48,034</td> <td></td> <td>329</td> <td></td> <td>658</td> <td></td> <td>49,021</td> </tr> <tr> <td>Salary Incentive</td> <td></td> <td>164,688</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>164,688</td> </tr> <tr> <td></td> <td><b>146</b></td> <td><b>11,243,460</b></td> <td><b>1</b></td> <td><b>74,378</b></td> <td><b>2</b></td> <td><b>122,598</b></td> <td><b>149</b></td> <td><b>11,440,436</b></td> </tr> <tr> <td><b>OIT Impact</b></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>17,400</td> </tr> <tr> <td><b>Total Fiscal Impact</b></td> <td><b>146</b></td> <td><b>11,243,460</b></td> <td><b>1</b></td> <td><b>74,378</b></td> <td><b>2</b></td> <td><b>122,598</b></td> <td><b>149</b></td> <td><b>11,440,436</b></td> </tr> </tbody> </table>									Correctional Probation Officers		Correctional Program Consultant		Correctional Services Assistant Consultant		Total			FTE's	Costs	FTE's	Costs	FTE's	Costs	FTE's	Costs	<b>Workload Impact</b>									Salaries and Benefits	146	8,926,294	1	66,242	2	106,326	149	9,098,862	Expenses-Recurring		1,234,430		3,378		6,756		1,244,564	Expenses-Nonrecurring		870,014		4,429		8,858		883,301	Human Resource Fee		48,034		329		658		49,021	Salary Incentive		164,688						164,688		<b>146</b>	<b>11,243,460</b>	<b>1</b>	<b>74,378</b>	<b>2</b>	<b>122,598</b>	<b>149</b>	<b>11,440,436</b>	<b>OIT Impact</b>								17,400	<b>Total Fiscal Impact</b>	<b>146</b>	<b>11,243,460</b>	<b>1</b>	<b>74,378</b>	<b>2</b>	<b>122,598</b>	<b>149</b>	<b>11,440,436</b>
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	<p>It appears electronic monitoring will be at the discretion of the department. If imposed, this would be an additional per diem costs of \$4.50.</p> <p>As previously stated in the analysis, as inmates participate in the program as established by the bill, there will likely be increased needs in other areas of the department such as community supervision.</p>
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.	<p>There will likely be a will be a significant technology impact due to the need for updating and additional programming on both the Institutions and Community Corrections sentence structure screens.</p> <p>Cost Estimate</p> <p>Estimated Total Hours: 200</p> <p>Estimated Cost Per Hour: \$87.00</p> <p>Estimated Total Cost: \$17, 400</p>
------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

## 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:	<ol style="list-style-type: none"> <li>1) Section 1. The bill's inclusion of the word "care" in the phrase "custody, care, supervision, and control of the department" is unclear because that word is not found anywhere within the community control statute. (See lines 108-112.) It is not assumed that the intent of the bill is to require FDC to provide any particular type of "care" to inmate/offenders who have been released to "supervised community release" status, but the language might be revised to achieve the apparent intent to authorize gain time awards to those assigned to this supervision without the use of the word.</li> <li>2) Section 2. Implementation and compliance with the bill may pose arrest and return-to-custody concerns. (See lines 116-128.) Currently, community control offenders, if arrested, are to be returned to the "court granting such probation or community control." See s. 948.06 (1)(a), Fla. Stat. FDC, not a court or the Commission or Offender Review, would be setting the terms of an inmate's "supervised community release," and is not granted authority to issue warrants to return such inmates into physical custody. The bill states that (warrantless) arrests be made in accordance with 948.06, but an inmate on "supervised community release" would have no "court" to be returned to. Lines 119-120 further indicate that inmate/offenders be returned back to their FDC institution. The statute lacks clarity on the process required to return noncompliant inmates back into physical custody.</li> </ol>
---------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	<p>b) Ex post facto concerns are raised by the provision in the bill that “[a]n inmate participating in supervised community release under this paragraph remains eligible to earn or lose gain-time in accordance with s. 944.275 and department rule,” if participation in these programs is made mandatory for inmates who commit their offenses before October 1, 2020, the date these statutory revisions go into effect, because the bill’s new provisions effectively give inmates more opportunity than they otherwise would have had to forfeit gain time. (See lines 129-135.) Accordingly, any rules developed by the Department to implement these new programs should stipulate that participation in them is voluntary, at least for inmates who committed their offenses before October 1 of 2020. On the other hand, mandatory participation by pre-October 1, 2020 offenders might pass constitutional muster if the rules stipulated that mere “failure to comply with the conditions prescribed by the department by rule” for these programs did not result in forfeiture of gain time, but if gain time could still be forfeited during the period of supervision for violation of rules these pre-10/01/20 inmates would otherwise be subjected to when incarcerated.</p>
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

12/10/19  
Meeting Date

572

Bill Number (if applicable)

Topic Extension of Confinement

100336

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

Address 104 S. Monroe St.

Street

Tallahassee FL 32301

City

State

Zip

Phone 850-425-1344

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU FL

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/19

Meeting Date

572

Bill Number (if applicable)

100 336

Amendment Barcode (if applicable)

Topic

Extension of Confinement

Name

Ida V. Eskamani

Job Title

Address

120 N. Mills Ave

Street

Orlando

City

FL

State

32801

Zip

Phone

Email

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

New Florida Majority + Organize Florida

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)

12/10/19.  
Meeting Date

572  
Bill Number (if applicable)  
100038 100 336  
Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Chelsea Murphy

Job Title State Director

Address 1005 Middlebrooks Cr.  
Street

Phone \_\_\_\_\_

TLH FL 32312  
City State Zip

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

12-10-19

Meeting Date

572

Bill Number (if applicable)

100336

Amendment Barcode (if applicable)

Topic Sentencing

Name Greg Newburn

Job Title Fla. Director

Address PO Box 142937

Street

Gainesville

City

FL

State

32614

Zip

Phone 352.682.2542

Email gnewburn@famm.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FAMM

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)

12/10/2019

*Meeting Date*

SB 572  
160336  
*Bill Number (if applicable)*

Topic Criminal Justice

*Amendment Barcode (if applicable)*

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 North Duval Street

Phone 850-322-9941

*Street*

Tallahassee

FL

32301

Email snuzzo@jamesmadison.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The James Madison 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

December 10, 2019

Meeting Date

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

572

Bill Number (if applicable)

100336

Amendment Barcode (if applicable)

Topic Prison & Sentencing reform reduxName Dan HendricksonJob Title president, Tallahassee Veterans Legal CollaborativeAddress 319 E Park Ave

Street

Tallahassee

FI

32301

City

State

Zip

Phone 850/570-1967Email danbhendrickson@comcast.netSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing TALLAHASSEE VETERANS LEGAL COLLABORATIVEAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/19

Meeting Date

572

Bill Number (if applicable)

Topic Prison Release

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden St  
Street

Phone 850 488-6850

Tallahassee FL 32301  
City State Zip

Email ndaniels@fpda.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

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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)

12/10/19

Meeting Date

572

Bill Number (if applicable)

100336

Amendment Barcode (if applicable)

Topic Gain Time

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden St.

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850 488-6850

Email ndaniels@flpda.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

12/10/19

Meeting Date

572

Bill Number (if applicable)

Topic

Extension of Confinement

Amendment Barcode (if applicable)

Name

Pamela Burch Fort

Job Title

Address

104 S. Monroe St.

Street

Tallahassee

FL

32301

City

State

Zip

Phone

850-425-1344

Email

tcglobby@aol.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

ACLU FL

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)

12/10/19

Meeting Date

572

Bill Number (if applicable)

Topic Extension of Confinement

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title

Address 126 N. Mills Ave

Street

Phone

Orlando FL 32801

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing New Florida Majority + Organize Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

# APPEARANCE RECORD

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

12/10/19

Meeting Date

572

Bill Number (if applicable)

Topic

CJ

Amendment Barcode (if applicable)

Name

Chelsea Murphy

Job Title

State Director

Address

405 Middlebrooks Cr.

Phone

Street

TLH

FL

32312

City

State

Zip

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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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

12/10/2019

*Meeting Date*

572

*Bill Number (if applicable)*

Topic Criminal Justice

*Amendment Barcode (if applicable)*

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 North Duval Street

Phone 850-322-9941

*Street*

Tallahassee

FL

32301

Email snuzzo@jamesmadison.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The James Madison 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)

12-10-19

Meeting Date

572

Bill Number (if applicable)

Topic Confinement

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title Fla. Director

Address PO Box 142433

Phone 352.682.2542

Street

Gainesville

City

FL

State

32614

Zip

Email gnewburn@famnm.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FAMN

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)

12/10/19

Meeting Date

572

Bill Number (if applicable)

Topic Extension of Confinement

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Policy Director

Address P.O. Box 10788  
Street

Phone 334-224-4309

Tallahassee FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Southern Poverty Law Action Fund

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**  
**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: CS/SB 574

INTRODUCER: Criminal Justice Committee and Senators Brandes and Perry

SUBJECT: Conditional Aging Inmate Release

DATE: December 11, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

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

The bill provides that an inmate is eligible for consideration for release under the CAIR program when the inmate has reached 70 years of age and has served at least 10 years on his or her term of imprisonment. The bill prohibits an inmate from being considered for release through the CAIR program if he or she has ever been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent for committing specified offenses.

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

The panel must conduct a hearing to determine, by a majority, whether CAIR is appropriate for the inmate within 45 days after receiving the referral. The bill creates a process for an inmate who is denied CAIR by the panel to have the decision reviewed. The Secretary has the final decision about the appropriateness of the release on CAIR. If CAIR is approved, the inmate must

be released by the DOC to the community within a reasonable amount of time and is considered an aging releasee upon release to the community.

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

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

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

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

The Criminal Justice Impact Conference (CJIC) has not reviewed the bill at this time. However, the Office of Economic and Demographic Research has prepared a preliminary estimate of the bill, which determined that the bill will have a negative indeterminate prison bed impact (i.e. an unquantifiable decrease in prison beds).

The DOC reports the overall fiscal impact of the bill is indeterminate because release will be at the discretion of the DOC and that it will need additional staff to oversee, provide guidance, and coordinate the implementation and administration of the CAIR program. The DOC reports it will have a technology impact of \$17,400, which is related to programming needed for the Offender Based Information System and Criminal Punishment Code impact. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2020.

## **II. Present Situation:**

### **Aging Population Statistics**

In 2016, 49 million adults in the United States, or 15 percent of the population, were 65 or older.<sup>1</sup> 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<sup>2</sup>

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

<sup>2</sup> 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 December 5, 2019).

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.<sup>3</sup>

### **Special Health Considerations for Aging Inmates**

Similarly to aging persons in the community, aging inmates are more likely to experience certain medical and health conditions, including, in part, dementia, impaired mobility, loss of hearing and vision, cardiovascular disease, cancer, osteoporosis, and other chronic conditions.<sup>4</sup> However, such ailments present special challenges within a prison environment and may result in the need for increased staffing levels and enhanced officer training.<sup>5</sup> Such aging inmates can also require structural accessibility adaptations, such as special housing and wheelchair ramps. For example, in Florida, four facilities serve relatively large populations of older inmates, which help meet special needs such as palliative and long-term care.<sup>6</sup>

### **Aging Inmate Statistics in Florida**

The DOC reports that the elderly inmate<sup>7</sup> 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.<sup>8</sup>

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<sup>3</sup> 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 December 5, 2019).

<sup>4</sup> 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 December 5, 2019).

<sup>5</sup> The PEW Charitable Trusts Older Prisoners Report.

<sup>6</sup> *Id.*

<sup>7</sup> 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.

<sup>8</sup> The DOC, *2017-18 Annual Report*, p. 19, available at [http://www.dc.state.fl.us/pub/annual/1718/FDC\\_AR2017-18.pdf](http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf) (last visited December 5, 2019).

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 2016-17. 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

### **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.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup> 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*<sup>15</sup> 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.<sup>16</sup>

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<sup>9</sup> *Id.*, at p. 20.

<sup>10</sup> *Id.*, at p. 21.

<sup>11</sup> *Id.*

<sup>12</sup> *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

<sup>13</sup> 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](https://www.pewtrusts.org/-/media/assets/2017/10/sfh_prison_health_care_costs_and_quality_final.pdf) (last visited December 5, 2019) (hereinafter cited as “The PEW Trusts Prison Health Care Cost Report”).

<sup>14</sup> *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 December 5, 2019); See also *Newman et al. v. Alabama et al.*, 349 F. Supp. 278 (M.D. Ala. 1972).

<sup>15</sup> 430 U.S. 325 (1977).

<sup>16</sup> *Id.* The Correctional Medical Authority, FY 2017-18 Annual Report and Update on the Status of Elderly Offender’s in Florida’s Prisons, p. 1 (on file with the Senate Criminal Justice Committee). The Correctional Medical Authority was created in response to such federal litigation.

The legal standard today for inmate medical care must be at “a level reasonably commensurate with modern medical science and of a quality acceptable within prudent professional standards” and “designed to meet routine and emergency medical, dental, and psychological or psychiatric care.”<sup>17</sup> 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.<sup>18</sup>

### ***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.<sup>19</sup> The DOC has the constitutional and statutory imperative to provide adequate health services to state prison inmates directly related to this responsibility.<sup>20</sup> This medical care includes comprehensive medical, mental health, and dental services, and all associated ancillary services.<sup>21</sup> 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.<sup>22</sup>

The DOC contracts with the Centurion of Florida, LLC (Centurion) to provide comprehensive medical, mental health, and dental services statewide. The care provided is under a managed care model. All inmates are screened at a reception center upon receipt to the DOC 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.<sup>23</sup>

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.<sup>24</sup>

### **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

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<sup>17</sup> The PEW Trusts Prison Health Care Cost Report, p. 4.

<sup>18</sup> *Id.*

<sup>19</sup> Sections 945.04(1) and 945.025(1), F.S.

<sup>20</sup> *Crews v. Florida Public Employers Council 79, AFSCME*, 113 So. 3d 1063 (Fla. 1st DCA 2013); *See also* s. 945.025(2), F.S.

<sup>21</sup> The DOC, Office of Health Services, available at <http://www.dc.state.fl.us/org/health.html> (last visited December 5, 2019).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* *See also* The DOC Annual Report, p. 19.

<sup>24</sup> *Id.*



condition of the inmate.<sup>25</sup> The National Conference of State Legislatures (NCSL) reports such discretionary release based on age has been legislatively authorized in 17 states.<sup>26</sup> The NCSL also reports that such statutes typically require an inmate to be of a certain age and to have served either a specified number of years or a specified percentage of his or her sentence. The NCSL reports that Alabama has the lowest age for aging inmate discretionary release, which is 55 years of age, whereas most other states set the limit somewhere between 60 and 65. Additionally, some states do not set a specific age.<sup>27</sup>

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.<sup>28</sup> Other states, such as Mississippi and Oklahoma, provide a term of years or a certain percentage of the sentence to be served.<sup>29</sup>

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.

### ***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."<sup>30</sup> The law makes a number of changes to the federal criminal justice system and procedures applicable to inmates in the Federal Bureau of Prisons, including, in part, modifying provisions related to compassionate release, which applies to the conditional release of medical inmates and aging inmates, to require inmates be informed of reduction in sentence availability and process.<sup>31</sup>

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<sup>25</sup> 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](https://www.bop.gov/policy/progstat/5050_050_EN.pdf) (all sites last visited December 5, 2019).

<sup>26</sup> 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.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> The NCSL Aging Inmate Statistics.

<sup>30</sup> The First Step Act of 2018, Pub. L. No. 115-391 (2018).

<sup>31</sup> 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](https://www.bop.gov/policy/progstat/5050_050_EN.pdf) (last visited December 5, 2019).

## Gain-time

Gain-time awards, which result in deductions to the court-ordered sentences of specified eligible inmates, are used to encourage satisfactory prisoner behavior or to provide incentives for prisoners to participate in productive activities while incarcerated.<sup>32</sup> An inmate is not eligible to earn or receive gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.<sup>33</sup>

Basic gain-time, which automatically reduced an inmate's sentence by a designated amount each month, was eliminated for offenses committed on or after January 1, 1994.<sup>34</sup> The only forms of gain-time that can currently be earned are:

- Incentive gain-time;<sup>35</sup>
- Meritorious gain-time;<sup>36</sup> and
- Educational achievement gain-time.<sup>37</sup>

The procedure for applying gain-time awards to an inmate's sentence is dependent upon the calculation of a "maximum sentence expiration date" and a "tentative release date." The tentative release date may not be later than the maximum sentence expiration date.<sup>38</sup> The maximum sentence expiration date represents the date when the sentence or combined sentences imposed on a prisoner will expire. To calculate the maximum sentence expiration date, the DOC reduces the total time to be served by any time lawfully credited.<sup>39</sup>

The tentative release is the date projected for the prisoner's release from custody after gain-time is granted or forfeited in accordance with s. 944.275, F.S.<sup>40</sup> Gain-time is applied when granted or restored to make the tentative release date proportionately earlier; and forfeitures of gain-time, when ordered, are applied to make the tentative release date proportionately later.<sup>41</sup>

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<sup>32</sup> Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further provides that an inmate serving a life sentence is not able to earn gain-time. Additionally, an inmate serving the portion of his or her sentence that is included in an imposed mandatory minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

<sup>33</sup> Section 944.275(4)(f), F.S.

<sup>34</sup> Chapter 93-406, L.O.F.

<sup>35</sup> 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.

<sup>36</sup> 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.

<sup>37</sup> 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.

<sup>38</sup> Section 944.275(3)(c), F.S.

<sup>39</sup> Section 944.275(2)(a), F.S.

<sup>40</sup> Section 944.275(3)(a), F.S.

<sup>41</sup> *Id.* See also s. 944.275(4)(b), F.S.

The DOC is authorized in certain circumstances to declare all gain-time earned by an inmate forfeited.<sup>42</sup>

### **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, Art. 1, 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.<sup>43</sup>

### **III. Effect of Proposed Changes:**

The bill creates s. 945.0912, F.S., which establishes a conditional aging inmate release (CAIR) program within the DOC for the purpose of:

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

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

#### **Eligibility Criteria**

An inmate is eligible for consideration for release under the CAIR program when the inmate has reached 70 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:

- A violation of any of certain offenses which result in the actual killing of a human being:

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<sup>42</sup> Section 944.28(1), F.S.

<sup>43</sup> Art. 1, s. 16(b)(6)a., b., f., and g., FLA. CONST.

- A violation of s. 775.33(4), F.S. (providing material support or resources for terrorism or to terrorist organizations that results in death);
- A violation of s. 782.04(1) or (2), F.S. (murder in the first degree and murder in the second degree mentioned above, excluding felony murder in the second degree); or
- A violation of s. 782.09, F.S. (killing of an unborn child by injury to the mother);
- 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.

### **Referral Process**

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

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

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

The bill requires the DOC to provide notice to a victim of the inmate's referral to the panel immediately upon identification of the inmate as potentially eligible for release on CAIR if the case that resulted in the inmate's commitment to the DOC involved a victim and such victim specifically requested notification pursuant to Art. 1, s. 16, of the Florida Constitution. Additionally, the victim must be afforded the right to be heard regarding the release of the inmate.

### **Determination of Release**

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

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

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

Additionally, an inmate who is denied CAIR may be subsequently reconsidered for such release in a manner prescribed by department rule.

### **Release Conditions**

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

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

The bill provides that an aging releasee is considered to be in the care, custody, supervision, and control of the DOC and remains eligible to earn or lose gain-time in accordance with s. 944.275, F.S., and department rule. The aging releasee may not be counted in the prison system population, and the aging releasee's approved community-based housing location may not be counted in the capacity figures for the prison system.

### **Revocation of CAIR Release and Recommitment to the DOC**

The bill establishes a process for the revocation of the CAIR program which may be based on the violation of any release conditions the DOC establishes, including, but not limited to, a new violation of law.

#### ***Revocation Based on Violation of Conditions***

The bill provides that CAIR may be revoked for a violation of any release conditions the DOC establishes, including, but not limited to, a new violation of law. If the basis of the violation of release conditions is related to a new violation of law, the aging releasee must be detained without bond until his or her initial appearance at which a judicial determination of probable cause is made.

If the judge determines that there was no probable cause for the arrest, the aging releasee may be released. If the judge determines that there was probable cause for the arrest, the judge's probable cause determination also constitutes reasonable grounds to believe that the aging releasee violated the conditions of the CAIR.

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

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

### ***Revocation Hearing Process***

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

- Alleged violation with which he or she is charged.
- Right to:
  - Be represented by counsel.<sup>44</sup>
  - 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.

### ***Review Process of Revocation Determination***

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

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

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

The bill amends ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, and 944.70, F.S., conforming these provisions to changes made by the Act.

The bill is effective October 1, 2020.

## **IV. Constitutional Issues:**

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

None.

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<sup>44</sup> However, this bill explicitly provides that this does not create a right to publicly funded legal counsel.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not reviewed the bill at this time. However, the Office of Economic and Demographic Research (EDR) has prepared a preliminary estimate of the bill, which determined that the bill will have a negative indeterminate prison bed impact (i.e. an unquantifiable decrease in prison beds).<sup>45</sup>

The DOC reports that as of October 18, 2019, there are 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 currently meet eligibility criteria for consideration for CAIR. The DOC reports that an additional 291 inmates are projected to become eligible over the next five years. In addition, the DOC reports that the overall fiscal impact of the bill is indeterminate because release will be at the discretion of the DOC.<sup>46</sup>

Further, 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

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<sup>45</sup> The Office of Economic and Demographic Research, *SB 574 Preliminary Estimate* (on file with the Senate Committee on Criminal Justice).

<sup>46</sup> 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 Committee on Criminal Justice) [hereinafter cited as “The DOC SB 574 Analysis”].

aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The DOC's FY 17-18 average per diem for community supervision was \$5.47.<sup>47</sup>

The DOC also reports that it will need additional staff for the Bureau of Classification Management to oversee, provide guidance, and coordinate the implementation and administration of the CAIR program. Lastly, the DOC reports it will have a technology impact of \$17,400, which is related to programming needed for the Offender Based Information System and Criminal Punishment Code impact.<sup>48</sup>

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

The bill creates a panel with decision-making authority, which may require the panel to comply with the statutory requirements of ch. 286, F.S. (relating to public meetings). Chapter 286, F.S., requires certain meetings to be open to the public unless specifically exempted. Additionally, the DOC is a covered entity for purposes of the Health Insurance Portability and Protection Act (HIPAA)<sup>49</sup> and it is possible that such information could be discussed at a CAIR hearing or revocation hearing. The bill is silent as to whether the panel is subject to the public meetings requirements of ch. 286, F.S., or how HIPPA information would be handled in such hearings.

#### **VIII. Statutes Affected:**

This bill creates section 945.0912 of the Florida Statutes.

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

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<sup>47</sup> The DOC SB 574 Analysis, p. 5.

<sup>48</sup> *Id.*

<sup>49</sup> The HIPAA and the Privacy Rule provide uniform federal protection for the privacy rights of individuals over their health information. HIPAA and the Privacy Rule protect the privacy rights of individuals over their health information, grant individuals access to their health information, and allow individuals to amend their health information under specified circumstances. The U.S. Department of Health and Human Services, Health Information Privacy, available at <https://www.hhs.gov/hipaa/for-individuals/index.html> (last visited December 9, 2019). See also 45 C.F.R. Parts 160 and 164. Additionally, the U.S. Supreme Court has recognized a limited constitutional protection of personal health information and recognized an individual's interest in avoiding the disclosure of personal matters within the context of medical information. See *Whalen v. Roe*, 429 U.S. 589 (1977).



**IX. Additional Information:**

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

**CS by Criminal Justice on December 10, 2019:**

The committee substitute:

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

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/10/2019	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

945.0912 Conditional aging inmate release.—

(1) CREATION.—There is established a conditional aging  
inmate release program within the department for the purpose of  
determining eligible inmates who are appropriate for such



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release, supervising the released inmates, and conducting  
revocation hearings as provided for in this section. The program  
must include a panel of at least three people appointed by the  
secretary or his or her designee for the purpose of determining  
the appropriateness of conditional aging inmate release and  
conducting revocation hearings on the inmate releases.

(2) ELIGIBILITY.—

(a) An inmate is eligible for consideration for release  
under the conditional aging inmate release program when the  
inmate has reached 70 years of age and has served at least 10  
years on his or her term of imprisonment.

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

1. A violation of any of the following sections which  
results in the actual killing of a human being:

a. Section 775.33(4).

b. Section 782.04(1) or (2).

c. Section 782.09.

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

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

(3) REFERRAL FOR CONSIDERATION.—

(a)1. Notwithstanding any provision to the contrary, an  
inmate in the custody of the department who is eligible for



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40 consideration pursuant to subsection (2) must be considered for  
41 the conditional aging inmate release program.

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

45 (b) The department must identify inmates who may be  
46 eligible for the conditional aging inmate release program. In  
47 considering an inmate for conditional aging inmate release, the  
48 department may require the production of additional evidence or  
49 any other additional investigations that the department deems  
50 are necessary for determining the appropriateness of the  
51 eligible inmate's release.

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

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

64 (4) DETERMINATION OF RELEASE.—

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



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

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

(5) RELEASE CONDITIONS.—

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

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

2. Active electronic monitoring, if such monitoring is



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determined to be necessary to ensure the safety of the public  
and the aging releasee's compliance with release conditions.

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

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

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

(6) REVOCATION HEARING AND RECOMMITMENT.—

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

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



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

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

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

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

155       1. The alleged violation with which the releasee is



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156 charged.

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

160 3. The releasee's right to be heard in person.

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

163 5. The releasee's right to produce documents on his or her  
164 own behalf.

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

168 7. The releasee's right to waive the hearing.

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

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

173 316.1935 Fleeing or attempting to elude a law enforcement  
174 officer; aggravated fleeing or eluding.—

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





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

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

(4)

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

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

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

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

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

(2)

(b) Subparagraph (a)1., subparagraph (a)2., or subparagraph



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

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

(3)

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

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than



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pardon or executive clemency, ~~or~~ conditional medical release under s. 947.149, or conditional aging inmate release under s. 945.0912, prior to serving the minimum sentence.

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

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

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

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

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

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

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



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

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

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

794.0115 Dangerous sexual felony offender; mandatory sentencing.—

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



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

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

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

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

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

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

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

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in



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

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

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

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

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



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provided under subparagraph 1.

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

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

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

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

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of hydrocodone, as described in s. 893.03(2)(a)1.k., codeine, as described in s. 893.03(2)(a)1.g., or any salt thereof, or 28 grams or more of any mixture containing any such substance,



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commits a felony of the first degree, which felony shall be known as "trafficking in hydrocodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

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

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

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

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

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

a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment





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of 3 years and shall be ordered to pay a fine of \$50,000.

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

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

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

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

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

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

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

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

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

(VI) A controlled substance analog, as described in s. 893.0356, of any substance described in sub-sub-subparagraphs (I)-(V); or

(VII) A mixture containing any substance described in sub-sub-subparagraphs (I)-(VI),

commits a felony of the first degree, which felony shall be known as "trafficking in fentanyl," punishable as provided in s.



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775.082, s. 775.083, or s. 775.084.

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

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

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

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

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



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

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

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

(g)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits a felony of the first



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degree, which felony shall be known as "trafficking in flunitrazepam," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

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

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

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

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits the first degree felony of trafficking in flunitrazepam. A person who has been convicted of the first degree felony of trafficking in flunitrazepam under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency, ~~or~~ conditional medical release under s. 947.149, or conditional aging inmate release under s. 945.0912. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the



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intentional killing of an individual and such killing was the result; or

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

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

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

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

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(2) The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure. The lowest permissible sentence is any nonstate



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

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

944.605 Inmate release; notification; identification card.-  
(7)



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

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

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

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

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

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

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

944.70 Conditions for release from incarceration.—

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

1. Upon expiration of the person's sentence;

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

3. As directed by an executive order granting clemency;

4. Upon attaining the provisional release date;

5. Upon placement in a conditional release program pursuant



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to s. 947.1405; or

6. Upon the granting of control release pursuant to s. 947.146.

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

1. Upon expiration of the person's sentence;

2. Upon expiration of the person's sentence as reduced by accumulated meritorious or incentive gain-time;

3. As directed by an executive order granting clemency;

4. Upon placement in a conditional release program pursuant to s. 947.1405, ~~or~~ a conditional medical release program pursuant to s. 947.149, or a conditional aging inmate release program pursuant to s. 945.0912; or

5. Upon the granting of control release, including emergency control release, pursuant to s. 947.146.

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

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to conditional aging inmate release; creating s. 945.0912, F.S.; establishing the conditional aging inmate release program within the Department of Corrections; establishing a panel to consider specified matters; providing for program eligibility; requiring that an inmate who meets certain criteria be considered for conditional aging





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inmate release; providing that the inmate does not have a right to release; requiring the department to identify eligible inmates; requiring the department to refer an inmate to the panel for consideration; providing victim notification requirements under certain circumstances; requiring the panel to conduct a hearing within a specified timeframe; providing requirements for the hearing; providing that an inmate who is approved for conditional aging inmate release must be released from the department's custody within a reasonable amount of time; providing that an inmate is considered an aging releasee upon release from the department into the community; providing a review process for an inmate who is denied release; providing conditions for release; prohibiting an aging releasee or his or her community-based housing from being counted in the prison system population and the prison capacity figures, respectively; providing for the revocation of conditional aging inmate release; requiring the aging releasee to be detained if a violation is based on certain circumstances; authorizing the aging releasee to be returned to the department if he or she violates any conditions of the release; requiring a majority of the panel to agree on the appropriateness of revocation; authorizing the forfeiture of gain-time if the revocation is based on certain violations; providing a review process for an aging releasee who has his or her released revoked; requiring the aging releasee to be given specified



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678 information in certain instances; providing rulemaking  
679 authority; amending ss. 316.1935, 775.084, 775.087,  
680 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605,  
681 and 944.70, F.S.; conforming cross-references to  
682 changes made by the act; providing an effective date.

By Senator Brandes

24-00764-20

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1 A bill to be entitled  
 2 An act relating to aging inmate conditional release;  
 3 creating s. 945.0912, F.S.; establishing the  
 4 conditional aging inmate release program within the  
 5 Department of Corrections; establishing a panel to  
 6 consider specified matters; providing for program  
 7 eligibility; requiring that an inmate who meets  
 8 certain criteria be considered for conditional aging  
 9 inmate release; providing that the inmate does not  
 10 have a right to release; requiring the department to  
 11 identify eligible inmates; requiring the department to  
 12 refer an inmate to the panel for consideration;  
 13 providing victim notification requirements under  
 14 certain circumstances; requiring the panel to conduct  
 15 a hearing within a specified timeframe; providing  
 16 requirements for the hearing; providing a review  
 17 process for an inmate who is denied release; providing  
 18 conditions for release; prohibiting an aging releasee  
 19 or his or her community-based housing from being  
 20 counted in the prison system population and the prison  
 21 capacity figures, respectively; providing for the  
 22 revocation of an aging inmate release; requiring the  
 23 aging releasee to be detained if a violation is based  
 24 on certain circumstances; authorizing the aging  
 25 releasee to be returned to the department if he or she  
 26 violates any conditions of the release; requiring a  
 27 majority of the panel to agree on the appropriateness  
 28 of revocation; authorizing the forfeiture of gain-time  
 29 if the revocation is based on certain violations;

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 providing a review process for an inmate who has his  
 31 or her released revoked; requiring the aging releasee  
 32 to be given specified information in certain  
 33 instances; providing rulemaking authority; providing  
 34 an effective date.  
 35

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

37  
 38 Section 1. Section 945.0912, Florida Statutes, is created  
 39 to read:

40 945.0912 Conditional aging release.-

41 (1) CREATION.—There is established a conditional aging  
 42 inmate release program within the department for the purpose of  
 43 determining eligible inmates who are appropriate for such  
 44 release, supervising the released inmates, and conducting  
 45 revocation hearings as provided for in this section. The program  
 46 must include a panel of at least three people appointed by the  
 47 secretary or his or her designee for the purpose of determining  
 48 the appropriateness of conditional aging inmate release and  
 49 conducting revocation hearings on the inmate releases.

50 (2) ELIGIBILITY.—

51 (a) An inmate is eligible for consideration for release  
 52 under the conditional aging inmate release program when the  
 53 inmate has reached 70 years of age and has served at least 10  
 54 years on his or her term of imprisonment.

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

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1. A violation of any of the following sections which results in the actual killing of a human being:

a. Section 775.33(4).

b. Section 782.04(1) or (2).

c. Section 782.09.

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

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

(3) REFERRAL FOR CONSIDERATION.—

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

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

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

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

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as potentially eligible for release pursuant to this section.

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

(4) DETERMINATION OF RELEASE.—

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

(b) A majority of the panel members must agree that the inmate is appropriate for release pursuant to this section.

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

(5) RELEASE CONDITIONS.—

(a) An inmate granted release pursuant to this section is released for a period equal to the length of time remaining on

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his or her term of imprisonment on the date the release is granted. The aging releasee must comply with all reasonable conditions of release the department imposes, which must include, at a minimum:

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

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

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

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

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

(6) REVOCATION HEARING AND RECOMMITMENT.—

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

2. If the basis of the violation of release conditions is related to a new violation of law, the aging releasee must be detained without bond until his or her initial appearance, at

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which a judicial determination of probable cause is made. If the judge determines that there was no probable cause for the arrest, the aging releasee may be released. If the judge determines that there was probable cause for the arrest, the judge's determination also constitutes reasonable grounds to believe that the offender violated the conditions of the release.

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

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

5. An aging releasee whose release has been revoked pursuant to this paragraph may have the revocation reviewed by the department's general counsel, who must make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of the revocation of conditional aging inmate release pursuant to this paragraph. The decision of the secretary is a final

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175 administrative decision not subject to appeal.

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

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

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

184 3. The releasee's right to be heard in person.

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

187 5. The releasee's right to produce documents on his or her  
188 own behalf.

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

192 7. The releasee's right to waive the hearing.

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

195 Section 2. This act shall take effect July 1, 2020.

# Racial/Ethnic Impact Statement

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## SB574

Prepared by  
Florida State University  
College of Criminology & Criminal Justice

For  
The Florida Senate Criminal Justice Committee



## Executive Summary

SB574 creates a conditional aging inmate release program within the Florida Department of Corrections (FDC). The program will consist of a panel of at least three people, appointed by the Secretary of the FDC, to determine eligible inmates who are appropriate for such a release, supervise the released inmates, and conduct revocation hearings. Seventeen states and the federal government offer conditional age-based release programs. Although these programs have not been assessed for any potential racial/ethnic disparities, evaluations have frequently found that far fewer inmates than those who are eligible are granted release. Using data from the FDC, it was found that a small percentage of Florida's inmate population would be eligible for conditional release consideration. Of the aging inmate population, a greater proportion of Black inmates (versus White and Hispanic inmates) would meet the eligibility criteria in the first five years of the program. The percent of eligible Black inmates will subsequently decline below that of White and Hispanic inmates by 2025. Eligibility rates among Hispanic inmates will begin to increase steadily after 2023 and will surpass the number of eligible Black and White inmates by 2025.

## Bill Summary

SB574 creates a conditional aging inmate release program within the Florida Department of Corrections (FDC) for the purpose of determining eligible inmates who are appropriate for such release, supervising the released inmates, and conducting revocation hearings. A panel of at least three people appointed by the Secretary of the FDC or their designee would conduct the release determination and revocation hearings. Inmates would be eligible for consideration of release when they have reached 70 years of age and served at least 10 years of their imprisonment term. Offenders who had been convicted of killing a human being or convicted of an offense(s) that requires registration as a sexual offender would not be eligible for conditional release. The program would take effect on July 1, 2020.

## Comparable Legislation and Prior Research

Seventeen states and the federal government offer conditional age-based inmate release programs, commonly referred to as "geriatric parole" or "geriatric release." Most states with these programs have minimum age requirements in order for an inmate to be eligible for release consideration. The states that do not have specified age requirements consider inmates to be eligible for release if they experience age-related declines in physical ability. The following is a description of programs in three states (chosen to show variation in these programs) and the federal government.

The United States federal government maintains a geriatric parole program (28 CFR § 2.78) for inmates who are 65 or older and have served 10 years or 75% of their sentence. The legislation requires a commission to consider for release inmates who are 65 or older, have chronic infirmity, illness, or disease, and are low risk. The only crimes that are precluded from conditional release eligibility are first-degree murder and crimes committed while armed. In 2015, the United States Department of Justice Office of the Inspector General found that two of the 855 inmates who requested to participate in the program had been released between 2013 and 2014 (Office of the Inspector General, 2015). The Inspector General concluded that the lack of clear guidelines for geriatric release, as well as some resistance to implementation by officials in the federal corrections system, resulted in the limited use of the program.

Georgia allows for geriatric parole when an inmate reaches 62 years old (Ga. Const, Art IV, Sec. II Paragraph II, (e)). Georgia does not require that a certain amount of the inmate's sentence be served prior to consideration for release. Inmates who have been sentenced to multiple life terms and those with sentences of death that were commuted to life are excluded from consideration. The decision to release an eligible inmate is determined by the Georgia State Board of Pardons and Parole, but the state assembly can vote to overturn any release decision.



Similar to Florida, Virginia has an 85% time served policy. Virginia allows for geriatric parole when an inmate is 60 years old and has served at least 10 years of their sentence, or is 65 years old and has served at least 5 years of their sentence (§ 53.1-40.01). Inmates convicted of a class 1 felony are not eligible for release consideration. The decision to release an aging inmate is determined by the state parole board; inmates must apply for consideration. In 2010, the Deputy Director of the Virginia Criminal Sentencing Commission found that only 12 inmates had been released under this law between 1995 and 2009 due to a lack of applications from inmates.

Washington does not have a fixed age requirement, but instead a requirement that the inmate be considered low-risk and be “physically incapacitated due to age.” The incapacitation must be separate from a medical condition that might qualify the inmate for release under the state’s compassionate release program (§9.94A.728). Persistent offenders, inmates serving life without parole, and inmates sentenced to death are excluded from the program. The state requires electronic monitoring of all prisoners released under this provision, unless the monitoring device would interfere with a needed medical device.

Geriatric release programs have not been evaluated for potential racial/ethnic disparity. Most of the research on these programs consists of implementation evaluations. The evaluations have identified a series of impediments in the implementation of correctional geriatric release programs, resulting in low usage. Specifically, despite numerous inmates who are eligible for release, in practice, very few are actually released.

## **Data and Methods for Racial/Ethnic Impact Forecast**

Individuals eligible for the proposed conditional aging inmate release program, as set forth in SB574, were identified using data provided by the FDC. Eligible inmates are those who have served at least 10 years of their sentence, are 70 years or older, and have not been convicted of an offense under s. 775.33(4), 782.04(1) or 782.04(2), and 782.09, F.S., or of a sex offense requiring registration.

The analyses involved two phases. The first phase was to identify all inmates who would be eligible for conditional release upon the initial passage of the legislation. The second phase was to identify all inmates who would become eligible 1, 2, 3, 4, and 5 years after the passage of the legislation. Each analysis provided the numbers of eligible inmates by race and ethnicity (White, Black, and Hispanic).

Only those inmates who are Black, White, and Hispanic were included in the analyses because the total number of inmates in other racial and ethnic groups was very small. Importantly, the analyses identified inmates who would be eligible, not necessarily those who would be released under the legislation, as release decisions would be made by the panel of individuals selected by the Secretary of the FDC.

## **Results**

If the conditional release program set forth in SB574 is enacted, on July 1, 2020, there will be 252 inmates eligible for conditional release. Table 1 shows the immediate impact that the program would have, by providing the total numbers of White, Black, and Hispanic inmates who would be over 70 and the number of those who would be eligible for conditional release (based upon number of years served and offense history) when the legislation would first take effect. The data show that a greater percentage of Black inmates would be eligible for conditional release.

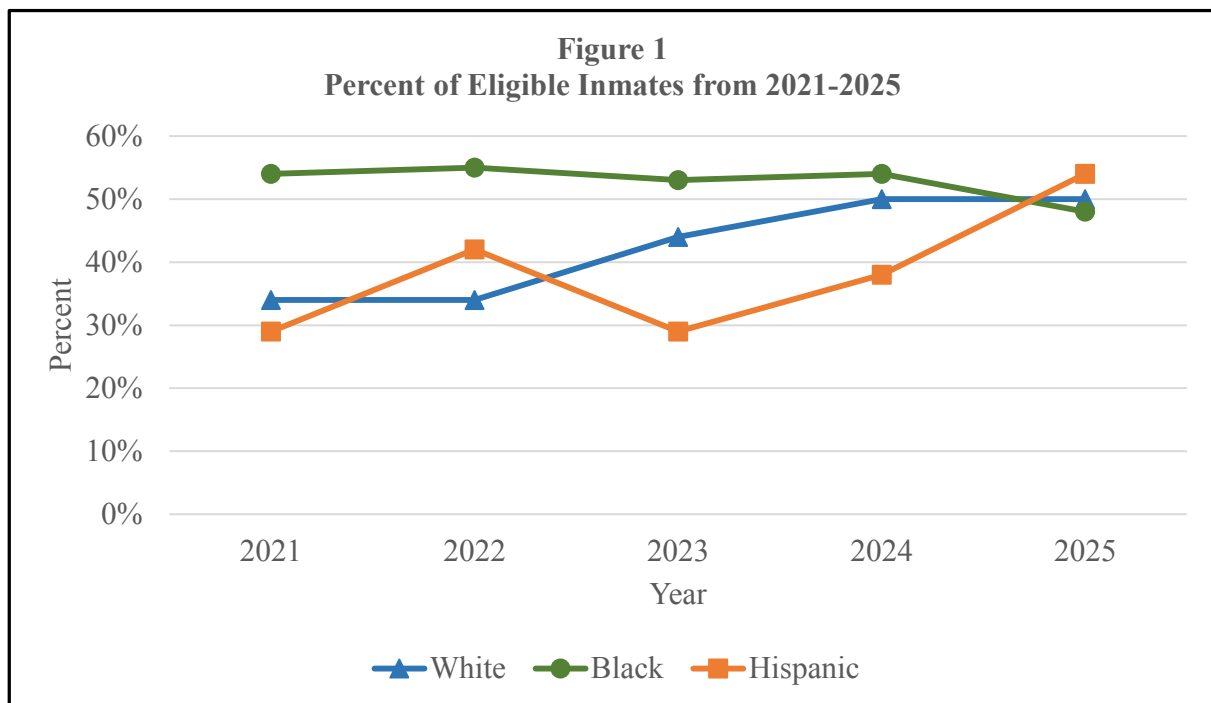
**Table 1**  
**Inmates Eligible for Conditional Release on July 1, 2020**

Race/Ethnicity	Total Number of Inmates Age 70 or Older by July 1, 2020	Number Eligible for Conditional Release	Percent Eligible for Conditional Release
White	1064	106	10.0%
Black	559	129	23.1%
Hispanic	221	17	7.7%

Table 2 and Figure 1 show the numbers of inmates who will become eligible for release in the five subsequent years, from 2021-2025. Of the aging inmate population, a greater proportion of Black inmates (versus White and Hispanic inmates) would meet the eligibility criteria in the first five years of the program. Eligibility rates among Hispanic inmates will begin to increase steadily after 2023 and will surpass the number of eligible Black and White inmates by 2025.

**Table 2**  
**Inmates Eligible for Conditional Release from 2021-2015**

Year of Prison Release	White		Black		Hispanic	
	Number	Percent	Number	Percent	Number	Percent
2021	45	34%	50	54%	7	29%
2022	47	34%	66	55%	11	42%
2023	67	44%	69	53%	8	29%
2024	89	50%	87	54%	11	38%
2025	102	50%	83	48%	29	54%



## **Racial/Ethnic Impact Statement for the Bill**

SB574 creates an aging inmate conditional release program in Florida's prison system. To be eligible, inmates must be at least 70 years old, have served at least 10 years of their sentence, and not have been convicted of homicide or sexual offenses requiring registration. A selected panel of individuals will make the final decision on whether an inmate will be released. The actual racial/ethnic impact of this program will depend upon its implementation and the release decisions made by the panel. However, among aging inmates, a greater proportion of Black inmates (versus Whites and Hispanics) will meet the eligibility criteria set forth in the proposed legislation during the first five years of its implementation. The percent of eligible Black inmates will subsequently decline below that of White and Hispanic inmates by 2025. The percent of eligible Hispanic inmates will increase after the fourth year of the program and will surpass the percent of eligible Black and White inmates in year six of the program.

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### **Contributors** **Racial/Ethnic Impact Statement** **SB574**

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**FLORIDA STATE UNIVERSITY**  
COLLEGE OF CRIMINOLOGY & CRIMINAL JUSTICE

## Appendix 1

Appendix 1: State Age and Sentence Requirements for Geriatric Release

State	Age Requirement	Time Served Requirement
Alabama	55	Not specified
Alaska	60	At least 10 years
California	60	Minimum 25 years
Georgia	62	Not specified
Louisiana	60	At least 10 years
Maryland	60	At least 15 years
Mississippi	60	At least 10 years or, for certain serious offenses, at least one-fourth of sentence
Missouri	None	Not specified
New Mexico	65	Not specified
North Carolina	65	Not specified
Oklahoma	60	10 years or one-third of sentence, whichever is shorter
Oregon	None	Not specified
South Dakota	65	At least 10 years
Utah	None	Not specified
Virginia	65	At least five years
	60	At least 10 years
Washington	None	Not specified
Wisconsin	65	At least five years
	60	At least 10 years

# 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



Peter C. Debelius-Enemark, M.D., Chair  
Katherine E. Langston, M.D.  
Kris-Tena Albers, APRN, MN  
Richard Huot, DDS

STATE OF FLORIDA  
CORRECTIONAL MEDICAL AUTHORITY

Leigh-Ann Cuddy, MS  
Lee B. Chaykin  
Ryan D. Beaty

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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# 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.<sup>1</sup>

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."<sup>2</sup>

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.

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<sup>1</sup> Celestineo V. Singletary. United States District Court. 30 Mar. 1993. Print.

<sup>2</sup> 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

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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

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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

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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**

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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**

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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."<sup>3</sup> 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."<sup>4</sup>

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."<sup>5</sup>

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."<sup>6</sup>

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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<sup>3</sup> Office of the Chief Inspector General. (2018). *Audit of the Correctional Medical Authority* (Audit Report Number A-17/18-001), pp.

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<sup>4</sup> Ibid., 4.

<sup>5</sup> Ibid., 4.

<sup>6</sup> Ibid., 5.

## DISABILITY RIGHTS FLORIDA SETTLEMENT AGREEMENT

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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

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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 (NWFR), and Lake CI) were surveyed in FY 2014-15; two reception centers (NWFR and CFRC); five institutions with main and annex units (FSP, Taylor CI, Wakulla CI, CFRC, and NWFR), 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<sup>7</sup>,

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<sup>7</sup> 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 ongoing 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
								<b>332</b>	<b>280</b>

## 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

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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 infirmiry 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.**

**\*\*\*Infirmiry 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	Infirmiry 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

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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 NWFR-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
<b>Total Findings</b>	<b>9</b>	<b>3</b>	<b>4</b>	<b>11</b>	<b>11</b>	<b>0</b>	<b>13</b>	<b>82</b>	<b>50</b>	<b>3</b>	<b>58</b>	<b>13</b>	<b>23</b>	<b>280</b>

## **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	<ul style="list-style-type: none"> <li>• Inmates were not seen timely according to M-grade status (Chronic Illness Clinic)</li> <li>• There was no evidence of vaccinations or refusals (Gastroenterology and Immunity Clinics)</li> <li>• There was no evidence of fundoscopic examinations (Endocrine Clinic)</li> <li>• There was no evidence that inmates with HgbA1c over 8.0 were seen at least every three months (Endocrine Clinic)</li> <li>• There was no evidence that the control of the disease was documented at each clinic visit (Miscellaneous Clinic)</li> <li>• There was no evidence of referrals to a specialist for more in-depth treatment, when indicated (Miscellaneous Clinic)</li> <li>• There was no evidence examinations were appropriate to the diagnosis and sufficient to assess patients' current status (Miscellaneous Clinic)</li> <li>• Seizures were not classified by nomenclature (Neurology Clinic)</li> <li>• Abnormal labs were not addressed in a timely manner (Neurology Clinic)</li> <li>• There was no evidence reactive airway diseases were classified as mild, moderate, or severe (Respiratory Clinic)</li> <li>• There was no evidence nursing staff provided monthly follow-up therapy in the Tuberculosis Clinic (Tuberculosis Clinic)</li> <li>• Inmates were not given the correct doses of tuberculosis medication (Tuberculosis Clinic)</li> </ul>
Consultation Requests	<ul style="list-style-type: none"> <li>• New diagnoses were not reflected on problem lists</li> <li>• There was no evidence consultant's recommendations were incorporated into treatment plans</li> <li>• The Consultation Appointment Log was incomplete</li> </ul>
Dental Review	<ul style="list-style-type: none"> <li>• Dental equipment was not in working order or not accessible</li> <li>• There was no evidence of complete and accurate charting of dental findings</li> <li>• There was no evidence of accurate diagnoses and appropriate treatment plans</li> <li>• There was no evidence that consultation or specialty services were requested in a reasonable timeframe</li> </ul>
Emergency Care	<ul style="list-style-type: none"> <li>• There was no evidence follow-up appointments with higher level clinicians were made in a timely manner</li> </ul>
Infirmiry Care	<ul style="list-style-type: none"> <li>• Physician's orders were not implemented or implemented incorrectly</li> <li>• Discharge notes for outpatient infirmiry admissions were missing</li> <li>• There was no evidence nursing evaluations were completed at least once every eight hours</li> <li>• There was no evidence of clinician weekend telephone rounds</li> <li>• Clinician discharge summaries were not completed within 72 hours of discharge</li> </ul>
Intra-system Transfers	<ul style="list-style-type: none"> <li>• Clinicians did not review intra-system transfer forms within seven days of arrival</li> </ul>
Medication Administration	<ul style="list-style-type: none"> <li>• There was no evidence of corresponding notes for medication orders in the medical record from an advanced level provider</li> <li>• MARS did not match the medication order</li> </ul>
Periodic Screenings	<ul style="list-style-type: none"> <li>• There was no evidence that all required diagnostic tests were performed prior to screening</li> <li>• Referrals were not made when indicated</li> </ul>
Sick Call	<ul style="list-style-type: none"> <li>• There was no evidence that follow-up visits occurred as indicated in a timely manner</li> </ul>

**Table 9. Mental Health Survey: System-Wide Trends**

Assessment Area	Mental Health Survey System-Wide Areas of Concern
Discharge Planning	<ul style="list-style-type: none"> <li>• Aftercare planning was not addressed on the Individualized Service Plan (ISP) within 180 days of expiration of sentence (EOS)</li> <li>• Consent to release information for continuity of care was missing or incomplete</li> </ul>
Inpatient Mental Health Services	<ul style="list-style-type: none"> <li>• No trends identified</li> </ul>
Inpatient Psychiatric Medication Practices	<ul style="list-style-type: none"> <li>• No trends identified</li> </ul>
Mental Health Inmate Requests	<ul style="list-style-type: none"> <li>• Interview or referral indicated in request response did not occur</li> </ul>
Psychiatric Restraints	<ul style="list-style-type: none"> <li>• No findings noted</li> </ul>
Psychological Emergencies	<ul style="list-style-type: none"> <li>• Following psychological emergency, there was no evidence of follow-up</li> </ul>
Outpatient Mental Health Services	<ul style="list-style-type: none"> <li>• Mental health screening evaluations were incomplete</li> <li>• Bio-psychosocial Assessments (BPSA) were not approved by all members of the multidisciplinary services team (MDST) within 30 days of initiating treatment</li> <li>• Mental health services were not initiated within 30 days of receiving an S2 or S3 mental health grade</li> <li>• ISPs did not specify the types of interventions, frequency of interventions, and/or the staff responsible for providing interventions</li> <li>• ISPs were not signed by all members of the MDST and/or inmate, or inmate refusal was not documented</li> <li>• ISPs were not reviewed or revised at the 180-day interval</li> <li>• Mental health problems were not recorded on the problem list</li> <li>• There was no evidence that inmates received mental health interventions and services described on the ISP</li> <li>• There was no evidence that counseling (individual or group) was offered and provided at least once every 90 days</li> <li>• There was no evidence that case management was provided at least every 90 days</li> </ul>
Outpatient Psychiatric Medication Practices	<ul style="list-style-type: none"> <li>• Initial laboratory tests were not ordered</li> <li>• Abnormal labs were not followed-up with appropriate treatment and/or referral in a timely manner</li> <li>• Follow-up labs were not completed</li> <li>• Inmates did not receive medications as prescribed and/or there was no documentation of refusal</li> <li>• There was no evidence nursing staff met with inmates who refused medication for two consecutive days</li> <li>• A "Refusal of Health Care Services" form was not signed after three consecutive medication refusals or five refusals in one month</li> <li>• Follow-up psychiatric contacts were not conducted at appropriate intervals</li> <li>• AIMS were not administered within the appropriate time frame</li> </ul>
Reception Process	<ul style="list-style-type: none"> <li>• Intelligence testing was not completed</li> </ul>
Self-Injury/ Suicide Prevention	<ul style="list-style-type: none"> <li>• Emergency evaluations were not completed by mental health or nursing staff prior to admissions</li> <li>• Guidelines for SHOS management were not observed</li> <li>• There was no evidence that inmates were observed at the frequency ordered by clinicians</li> <li>• "Mental Health Daily Nursing Evaluations" were not completed once per shift, as required</li> <li>• Daily counseling by mental health staff did not occur</li> <li>• There was no evidence that mental health staff provided post-discharge follow-up within seven days</li> </ul>
Special Housing	<ul style="list-style-type: none"> <li>• "Special Housing Health Appraisals" were not completed</li> <li>• Mental status exams were not completed within the required timeframe</li> </ul>
Use of Force	<ul style="list-style-type: none"> <li>• There was no evidence that post use of force evaluations were conducted as required</li> <li>• Following use of force episodes, there was no evidence of a referral to mental health from physical health staff</li> <li>• Untimely mental health assessments following use of force episodes</li> </ul>

## THREE-YEAR INSTITUTIONAL SURVEY COMPARISON

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	Infirmity 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	Infirmiry 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
<b>Total Findings</b>	<b>7</b>	<b>3</b>	<b>4</b>	<b>11</b>	<b>10</b>	<b>0</b>	<b>13</b>	<b>81</b>	<b>36</b>	<b>3</b>	<b>55</b>	<b>13</b>	<b>21</b>	<b>257</b>

## **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.

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.<sup>8</sup>

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.<sup>9</sup> 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."<sup>10</sup> 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.<sup>11</sup>

<sup>8</sup> 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.

<sup>9</sup> *Ibid.*, 1151.

<sup>10</sup> Florida Department of Corrections Report, "Elderly Inmates, 2014-2015 Agency Annual Report." Web. 2 Nov. 2017.

<sup>11</sup> 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%
<b>Total</b>	<b>27,916</b>	<b>24,322</b>	<b>3,594</b>	<b>13%</b>
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%
<b>Total</b>	<b>27,916</b>	<b>24,322</b>	<b>3,594</b>	<b>13%</b>
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%		
<b>Total</b>	<b>3,594</b>			

## 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%
<b>Total</b>	<b>96,253</b>	<b>72,915</b>	<b>23,338</b>	<b>24%</b>
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%
<b>Total</b>	<b>96,253</b>	<b>72,915</b>	<b>23,338</b>	<b>24%</b>
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%		
<b>Total</b>	<b>23,338</b>			



## 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	<b>15,124</b>	<b>65%</b>
Property	2,999	756	58	<b>3,813</b>	<b>16%</b>
Drugs	2,021	579	74	<b>2,674</b>	<b>11%</b>
Other	1,268	382	77	<b>1,727</b>	<b>7%</b>

## 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.<sup>12</sup>

### 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.

<sup>12</sup> 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	<b>14,848</b>	<b>55%</b>
Endocrine	9,027	399	4,790	<b>5,189</b>	<b>57%</b>
Gastrointestinal	9,794	259	3,965	<b>4,224</b>	<b>43%</b>
Immunity	2,728	71	1,145	<b>1,216</b>	<b>45%</b>
Renal	6	0	6	<b>6</b>	<b>100%</b>
Miscellaneous	2,523	96	1,349	<b>1,445</b>	<b>57%</b>
Neurology	3,065	62	785	<b>847</b>	<b>28%</b>
Oncology	791	27	572	<b>599</b>	<b>76%</b>
Respiratory	7,237	285	2,596	<b>2,881</b>	<b>40%</b>
Tuberculosis	1,387	12	306	<b>318</b>	<b>23%</b>
<b>Total</b>	<b>63,729</b>	<b>2,122</b>	<b>29,451</b>	<b>31,573</b>	<b>50%</b>

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	<b>29,365</b>	<b>57%</b>
Endocrine	18,550	740	10,244	<b>10,984</b>	<b>59%</b>
Gastrointestinal	16,644	430	7,625	<b>8,055</b>	<b>48%</b>
Immunity	8,578	221	3,744	<b>3,965</b>	<b>46%</b>
Renal	11	0	11	<b>11</b>	<b>100%</b>
Miscellaneous	4,542	152	2,607	<b>2,759</b>	<b>61%</b>
Neurology	5,667	91	1,594	<b>1,685</b>	<b>30%</b>
Oncology	1,666	45	1,275	<b>1,320</b>	<b>79%</b>
Respiratory	13,136	490	5,268	<b>5,758</b>	<b>44%</b>
Tuberculosis	6,901	68	1,544	<b>1,612</b>	<b>23%</b>
<b>Total</b>	<b>127,102</b>	<b>3,872</b>	<b>61,642</b>	<b>65,514</b>	<b>52%</b>

## 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.<sup>13</sup>

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%
<b>Total</b>	<b>1,815</b>	<b>2,514</b>	<b>4,329</b>	<b>58%</b>

**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%
<b>Total</b>	<b>12,926</b>	<b>10,776</b>	<b>23,702</b>	

<sup>13</sup> 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.

## **SB 574 – Aging Inmate Conditional Release**

This bill creates s. 945.0912, F.S., establishing “a conditional aging inmate release program within the department for the purpose of determining eligible inmates who are appropriate for such release, supervising the released inmates, and conducting revocation hearings as provided for in this section.” An inmate becomes eligible for this program when the inmate “has reached 70 years of age and has served at least 10 years on his or her term of imprisonment.” However, an inmate may not be considered for release through the program “if he or she has ever been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent for committing” a list of offenses involving the killing of a human being or serving as predicates to registration as a sexual offender. Furthermore, an inmate who is eligible for consideration as a candidate for conditional aging inmate release must be considered for this program.

Per DOC, currently there are 160 inmates potentially eligible under the criteria outlined in the bill. However, given the multiple steps involving both the consideration of additional evidence/investigations and the right of victims to be heard, as well as an initial majority decision by a panel and the final decision by the secretary, it is not known how many of the potentially eligible inmates would be part of this program.

**EDR PROPOSED ESTIMATE: Negative Indeterminate**

**Requested by: Senate**



## 2020 AGENCY LEGISLATIVE BILL ANALYSIS

### AGENCY: Department of Corrections

<b><u>BILL INFORMATION</u></b>	
<b>BILL NUMBER:</b>	<u>SB 574</u>
<b>BILL TITLE:</b>	<u>Aging Inmate Conditional Release</u>
<b>BILL SPONSOR:</b>	Senator Brandes
<b>EFFECTIVE DATE:</b>	<u>July 1, 2020</u>

<b><u>COMMITTEES OF REFERENCE</u></b>
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

<b><u>CURRENT COMMITTEE</u></b>

<b><u>SIMILAR BILLS</u></b>	
<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

<b><u>IDENTICAL BILLS</u></b>	
<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

<b>Is this bill part of an agency package?</b>
No.

<b><u>BILL ANALYSIS INFORMATION</u></b>	
<b>DATE OF ANALYSIS:</b>	December 6, 2019
<b>LEAD AGENCY ANALYST:</b>	Michelle Palmer
<b>ADDITIONAL ANALYST(S):</b>	Mary Le, Laura Carter, Shana Lasseter, Sibyle Walker
<b>LEGAL ANALYST:</b>	Philip Fowler
<b>FISCAL ANALYST:</b>	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 <input type="checkbox"/> N <input type="checkbox"/>
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:	
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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:	<p>If this bill is passed, the overall inmate and community supervision population fiscal impact is indeterminate.</p> <p>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.</p> <p>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.</p> <p>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.</p>
Does the legislation contain a State Government appropriation?	No

If yes, was this appropriated last year?	
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**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.
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## 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.	
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## ADDITIONAL COMMENTS

N/A.

## LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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</li> </ul>
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	<p>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.</p> <ul style="list-style-type: none"> <li>• 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. <i>Sarasota Citizens for Responsible Government v. City of Sarasota</i>, 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.</li> <li>• Subsection 5 (lines 114-137) – this section establishes release conditions for inmates on CAR. Lines 131 through 132 contain the phrase “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.</li> <li>• Subsection 6 (138-192) – this section sets forth the process by which revocation hearings occur. The US Supreme Court considered in <u>Morrissey v. Brewer</u>, 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 as to the</li> </ul>
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	<p>evidence relied on and reasons for revoking the conditional release. While some of the <u>Morrissey</u> 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.</p>
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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

12/10/19  
Meeting Date

574  
Bill Number (if applicable)

Topic Aging Inmate Conditional Release

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Policy Director

Address P.O. Box 10788  
Street

Phone 334-224-4309

Tallahassee FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Southern Poverty Law Action Fund

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.***

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/19  
Meeting Date

579  
Bill Number (if applicable)

Topic Aging Inmate Conditional Release

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 S. Monroe St.  
Street

Phone 850-425-1344

Tallahassee FL 32301  
City State Zip

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU FL

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)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

12/10/19  
Meeting Date

~~574~~ 574  
Bill Number (if applicable)

Topic Aging Inmate

Amendment Barcode (if applicable)

Name Eda V. Eskamani

Job Title \_\_\_\_\_

Address 126 N. Mills

Phone \_\_\_\_\_

Street

Orlando

FL

32801

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing New Florida Majority + Organize Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

12/10/19.  
Meeting Date

574  
Bill Number (if applicable)

Topic CJ

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 1005 Middlebrook Cir.

Phone \_\_\_\_\_

Street

City

State

Zip

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

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12-10-19

Meeting Date

574

Bill Number (if applicable)

Topic

Cond. Release

Amendment Barcode (if applicable)

Name

Greg Newburn

Job Title

Fla. Director

Address

PO Box 142933

Phone

352.682.2542

Street

Gainesville

FL

32614

City

State

Zip

Email

gnewburn@fam.org

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

FAMM

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)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

12/10/2019

*Meeting Date*

574

*Bill Number (if applicable)*

Topic Criminal Justice

*Amendment Barcode (if applicable)*

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 North Duval Street

Phone 850-322-9941

*Street*

Tallahassee

FL

32301

Email snuzzo@jamesmadison.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The James Madison Institute

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/19

Meeting Date

574

Bill Number (if applicable)

Topic Aged Inmates Early Release

Amendment Barcode (if applicable)

Name Gene Greeson

Job Title Director - Men of the Word Prison Ministry

Address 10819 109<sup>th</sup> Street North

Phone 727-580-8819

Largo, FL 33778

City

State

Zip

Email gene.greeson@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Group of Volunteers

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/19

Meeting Date

574

Bill Number (if applicable)

Topic Aging Inmate Release

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

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Phone 850 488 6850

Tallahassee, FL 32301

Email ndaniels@flpda.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)





The Florida Senate

## Committee Agenda Request

**To:** Senator Keith Perry  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** November 1, 2019

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I respectfully request that **Senate Bill #574**, relating to **Aging Inmate Conditional Release**, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 24

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 684

INTRODUCER: Criminal Justice Committee and Senator Pizzo and others

SUBJECT: Expunction of Criminal History Records

DATE: December 10, 2019 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	<b>Fav/CS</b>
2.			JU	
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 684 amends s. 943.0585, F.S., to permit a person who has had a prior expunction granted for an offense that was committed when he or she was a minor to have another eligible record expunged. If the prior expunction was for an offense in which the minor was charged as an adult, the person is not eligible for a subsequent expunction. This bill also provides that the record is exempt from the 10 year sealing requirement.

This bill may have a negative impact on the Florida Department of Law Enforcement and the courts. See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2020.

**II. Present Situation:**

There are multiple types of relief that may be sought in order to seal or expunge a criminal history record. The public will not have access to a criminal history record that has been sealed or expunged. Certain government or related entities have access to records even after they are sealed. Most of the entities who have access to sealed records also have access to see whether a

person has had an expunction. However, those entities do not have access to the expunged criminal history record without a court order.<sup>1</sup>

### **Sealing and Expunction of Criminal History Records**

A criminal history record includes any non-judicial record maintained by a criminal justice agency<sup>2</sup> that contains criminal history information.<sup>3</sup> Criminal history information is information collected by criminal justice agencies and consists of identifiable descriptions of individuals and notations of arrests, detentions, indictments, informations, other formal criminal charges, and criminal dispositions.<sup>4</sup>

#### ***Sealing***

When a criminal history record is sealed, it is preserved so that it is secure and inaccessible to any person who does not have a legal right to access the record or the information contained within the record.<sup>5</sup> A court may order a criminal history record sealed,<sup>6</sup> rendering it confidential and exempt from Florida's public records laws.<sup>7</sup> Only the following entities may access a sealed criminal history record:

- The subject of the record;
- His or her attorney;
- Criminal justice agencies for criminal justice purposes;
- Judges in the state courts system for assisting in their case-related decision-making responsibilities; and
- Certain enumerated entities<sup>8</sup> for licensing, access authorization, and employment purposes.<sup>9</sup>

To seal a record, a person must first apply to the Florida Department of Law Enforcement (FDLE) for a certificate of eligibility, which the FDLE must issue to a person who:

- Has submitted a certified copy of the charge disposition he or she seeks to seal;
- Is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses;

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<sup>1</sup> *Florida Department of Law Enforcement Frequently Asked Questions*, Florida Department of Law Enforcement, available at [http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Frequently-Asked-Questions#Sealed\\_vs\\_Expunged](http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Frequently-Asked-Questions#Sealed_vs_Expunged) (last visited November 11, 2019).

<sup>2</sup> Section 943.045(11), F.S., provides that criminal justice agencies include the court, the Florida Department of Law Enforcement (FDLE), the Department of Juvenile Justice, components of the Department of Children and Families, and other governmental agencies that administrate criminal justice.

<sup>3</sup> Section 943.045(6), F.S.

<sup>4</sup> Section 943.045(5), F.S.

<sup>5</sup> Section 943.045(19), F.S.

<sup>6</sup> Section 943.059, F.S.

<sup>7</sup> Sections 943.059(6) and 119.07(1), F.S.; Art. I, s. 24(a), Fla. Const.

<sup>8</sup> Section 943.059(6)(b), F.S., provides that enumerated entities include criminal justice agencies, The Florida Bar, the Department of Children and Families, the 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, the Department of Juvenile Justice, the Department of Education, a district school board, a university laboratory school, a charter school, a private or parochial school, a local governmental entity that licenses child care facilities, the Division of Insurance Agent and Agency Services within the Department of Financial Services, and the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services.

<sup>9</sup> Sections 943.059(6)(a), F.S.

- Has never, prior to filing the application for a certificate of eligibility, been either:
  - Adjudicated guilty of any criminal offense or comparable ordinance violation; or
  - Adjudicated delinquent of any felony or certain enumerated misdemeanors as a juvenile.
- Has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains;
- Has never secured a prior sealing or expunction; and
- Is no longer under court supervision related to the disposition of the arrest or alleged criminal activity to which the petition to seal pertains.<sup>10</sup>

Upon receiving a certificate of eligibility from the FDLE, a person must petition the court to seal the record.<sup>11</sup> A complete petition contains both a valid certificate of eligibility, issued within the previous 12 months, and a sworn statement from the petitioner attesting to his or her eligibility.<sup>12</sup> It is solely within the court's discretion to grant or deny a petition to seal.<sup>13</sup>

A criminal history record is not eligible for court-ordered sealing if it relates to:

- Sexual misconduct (Sections 393.135, 394.4593, and 916.1075, F.S.).
- Illegal use of explosives (Chapter 552, F.S.).
- Terrorism (Section 775.30, F.S.).
- Murder (Sections 782.04, 782.065, and 782.09, F.S.).
- Manslaughter or homicide (Sections 782.07, 782.071, and 782.072, F.S.).
- Assault or battery of one family or household member by another family or household member<sup>14</sup> (Sections 784.011 and 784.03, F.S.).
- Aggravated assault (Section 784.021, F.S.).
- Felony battery, domestic battery by strangulation, or aggravated battery (Sections 784.03, 784.041, and 784.045, F.S.).
- Stalking or aggravated stalking (Section 784.048, F.S.).
- Luring or enticing a child (Section 787.025, F.S.).
- Human trafficking (Section 787.06, F.S.).
- Kidnapping or false imprisonment (Sections 787.01 and 787.02, F.S.).
- Sexual battery, unlawful sexual activity with a minor, or female genital mutilation (Chapter 794, F.S.).
- Procuring a person under the age of 18 for prostitution (Section 796.03, F.S. (2013) (repealed by ch. 2014-160, s. 10, L.O.F.)).
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age (Section 800.04, F.S.).
- Arson (Section 806.01, F.S.).
- Burglary of a dwelling (Section 810.02, F.S.).

<sup>10</sup> Section 943.059(2), F.S.

<sup>11</sup> Section 943.059(3), F.S.

<sup>12</sup> Section 943.059(2)(b), F.S.

<sup>13</sup> Section 943.059, F.S.

<sup>14</sup> Section 741.28(3), F.S., defines family or household member as spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

- Voyeurism or video voyeurism (Sections 810.14 and 810.145, F.S.).
- Robbery or robbery by sudden snatching (Sections 812.13 and 812.131, F.S.).
- Carjacking (Section 812.133, F.S.).
- Home invasion robbery (Section 812.135, F.S.).
- A violation of the Florida Communications Fraud Act (Section 817.034, F.S.).
- Abuse of an elderly person or disabled adult or aggravated abuse of an elderly person or disabled adult (Section 825.102, F.S.).
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person (Section 825.1025, F.S.).
- Child abuse or aggravated child abuse (Section 827.03, F.S.).
- Sexual performance by a child (Section 827.071, F.S.).
- Offenses by public officers and employees (Chapter 839, F.S.).
- Certain acts in connection with obscenity (Section 847.0133, F.S.).
- A violation of the Computer Pornography and Child Exploitation Prevention Act (Section 893.0135, F.S.).
- Selling or buying of minors (Section 847.0145, F.S.).
- Aircraft piracy (Section 860.16, F.S.).
- Manufacturing a controlled substance (Chapter 893, F.S.).
- Drug trafficking (Section 893.135, F.S.).
- Any violation specified as a predicate offense for registration as a sexual predator or sexual offender. (Sections 775.21 and 943.0535, F.S.).

Upon sealing of a criminal history record, the subject of the record may lawfully deny or fail to acknowledge the arrests covered by the sealed record, with exceptions for certain state employment positions, professional licensing purposes, purchasing a firearm, applying for a concealed weapons permit, seeking expunction, or if the subject is a defendant in a criminal prosecution.<sup>15</sup>

### **Expunction**

A person may have his or her criminal history record expunged under certain circumstances.<sup>16</sup> When a record is expunged, the criminal justice agencies possessing such record must physically destroy or obliterate it. The FDLE maintains a copy of the record to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.<sup>17</sup> The criminal history record retained by the FDLE is confidential and exempt.<sup>18</sup> Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.<sup>19</sup>

<sup>15</sup> Sections 943.059(6)(b), F.S.

<sup>16</sup> Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

<sup>17</sup> Section 943.045(16), F.S.

<sup>18</sup> Section 943.0585(6)(a), F.S.

<sup>19</sup> Section 943.0585(6), F.S.

### ***Court-Ordered Expunction***

A court, in its discretion, may order the expunction of a person's criminal history record if the FDLE issues the person a certificate of eligibility for expunction.<sup>20</sup> The FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting all criteria.<sup>21</sup> Generally, a person is eligible for expunction if:

- An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record.
- An indictment, information, or other charging document was filed or issued in the case giving rise to the criminal history record, but was dismissed or nolle prosequi by the State, was dismissed by the court, a judgment of acquittal was rendered, or a verdict of not guilty was rendered.
- The person is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses.
- The person has never, prior to filing the application for a certificate of eligibility, been either:
  - Adjudicated guilty of any criminal offense or comparable ordinance violation; or
  - Adjudicated delinquent of any felony or certain enumerated misdemeanors as a juvenile.
- The person has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains;
- The person has never secured a prior sealing or expunction, unless:
  - Expunction is sought of a criminal history record previously sealed for at least 10 years; and
  - The record was sealed because adjudication was withheld, or because a judgment of acquittal or verdict of not guilty was rendered.<sup>22</sup>

### ***Other Types of Expunction***

Other types of expunction include:

- Lawful self-defense expunction.<sup>23</sup>
- Human trafficking victim expunction.<sup>24</sup>
- Automatic Juvenile expunction.<sup>25</sup>
- Early juvenile expunction.<sup>26</sup>
- Administrative Expunction<sup>27</sup>
- Juvenile diversion program expunction.<sup>28</sup>

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<sup>20</sup> Section 943.0585(4), F.S.

<sup>21</sup> Section 943.0585(2), F.S.

<sup>22</sup> Section 943.0585(1), F.S.

<sup>23</sup> Section 943.0578, F.S.

<sup>24</sup> Section 943.0583, F.S.

<sup>25</sup> Section 943.0515(1)(b)1., F.S.

<sup>26</sup> Section 943.0515(1)(b)2., F.S.

<sup>27</sup> Section 943.0581, F.S.

<sup>28</sup> Section 943.0582, F.S.

**III. Effect of Proposed Changes:**

The bill amends s. 943.0585, F.S., to permit a person who has had a prior expunction granted for an offense that was committed when he or she was a minor to have another eligible record expunged. If the prior expunction was for an offense in which the minor was charged as an adult, the person is not eligible for a subsequent expunction. This bill also provides that the record is exempt from the 10 year sealing requirement.

This 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:**

The FDLE reports that there are currently 32,793 individuals with criminal records who are under 18 years of age that could receive a court ordered expunction as a minor, who have not previously received a court ordered sealing or expunction. The FDLE estimates that if ten percent of those individuals apply for a Certificate of Eligibility, the increase in applicants would require seven additional FTE positions. Specifically, the FDLE reports

it would need one Operations and Management Consultant Manger, one Criminal Justice Information Consultant II, one Criminal Justice Consultant I, three Criminal Justice Information Analyst II's and one Criminal Justice Information Analyst I, totaling \$480,734 (\$453,469 recurring). Additionally the FDLE reports that it will need additional office space and changes in the CCH workflows including the addition of new fields and notification templates. The FDLE estimates the technology cost will total approximately \$120,000.<sup>29</sup>

According to the FDLE, the total fiscal impact will be \$600,734 (year one) and \$453,469 (recurring).<sup>30</sup>

The courts may also see an increase in requests for court ordered expunctions for those who would have been ineligible due to a previous expunction that was granted when he or she was a minor. Therefore, the bill may have a negative indeterminate fiscal impact on the courts.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 943.0585 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Criminal Justice on December 10, 2019:**

The committee substitute permits a person who has had a prior expunction granted for an offense that was committed when he or she was a minor to have another eligible record expunged. If the prior expunction was for an offense in which the minor was charged as an adult, the person is not eligible for a subsequent expunction.

- B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>29</sup> Florida Department of Law Enforcement, *2020 Agency Analysis of SB 684* (November 27, 2019), at 3.

<sup>30</sup> *Id.*





816426

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/10/2019	.	
	.	
	.	
	.	

---

The Committee on Criminal Justice (Pizzo) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 70 - 74  
and insert:

2. The prior expunction was granted for a criminal history record for an offense that was committed when he or she was a minor and the record is otherwise eligible for expunction. This subparagraph does not apply when the prior expunction was for an offense in which the minor was charged as an adult. The requirement for the record to have previously been sealed for a



816426

minimum of 10 years under paragraph (h) does not apply to this  
subparagraph.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 4 - 7

and insert:

expanding an exception to an eligibility requirement  
for expunction of a criminal history record to allow a  
prior expunction of a criminal history record granted  
for offenses committed when the person was a minor;  
providing applicability;

By Senator Pizzo

38-00979-20

2020684\_\_

1 A bill to be entitled  
 2 An act relating to expunction of criminal history  
 3 records; reenacting and amending s. 943.0585, F.S.;  
 4 expanding an exception to an eligibility requirement  
 5 for expunction of a criminal history record to allow  
 6 prior expunctions of criminal history records granted  
 7 when the person was a minor; providing applicability;  
 8 providing an effective date.  
 9  
 10 Be It Enacted by the Legislature of the State of Florida:  
 11  
 12 Section 1. Subsection (1) of section 943.0585, Florida  
 13 Statutes, is amended, and paragraph (a) of subsection (2) and  
 14 subsection (3) of that section are reenacted, to read:  
 15 943.0585 Court-ordered expunction of criminal history  
 16 records.—  
 17 (1) ELIGIBILITY.—A person is eligible to petition a court  
 18 to expunge a criminal history record if:  
 19 (a) An indictment, information, or other charging document  
 20 was not filed or issued in the case giving rise to the criminal  
 21 history record.  
 22 (b) An indictment, information, or other charging document  
 23 was filed or issued in the case giving rise to the criminal  
 24 history record, was dismissed or nolle prosequi by the state  
 25 attorney or statewide prosecutor, or was dismissed by a court of  
 26 competent jurisdiction or a judgment of acquittal was rendered  
 27 by a judge, or a verdict of not guilty was rendered by a judge  
 28 or jury.  
 29 (c) The person is not seeking to expunge a criminal history

Page 1 of 5

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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30 record that is ineligible for court-ordered expunction under s.  
 31 943.0584.  
 32 (d) The person has never, as of the date the application  
 33 for a certificate of expunction is filed, been adjudicated  
 34 guilty in this state of a criminal offense or been adjudicated  
 35 delinquent in this state for committing any felony or any of the  
 36 following misdemeanors, unless the record of such adjudication  
 37 of delinquency has been expunged pursuant to s. 943.0515:  
 38 1. Assault, as defined in s. 784.011;  
 39 2. Battery, as defined in s. 784.03;  
 40 3. Assault on a law enforcement officer, a firefighter, or  
 41 other specified officers, as defined in s. 784.07(2)(a);  
 42 4. Carrying a concealed weapon, as defined in s. 790.01(1);  
 43 5. Open carrying of a weapon, as defined in s. 790.053;  
 44 6. Unlawful possession or discharge of a weapon or firearm  
 45 at a school-sponsored event or on school property, as defined in  
 46 s. 790.115;  
 47 7. Unlawful use of destructive devices or bombs, as defined  
 48 in s. 790.1615(1);  
 49 8. Unlawful possession of a firearm, as defined in s.  
 50 790.22(5);  
 51 9. Exposure of sexual organs, as defined in s. 800.03;  
 52 10. Arson, as defined in s. 806.031(1);  
 53 11. Petit theft, as defined in s. 812.014(3);  
 54 12. Neglect of a child, as defined in s. 827.03(1)(e); or  
 55 13. Cruelty to animals, as defined in s. 828.12(1).  
 56 (e) The person has not been adjudicated guilty of, or  
 57 adjudicated delinquent for committing, any of the acts stemming  
 58 from the arrest or alleged criminal activity to which the

Page 2 of 5

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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petition pertains.

(f) The person is no longer under court supervision applicable to the disposition of arrest or alleged criminal activity to which the petition to expunge pertains.

(g) The person has never secured a prior sealing or expunction of a criminal history record under this section, s. 943.059, former s. 893.14, former s. 901.33, or former s. 943.058, unless:

1. Expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (h) and the record is otherwise eligible for expunction; or

2. The prior expunction was granted when he or she was a minor and the record is otherwise eligible for expunction. The requirement for the record to have previously been sealed for a minimum of 10 years under paragraph (h) does not apply to this subparagraph.

(h) The person has previously obtained a court-ordered sealing the criminal history record under s. 943.059, former s. 893.14, former s. 901.33, or former s. 943.058 for a minimum of 10 years because adjudication was withheld or because all charges related to the arrest or alleged criminal activity to which the petition to expunge pertains were not dismissed before trial, without regard to whether the outcome of the trial was other than an adjudication of guilt. The requirement for the record to have previously been sealed for a minimum of 10 years does not apply if a plea was not entered or all charges related to the arrest or alleged criminal activity to which the petition to expunge pertains were dismissed before trial or a judgment of acquittal was rendered by a judge or a verdict of not guilty was

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2020684\_\_

rendered by a judge or jury.

(2) CERTIFICATE OF ELIGIBILITY.—Before petitioning a court to expunge a criminal history record, a person seeking to expunge a criminal history record must apply to the department for a certificate of eligibility for expunction. The department shall adopt rules to establish procedures for applying for and issuing a certificate of eligibility for expunction.

(a) The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

1. Satisfies the eligibility criteria in paragraphs (1)(a)-(h) and is not ineligible under s. 943.0584.

2. Has submitted to the department a written certified statement from the appropriate state attorney or statewide prosecutor which confirms the criminal history record complies with the criteria in paragraph (1)(a) or paragraphs (1)(b) and (c).

3. Has submitted to the department a certified copy of the disposition of the charge to which the petition to expunge pertains.

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

(3) PETITION.—Each petition to expunge a criminal history record must be accompanied by:

(a) A valid certificate of eligibility issued by the department.

(b) The petitioner's sworn statement that he or she:

1. Satisfies the eligibility requirements for expunction in

38-00979-20

2020684\_\_

117 subsection (1).

118 2. Is eligible for expunction to the best of his or her  
119 knowledge and does not have any other petition to seal or  
120 expunge a criminal history record pending before any court.

121

122 A person who knowingly provides false information on such sworn  
123 statement commits a felony of the third degree, punishable as  
124 provided in s. 775.082, s. 775.083, or s. 775.084.

125 Section 2. This act shall take effect July 1, 2020.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

12/10/19

Meeting Date

684

Bill Number (if applicable)

Topic Expunction of Criminal History Records Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Policy Director

Address P.O. Box 10788

Street

Phone 334 224-4309

Tallahassee

City

FL

State

32302

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Southern Poverty Law Center Action Fund

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)

12/10/19  
Meeting Date

SB684  
Bill Number (if applicable)

Topic EXPUNCTION OF CRIMINAL HISTORY

Amendment Barcode (if applicable)

Name Christian Minor

Job Title Executive Director

Address 1300 N Adams St.  
Street

Phone 521-223-4232

Tallahassee FL 32303  
City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Juvenile Justice 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.

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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)

12/10/19  
Meeting Date

684  
Bill Number (if applicable)

Topic CJ

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 405 Middlebrook Cr.  
Street

Phone

City FLH State FL Zip 32312

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

12/10/19

*Meeting Date*

684

*Bill Number (if applicable)*

Topic Expunction of Arrest Records

*Amendment Barcode (if applicable)*

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden St.

Phone 850-488-6850

*Street*

Tallahassee

Florida

32301

Email ndaniels@flpda.org

*City*

*State*

*Zip*

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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***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)

December 10, 2019

*Meeting Date*

684

*Bill Number (if applicable)*

Topic Expunction of Criminal History Records

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title Chief Executive Officer

Address 2215 Thomasville Road

Phone 850-510-9922

*Street*

Tallahassee

FL

32308

Email Barney@BarneyBishop.com

*City*

*State*

*Zip*

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.*

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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)

12/10/19

Meeting Date

684

Bill Number (if applicable)

Topic Expansion of Criminal History Record

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 S. Monroe St.

Phone 850-425-1344

Street

Tallahassee

FL

32301

City

State

Zip

Email tcglobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU FL

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)

12/10/2019

*Meeting Date*

684  
\_\_\_\_\_  
*Bill Number (if applicable)*

Topic Criminal Justice

\_\_\_\_\_  
*Amendment Barcode (if applicable)*

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 North Duval Street

Phone 850-322-9941

*Street*

Tallahassee

FL

32301

Email snuzzo@jamesmadison.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The James Madison Institute

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)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

12-10-19

Meeting Date

684

Bill Number (if applicable)

Topic Expunction

Amendment Barcode (if applicable)

Name Greg Newbun

Job Title Fla. Director

Address PO Box 142933

Street

Gainesville

City

FL

State

32614

Zip

Phone 352.682.2542

Email gnewbun@fam.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FAMM

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)

12/10/19

Meeting Date

HB 684

Bill Number (if applicable)

Topic Ex punction of Crim. History

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title \_\_\_\_\_

Address 126 N. Mills Ave

Street

Phone \_\_\_\_\_

Orlando FL

City

State

32801

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing New Florida Majority + Organize Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

12/10/19  
Meeting Date

SB 684  
Bill Number (if applicable)

Topic Expunction of Criminal Records Amendment Barcode (if applicable) \_\_\_\_\_

Name Yafir Nitzany

Job Title Flew in from Miami to speak

Address 3731 N Country Club Dr Phone 786 459 9399  
Street

Miami FL  
City State

33180  
Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Pizzo

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

## Committee Agenda Request

**To:** Senator Keith Perry, Chair  
Committee on Criminal Justice

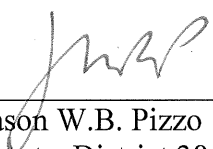
**Subject:** Committee Agenda Request

**Date:** November 6, 2019

---

I respectfully request that **SB 684**, relating to Expunction of Criminal History Records, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

  
\_\_\_\_\_  
Senator Jason W.B. Pizzo  
Florida Senate, District 38



# CourtSmart Tag Report

**Room:** LL 37

**Case No.:**

**Type:**

**Caption:** Senate Criminal Justice Committee

**Judge:**

**Started:** 12/10/2019 10:01:58 AM

**Ends:** 12/10/2019 10:51:10 AM

**Length:** 00:49:13

10:01:57 AM Meeting called to order by Chair Perry  
10:02:01 AM Roll call by Administrative Assistant Sue Arnold  
10:02:06 AM Quorum present  
10:02:11 AM Comments from Chair Perry  
10:02:58 AM Introduction of Tab 1 by Chair Perry  
10:03:06 AM Explanation of CS/SB 154, Human Trafficking Education in Schools by Senator Thurston  
10:04:10 AM Comments from Chair Perry  
10:04:16 AM Barbara DeVane, FL NOW waives in support  
10:04:19 AM Barney BishopIII, Chief Executive Officer, Florida Smart Justice Alliance waives in support  
10:04:25 AM Pamela Burch Fort, ACLU FL waives in support  
10:04:32 AM Tom Cerra, Miami-Dade Public Schools waives in support  
10:04:49 AM Closure by Senator Thurston  
10:04:55 AM Roll call by CAA  
10:05:05 AM CS/SB 154 reported favorably  
10:05:17 AM Introduction of Tab 3 by Chair Perry  
10:05:27 AM Explanation of SB 550, Sentencing by Senator Brandes  
10:05:52 AM Greg Newburn, Fla. Director, FAMM waives in support  
10:05:53 AM Sal Nunez, Vice President of Policy, The James Madison Institute waives in support  
10:05:57 AM Chelsea Murphy, State Director, Right on Crime waives in support  
10:06:01 AM Ida Eskamani, New Florida Majority & Organize Florida waives in support  
10:06:05 AM Pamela Burch Fort, ACLU FL waives in support  
10:06:09 AM Nancy Daniels, Florida Public Defender Association waives in support  
10:06:24 AM Closure waived  
10:06:28 AM Roll call by CAA  
10:06:33 AM SB 550 reported favorably  
10:06:41 AM Introduction of Tab 4 by Chair Perry  
10:06:51 AM Explanation of SB 552, Sentencing by Senator Brandes  
10:07:15 AM Introduction of Amendment Barcode No. 146202 by Chair Perry  
10:07:21 AM Explanation of Amendment by Senator Brandes  
10:07:43 AM Closure waived  
10:07:46 AM Amendment Barcode No. 146202 adopted  
10:07:52 AM Greg Newborn, Fla. Director, FAMM waives in support  
10:07:56 AM Sal Nuzzo, Vice President of Policy, The James Madison Institute waives in support  
10:07:58 AM Ida Eskamani, New Florida Majority & Organize Florida waives in support  
10:08:03 AM Nancy Daniels, Florida Public Defender Association waives in support  
10:08:16 AM Pamela Burch Fort, ACLU FL waives in support  
10:08:18 AM Closure waived  
10:08:21 AM Roll call by CAA  
10:08:24 AM CS/SB 552 reported favorably  
10:08:30 AM Introduction of Tab 5 by Chair Perry  
10:08:42 AM Explanation of SB 554, Sentencing by Senator Brandes  
10:09:41 AM Introduction of Amendment Barcode No. 715730 by Chair Perry  
10:09:44 AM Explanation of Amendment by Senator Brandes  
10:09:57 AM Closure waived  
10:10:03 AM Amendment Barcode No. 715730 adopted  
10:10:08 AM Greg Newburn, Fla. Director, GAMM waives in support  
10:10:09 AM Sal Nuzzo, Vice President of Policy, The James Madison Institute waives in support  
10:10:12 AM Pamela Burch Fort, ACLU FL waives in support  
10:10:15 AM Chelsea Murphy, State Director, Right on Crime waives in support  
10:10:19 AM Ida Eskamani, New Florida Majority & Organize Florida waives in support  
10:10:21 AM Nancy Daniels, Florida Public Defender Association waives in support  
10:10:36 AM Closure waived

10:10:38 AM Roll call by CAA  
10:10:43 AM CS/SB 544 reported favorably  
10:10:51 AM Introduction of Tab 6 by Chair Perry  
10:11:01 AM Explanation of SB 572, Extension of Confinement by Senator Brandes  
10:11:42 AM Introduction of Amendment Barcode No. 244404 by Chair Perry  
10:11:49 AM Explanation of Amendment by Senator Brandes  
10:12:11 AM Comments by Chair Perry  
10:12:15 AM Closure waived  
10:12:19 AM Amendment Barcode No. 244404 adopted  
10:12:24 AM Introduction of Amendment Barcode No. 100336 by Chair Perry  
10:12:31 AM Explanation of Amendment by Senator Bracy  
10:13:32 AM Ida Eskamani, New Florida Majority & Organize Florida in support of Amendment  
10:13:35 AM Pamela Burch Ford, ACLU FL in support of Amendment  
10:14:02 AM Chelsea Murphy, Right on Crime waives in support of Amendment  
10:14:03 AM Greg Newburn, FAMM waives in support of Amendment  
10:14:04 AM Sal Nuzzo, The James Madison Institute waives in support of Amendment  
10:14:05 AM Nancy Daniels, Florida Public Defender Association in support of Amendment  
10:14:08 AM Senator Brandes in debate  
10:15:41 AM Chair Perry in debate  
10:16:57 AM Comments from Senator Bracy  
10:17:11 AM Comments from Representative Hart  
10:18:22 AM Closure on Amendment by Senator Bracy  
10:19:01 AM Amendment Barcode No. 100336 adopted  
10:19:12 AM Greg Newburn, Fla. Director, FAMM waives in support  
10:19:17 AM Sal Nuzzo, The James Madison Institute waives in support  
10:19:19 AM Chelsea Murphy, Right on Crime waives in support  
10:19:21 AM Ida Eskamani, New Florida Majority & Organize Florida waives in support  
10:19:24 AM Pamela Burch Fort, ACLU FL waives in support  
10:19:29 AM Dan Hendrickson, President, Tallahassee Veterans Legal Collaborative waives in support  
10:19:52 AM Closure by Senator Brandes  
10:20:16 AM Roll call by CAA  
10:20:54 AM CS/SB 572 reported favorably  
10:21:08 AM Introduction of Tab 7 by Chair Perry  
10:21:09 AM Explanation of SB 574, Aging Inmate Conditional Release by Senator Brandes  
10:21:12 AM Introduction of Amendment Barcode No. 488440 by Chair Perry  
10:21:23 AM Explanation of Amendment by Senator Brandes  
10:23:11 AM Comments from Chair Perry  
10:23:17 AM Closure waived  
10:23:20 AM Amendment Barcode No. 488440 adopted  
10:23:38 AM Speaker Gene Greeson, Director, Men of the Word Prison Ministry  
10:33:06 AM Sal Nuzzo, The James Madison Institute waives in support  
10:33:12 AM Greg Newburn, FAMM waives in support  
10:33:16 AM Chelsea Murphy, Right on Crime waives in support  
10:33:19 AM Ida Eskamani, New Florida Majority & Organize Florida waives in support  
10:33:21 AM Pamela Burch Fort, ACLU FL waives in support  
10:33:23 AM Scott McCoy, Policy Director, Southern Poverty Law Action Fund waives in support  
10:33:29 AM Comments from Chair Perry  
10:33:35 AM Closure by Senator Brandes  
10:33:53 AM Roll call by CAA  
10:34:03 AM CS/SB 574 reported favorably  
10:34:20 AM Introduction of Tab 8 by Chair Perry  
10:34:27 AM Explanation of SB 684, Expunction of Criminal History Records by Senator Pizzo  
10:34:46 AM Introduction of Amendment Barcode No. 816426 by Chair Perry  
10:34:50 AM Explanation of Amendment by Senator Pizzo  
10:35:24 AM Closure waived  
10:35:28 AM Amendment Barcode No. 816426 adopted  
10:35:37 AM Speaker Yatir Nilzamy in support  
10:39:28 AM Ida Eskamani, New Florida Majority & Organize Florida waives in support  
10:39:30 AM Greg Newburn, FAMM waives in support  
10:39:35 AM Sal Nuzzo, The James Madison Institute waives in support  
10:39:37 AM Pamela Burch Fort, ACLU FL waives in support  
10:39:39 AM Barney Bishop III, Florida Smart Justice Alliance waives in support

**10:39:43 AM** Nancy Daniels, Florida Public Defender Association waives in support  
**10:39:46 AM** Chelsea Murphy, Right on Crime waives in support  
**10:39:51 AM** Christian Minor, Executive Director, Florida Juvenile Justice Association waives in support  
**10:39:56 AM** Scott McCoy, Southern Poverty Law Center Action Fund waives in support  
**10:40:09 AM** Closure by Senator Pizzo  
**10:40:49 AM** Roll call by CAA  
**10:40:57 AM** CS/SB 684 reported favorably  
**10:41:06 AM** Introduction of Tab 2 by Chair Perry, SB 522, Cruelty to Dogs  
**10:41:09 AM** Introduction of Amendment Barcode No. 607430 by Chair Perry  
**10:41:28 AM** Explanation of Amendment Barcode No. 607430 and SB 522, Cruelty to Dogs by Senator Gruters  
**10:41:57 AM** Question from Senator Bracy  
**10:42:02 AM** Response from Senator Gruters  
**10:42:19 AM** Speaker Lane Stephens, Southeast Dog Hunters Association/Fla. Dog Hunters & Sportman's Association  
**10:42:46 AM** Closure waived  
**10:42:49 AM** Amendment Barcode No. 607430 adopted  
**10:42:57 AM** Travis Moore, Animal Legal Defense Fund  
**10:42:59 AM** Speaker Kate MacFall, Humane Society of the United States in support  
**10:44:33 AM** Question from Senator Brandes  
**10:44:39 AM** Response from Ms. MacFall  
**10:44:52 AM** Question from Senator Brandes  
**10:44:58 AM** Response from Ms. MacFall  
**10:45:15 AM** Follow-up question from Senator Brandes  
**10:45:22 AM** Response from Ms. MacFall  
**10:45:33 AM** Question from Senator Bracy  
**10:45:39 AM** Response from Ms. MacFall  
**10:45:44 AM** Follow-up question from Senator Bracy  
**10:45:57 AM** Response from Ms. MacFall  
**10:46:03 AM** Speaker Greg Pound  
**10:47:02 AM** Barney Bishop, Smart Justice Alliance waives in support  
**10:47:25 AM** Comments from Senator Brandes in debate  
**10:48:23 AM** Senator Pizzo in debate  
**10:49:26 AM** Senator Gruters in closure  
**10:50:01 AM** Comments from Senator Pizzo  
**10:50:21 AM** Roll call by CAA  
**10:50:31 AM** CS/SB 522 reported favorably  
**10:50:39 AM** Senator Flores would like to be shown voting in the affirmative on Tabs 1, 3 and 4  
**10:50:51 AM** Comments from Chair Perry  
**10:50:52 AM** Senator Pizzo moves to adjourn, meeting adjourned