Tab 1	**SB 232** by **Brandes**; Criminal Justice

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Tab 2	**SB 246** by **Brandes**; Public Meetings and Records/Conditional Aging Medical Release Program

Tab 3	**SB 248** by **Brandes**; Public Meetings and Records/Conditional Medical Release Program

Tab 4	**SPB 7012** by **CJ**; OGSR/Criminal History Information of Juveniles

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Pizzo, Chair
Senator Brandes, Vice Chair

MEETING DATE: Wednesday, February 3, 2021
TIME: 9:00—11:30 a.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Building

MEMBERS: Senator Pizzo, Chair; Senator Brandes, Vice Chair; Senators Baxley, Boyd, Gainer, Perry, Powell, and Taddeo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A1 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301		
1	**SB 232** Brandes (Linked S 246, S 248)	Criminal Justice; Requiring that a custodial interrogation conducted at a place of detention in connection with covered offenses be electronically recorded in its entirety; providing for retroactive application of a specified provision relating to a review of sentence for juvenile offenders convicted of murder; precluding eligibility for a sentence review for young adult offenders who previously committed, or conspired to commit, murder; establishing the conditional medical release program within the Department of Corrections; establishing the conditional aging inmate release program within the department; repealing provisions relating to conditional medical release, etc. CJ 02/03/2021 Fav/CS ACJ AP	Fav/CS Yeas 7 Nays 0
2	**SB 246** Brandes (Linked S 232)	Public Meetings and Records/Conditional Aging Medical Release Program; Exempting from public meetings requirements that portion of a panel review hearing at which the exempt or confidential information of specified inmates being considered for the conditional aging inmate release program is discussed; exempting from public records requirements certain records used by the review panel to make a determination of the appropriateness of conditional aging inmate release and the recordings and transcripts of closed panel review hearings; providing for legislative review and repeal of the exemptions; providing a statement of public necessity, etc. CJ 02/03/2021 Favorable ACJ AP	Favorable Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 248** Brandes (Linked S 232)	Public Meetings and Records/Conditional Medical Release Program; Exempting from public meetings requirements that portion of a panel review hearing at which the exempt or confidential information of specified inmates being considered for the conditional medical release program is discussed; exempting from public records requirements certain records used by the review panel to make a determination of the appropriateness of conditional medical release and the recordings and transcripts of closed panel review hearings; providing for legislative review and repeal of the exemptions; providing a statement of public necessity, etc. CJ 02/03/2021 Favorable ACJ AP	Favorable Yeas 7 Nays 0
	Consideration of proposed bill:		
4	**SPB 7012**	OGSR/Criminal History Information of Juveniles; Amending provisions abrogating the scheduled repeals of provisions relating to criminal history information of juveniles, etc.	Submitted and Reported Favorably as Committee Bill Yeas 7 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.)

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

BILL:	CS/SB 232
INTRODUCER:	Criminal Justice Committee and Senator Brandes
SUBJECT:	Criminal Justice
DATE:	February 4, 2021 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 232 addresses several areas of the criminal justice system in the state. The bill requires custodial interrogations to be electronically recorded, with some exceptions; revises the circumstances under which a juvenile offender may have his or her sentence reviewed and establishes a sentence review process for young adult offenders; establishes a conditional medical release (CMR) program and a conditional aging inmate release (CAIR) program within the Department of Corrections (DOC); and repeals the existing conditional medical release program within the Florida Commission on Offender Review (FCOR).

Specifically, the bill requires a custodial interrogation relating to a covered offense (specified in the bill) that is conducted at a place of detention be electronically recorded in its entirety. If the custodial interrogation at the place of detention is not electronically recorded by the law enforcement officer, he or she must prepare a written report explaining the reason for not recording it. The bill provides exceptions to the general recording requirement. The bill further provides:

- If a custodial interrogation is not recorded and no exception applies, a court must consider "the circumstances of an interrogation" in its analysis of whether to admit into evidence a statement made at the interrogation;
- If the court decides to admit a statement made during a custodial interrogation that was not electronically recorded, the defendant may require the court to give a cautionary jury instruction regarding the officer's failure to comply with the recording requirement;

- If a law enforcement agency "has enforced rules" adopted pursuant to the bill which are reasonably designed to comply with the bill's requirements, the agency is not subject to civil liability for damages arising from a violation of the bill's requirements; and
- Requirements relating to electronic recording of a custodial interrogation do not create a cause of action against a law enforcement officer.

In regards to juvenile and youthful offenders, the bill:

- Modifies the list of enumerated offenses that exclude juvenile offenders convicted of capital murder from a sentence review hearing in accordance with s. 921.1402, F.S., enacted subsequent to the *Graham v. Florida* and *Miller v. Alabama* cases, to only murder.
- Retroactively applies the above modification to limit the prior offenses that serve as a bar for certain juvenile offenders to have a sentence review hearing to only murder.
- Provides that juvenile offenders who are no longer barred from a sentence review hearing due to the change to the list of enumerated prior offenses and who have served 25 years of the imprisonment imposed on the effective date of the bill must have a sentence review hearing conducted immediately.
- Provides all other juvenile offenders who are no longer barred from a sentence review hearing due to the change to the list of enumerated prior offenses must be given a sentence review hearing when 25 years of the imprisonment imposed have been served.
- Establishes a sentence review process similar to that created for juvenile offenders pursuant to s. 921.1402, F.S., for "young adult offenders."
- Defines the term "young adult offender."
- Allows certain young adult offenders to request a sentence review hearing with the original sentencing court if specified conditions are met, specifically:
  - A young adult offender convicted of a life felony offense, or an offense reclassified as such, who was sentenced to 20 years imprisonment may request a sentence review after 20 years; and
  - A young adult offender convicted of a first degree felony offense, or an offense reclassified as such, who was sentenced to 15 years imprisonment may request a sentence review after 15 years.

In regard to conditional release programs, the bill:

- Repeals s. 947.149, F.S., which establishes the CMR program within the FCOR and creates s. 945.0911, F.S., to establish a CMR program within the DOC.
- Provides definitions and eligibility criteria for the CMR program.
- Provides a process for the referral, determination of release, and revocation of release for the CMR program.
- Establishes a CAIR program within the DOC.
- Provides eligibility criteria for the CAIR program.
- Provides a process for the referral, determination of release, and revocation of release for the CAIR program.

The bill will likely have a fiscal impact to various agencies as well as a prison bed impact to the DOC. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2021.

II. Present Situation:

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

III. Effect of Proposed Changes:

Custodial Interrogation (Section 1)

Constitutional Protections and Court Decisions Interpreting and Applying Those Protections

The Fifth Amendment of the United States Constitution states that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself."[1] Similarly, the Florida Constitution extends the same protection.[2]

Custodial Interrogation Legal Requirements

Whether a person is in custody and under interrogation is the threshold question that determines the need for a law enforcement officer to advise the person of his or her *Miranda* rights.[3] In *Traylor v. State*, the Florida Supreme Court found that "to ensure the voluntariness of confessions, the Self–Incrimination Clause of Article I, Section 9, Florida Constitution, requires that prior to custodial interrogation in Florida suspects must be told that they have a right to remain silent, that anything they say will be used against them in court…."[4]

The test to determine if a person is in custody for the purposes of his or her *Miranda* rights is whether "a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest."[5]

An interrogation occurs "when a person is subjected to express questions, or other words or actions, by a state agent that a reasonable person would conclude are designed to lead to an incriminating response."[6]

Waiver of the Right to Remain Silent

A person subjected to a custodial interrogation is entitled to the protections of *Miranda*.[7] The warning must include the right to remain silent as well as the explanation that anything a person says can be used against them in court. The warning includes both parts because it is important for a person to be aware of his or her right and the consequences of waving such a right.[8]

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[1] U.S. Const. amend. V.
[2] "No person shall be . . . compelled in any criminal matter to be a witness against himself." FLA. CONST. article I, s. 9.
[3] In *Miranda v. Arizona,* 384 U.S. 436 (1966), the Court established procedural safeguards to ensure the voluntariness of statements rendered during custodial interrogation.
[4] 596 So.2d 957, 965-966 (Fla. 1992).
[5] *Id.* at 966 n. 16.
[6] *Id.* at 966 n. 17.
[7] *See Miranda v. Arizona,* 384 U.S. 436, 444 (1966).
[8] *Sliney v. State*, 699 So.2d 662, 669 (Fla. 1997), *cert. den.*, 522 U.S. 1129 (1998).

Admissibility of a Defendant's Statement as Evidence

The admissibility of a defendant's statement is a mixed question of fact and law decided by the court during a pretrial hearing or during the trial outside the presence of the jury.[9] For a defendant's statement to become evidence in a criminal case, the judge must first determine whether the statement was freely and voluntarily given to a law enforcement officer during the custodial interrogation of the defendant. The court looks to the totality of the circumstances of the statement to determine if it was voluntarily given.[10]

The court can consider testimony from the defendant and any law enforcement officers involved, their reports, and any additional evidence such as audio or video recordings of the custodial interrogation.

As previously discussed, the courts use a "reasonable person" standard in making the determination of whether the defendant was in custody at the time he or she made a statement.[11] The court considers, given the totality of the circumstances, whether a reasonable person in the defendant's position would have believed he or she was free to terminate the encounter with law enforcement and, therefore, was not in custody.[12] Among the circumstances or factors the courts have considered are:

- The manner in which the police summon the suspect for questioning;
- The purpose, place, and manner of the interrogation;
- The extent to which the suspect is confronted with evidence of his or her guilt; and
- Whether the suspect is informed that he or she is free to leave the place of questioning.[13]

The court will also determine whether the defendant was made aware of his or her *Miranda* rights and whether he or she knowingly, voluntarily, and intelligently elected to waive those rights and give a statement.[14]

Even if the court deems the statement admissible and the jury hears the evidence, defense counsel will be able to cross-examine any witnesses who testify and have knowledge of the circumstances surrounding the defendant's statement. Additionally, counsel may argue to the jury in closing argument that the statement was coerced in some way by a law enforcement officer.

Interrogation Recording in Florida

Currently, 26 states and the District of Columbia record custodial interrogations statewide.[15] These states have statutes, court rules, or court cases that require law enforcement to make the recordings or allow the court to consider the failure to record a statement in determining the

[9] *Nickels v. State*, 90 Fla. 659, 668 (Fla. 1925).
[10] *Supra* n. 8 at 667.
[11] *Supra* n. 5.
[12] *Voorhees v. State*, 699 So.2d 602, 608 (Fla. 1997).
[13] *Ramirez v. State*, 739 So.2d 568, 574 (Fla. 1999).
[14] *Supra* n. 5 at 668.
[15] *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, January 2019, National Association of Criminal Defense Lawyers, p. 7, available at https://www.nacdl.org/getattachment/581455af-11b2-4632-b584-ab2213d0a2c2/custodial-interrogations-compendium-january-2019-.pdf (last visited January 21, 2021).

admissibility of a statement.[16] Although Florida is not one of these states, 58 Florida law enforcement agencies have been identified as recording custodial interrogations, voluntarily, at least to some extent.[17]

Effect of the Bill

The bill creates s. 900.06, F.S., which creates a statutory requirement, and exceptions to that requirement, that a law enforcement officer conducting a custodial interrogation must electronically record the interrogation in its entirety.

The bill provides the following definitions for terms used in the bill:

- "Custodial interrogation" means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency;
- "Electronic recording" means an audio recording or an audio and video recording that accurately records a custodial interrogation;
- "Covered offense" means any of the following criminal offenses:
  - Arson.
  - Sexual battery.
  - Robbery.
  - Kidnapping.
  - Aggravated child abuse.
  - Aggravated abuse of an elderly person or disabled adult.
  - Aggravated assault with a deadly weapon.
  - Murder.
  - Manslaughter.
  - Aggravated manslaughter of an elderly person or disabled adult.
  - Aggravated manslaughter of a child.
  - The unlawful throwing, placing, or discharging of a destructive device or bomb.
  - Armed burglary.
  - Aggravated battery.
  - Aggravated stalking.
  - Home-invasion robbery.
  - Carjacking.

[16] *See Stephan v. State*, 711 P.2d 1156 (AK 1985); Ark. R. Crim. P. 4.7 (2012); Cal. Pen. Code s. 859.5 and Cal. Wel. & Inst. Code s. 626.8 (2013); CO. Rev. Stat. 16-3-601 (2016); CT Gen. Stat. s. 54-1o (2011); D.C. Code ss. 5-116.01 and 5-116.03 (2006); Hawaii was verified by the four departments that govern law enforcement in the state; 705 IL Comp. Stat. Ann. 405/5-401.5; 725 ICSA 5/103-2.1 (2003, 2005, 2013); Ind. R. Evid. 617 (2009); Kan. Stat. s. 22-4620 (2017); 25 ME Rev. Stat. Ann. s. 2803-B(1)(K) (2007); MD Code Ann., Crim. Proc. ss. 2-402 and 2-403 (2008); MI Comp. Laws ss. 763.7 – 763.11 (2012)**;** *State v. Scales*, 518 N.W.2d 587 (MN 1994); MO Rev. Stat. ss. 590.700 and 700.1 (2009 and 2015); MT Code Ann. ss. 46-4-406 – 46-4-410 (2009); NE Rev. Stat. Ann. ss. 29-4501 – 29-4508 (2008); NJ Court Rules, R. 3:17 (2005); NM Stat. Ann. s. 29-1-16 (2006); NC Gen. Stat. s. 15A-211 (2007, 2011); N.Y. Crim. Proc. Law s. 60.45 (McKinney 2018); OR Rev. Stat. s. 133.400 (2010); RI PAC, Accreditation Standards Manual, s. 8.10 (2013); Tex. Crim. Proc. Code ss. 2.32 and 38.22; Tex. Fam. Code s. 51.095; Utah R. Evid. Rule 616 (2015); 13 V.S.A. s. 5585 (2014); *State v. Jerrell*, 699 N.W.2d 110 (WI 2005); and WI Stat. ss. 968.073 and 972.115 (2005). *See also supra* n. 15 at p. 8.

[17] *Supra* n. 15 at pp. 40-41.

- "Place of detention" means a police station, sheriff's office, correctional facility, prisoner holding facility, county detention facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual; and
- "Statement" means a communication that is oral, written, electronic, nonverbal, or in sign language.

The bill requires a custodial interrogation relating to a covered offense that is conducted at a place of detention be electronically recorded in its entirety. The recording must include:
- The giving of a required warning;
- The advisement of rights; and
- The waiver of rights by the individual being questioned.

If a custodial interrogation at a place of detention is not recorded by the law enforcement officer, he or she must prepare a written report explaining the reason for the noncompliance.

If a law enforcement officer conducts a custodial interrogation at a place other than a place of detention, the officer must prepare a written report as soon as practicable. The report must explain the circumstances of the interrogation in that place and summarize the custodial interrogation process and the individual's statements.

This recording requirement does not apply if:
- There is an unforeseen equipment malfunction that prevents recording the custodial interrogation in its entirety;
- A suspect refuses to participate in a custodial interrogation if his or her statements are electronically recorded;
- An equipment operator error prevents the recording of the custodial interrogation in its entirety;
- The statement is made spontaneously and not in response to a custodial interrogation question;
- A statement is made during the processing of the arrest of a suspect;
- The custodial interrogation occurs when the law enforcement officer participating in the interrogation does not have any knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed a covered offense;
- The law enforcement officer conducting the custodial interrogation reasonably believes that electronic recording would jeopardize the safety of the officer, individual being interrogated, or others; or
- If the custodial interrogation is conducted outside of the state.

Unless a court finds that one or more of the enumerated exceptions applies, the court must consider the officer's failure to record all or part of the custodial interrogation as a factor in determining the admissibility of a defendant's statement made during the interrogation. If the court admits the statement into evidence, the defendant may request and the court must give a cautionary jury instruction regarding the officer's failure to comply with the recording requirement.

Finally, if a law enforcement agency has enforced rules that are adopted pursuant to the bill and such rules are reasonably designed to comply with the bill's requirements, the agency is not subject to civil liability for damages arising from a violation of the bill's requirements. The bill does not create a cause of action against a law enforcement officer.

Sentence Review Hearings for Specified Offenders (Sections 2-4)

Juvenile Offenders Convicted of Offenses Punishable by Life without Parole

In recent years, the U.S. Supreme Court issued several decisions addressing the application of the Eighth Amendment's prohibition against cruel and unusual punishment as it relates to the punishment of juvenile offenders.[18] The first of these was *Roper v. Simmons*,[19] in which the Court held that juvenile offenders cannot be subject to the death penalty for any offense. More recently, the Court expanded juvenile sentencing doctrine in *Graham v. Florida*[20] and *Miller v. Alabama*.[21]

Graham v. Florida

In *Graham*, the U.S. Supreme Court held that a juvenile offender may not be sentenced to life in prison without the possibility of parole for a non-homicide offense. More specifically, the Court found that if a non-homicide juvenile offender is sentenced to life in prison, the state must "provide him or her with some realistic opportunity to obtain release before the end of that term."[22] Because Florida abolished parole[23] and the possibility of executive clemency was deemed to be remote,[24] the Court held that a juvenile offender in Florida could not be given a life sentence for a non-homicide offense without a meaningful opportunity to obtain release.[25]

Graham applies retroactively to previously sentenced offenders because it established a fundamental constitutional right.[26] Therefore, a juvenile offender who is serving a life sentence for a non-homicide offense that was committed after parole eligibility was eliminated is entitled to be resentenced to a term less than life.

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[18] The term "juvenile offender" refers to an offender who was less than 18 years of age at the time the offense was committed for which he or she was sentenced. Most crimes committed by juveniles are dealt with through delinquency proceedings as set forth in ch. 985, F.S. However, the law provides a mechanism for juveniles to be tried and handled as adults. A juvenile who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned. A juvenile who is older than 13 years may be tried as an adult for certain felony offenses if a grand jury indictment is returned, if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S., or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Regardless of age, s. 985.58, F.S., requires a grand jury indictment to try a juvenile as an adult for an offense that is punishable by death or life imprisonment.
[19] 125 S.Ct. 1183 (2005).
[20] 130 S.Ct. 2011 (2010).
[21] 132 S.Ct. 2455 (2012).
[22] *Graham* at 82.
[23] Parole was abolished in 1983 for all non-capital felonies committed on or after October 1, 1983, and was completely abolished in 1995 for any offense committed on or after October 1, 1995.
[24] *Graham* at 70.
[25] *Graham* at 75.
[26] *See, e.g., St. Val v. State*, 107 So.3d 553 (Fla. 4th DCA 2013); *Manuel v. State*, 48 So.3d 94 (Fla. 2d DCA 2010).

The U.S. Supreme Court did not give any guidance as to the maximum permissible sentence for a non-homicide juvenile offender other than to exclude the possibility of life without parole. Prior to the 2014 Legislative Session, there were conflicts in the case law regarding whether a term of years could be deemed to equate to a life without parole sentence. The Florida First District Court of Appeal held that a lengthy term of years is a *de facto* life sentence if it exceeds the juvenile offender's life expectancy.[27] On the other hand, the Florida Fourth and Fifth District Courts of Appeal strictly construed *Graham* to apply only to life sentences and not to affect sentences for a lengthy term of years.[28]

On March 19, 2015, the Florida Supreme Court issued opinions on two cases that had been certified for it to resolve, *Gridine v. State*, 89 So.3d 909 (Fla. 1st DCA 2011) and *Henry v. State*, 82 So.3d 1084 (Fla. 5th DCA 2012). The Court held that a sentence proscribing a lengthy term of years imprisonment, such as a 70-year sentence as was pronounced in *Gridine* or the 90-year sentence pronounced in *Henry* that does not provide a meaningful opportunity for release is a de facto life sentence that violates the Eighth Amendment to the U.S. Constitution and the holding in *Graham*.[29]

Miller v. Alabama

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

The majority opinion in *Miller* noted mandatory life without parole sentences "preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it."[30]

CS/HB 7035 (2014)

In response to the above-mentioned cases, the 2014 Legislature passed and the Governor signed into law CS/HB 7035 (2014),[31] ensuring Florida had a constitutional sentencing scheme for juvenile offenders who are convicted of offenses punishable by a sentence of life without parole.

CS/HB 7035 (2014) amended s. 775.082, F.S., *requiring* a court to sentence a juvenile offender who is convicted of a homicide offense[32] that is a capital felony or an offense that was

[27] *Adams v. State*, 2012 WL 3193932 (Fla. 1st DCA 2012). The First District Court of Appeal has struck down sentences of 60 years (*Adams)* and 80 years (*Floyd v. State*, 87 So.3d 45 (Fla. 1st DCA 2012)), while approving sentences of 50 years (*Thomas v. State*, 78 So.3d 644 (Fla. 1st DCA 2011)) and 70 years (*Gridine v. State*, 89 So. 3d 909 (Fla. 1st DCA 2011)).
[28] *See Guzman v. State*, 110 So.3d 480 (Fla. 4th DCA 2013)*; Henry v. State*, 82 So.3d 1084 (Fla. 5th DCA 2012). It also appears that the Second District Court of Appeal may agree with this line of reasoning: *see Young v. State*, 110 So.3d 931 (Fla. 2d DCA 2013).
[29] *Gridine v. State*, 175 So.3d 672 (Fla. 2015) and *Henry v. State*, 175 So.3d 675 (Fla. 2015).
[30] *Miller* at 2467.
[31] Chapter 201-220, L.O.F.
[32] Section 782.04, F.S., establishes homicide offenses.

reclassified as a capital felony (capital felony homicide) and where the person actually killed, intended to kill, or attempted to kill the victim to:

- Life imprisonment, if, after conducting a sentencing hearing in accordance with the newly created s. 921.1401, F.S., the court concluded that life imprisonment is an appropriate sentence; or
- A term of imprisonment of not less than 40 years, if the judge concluded at the sentencing hearing that life imprisonment is not an appropriate sentence.[33]

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

- Life or first degree felony homicide where the person actually killed, intended to kill, or attempted to kill the victim;[34]
- Capital, life, or first degree felony homicide offense where the person did not actually kill, intend to kill, or attempt to kill the victim;[35] or
- Nonhomicide offense.[36]

Section 775.082(1)(b)1., F.S., requires the court to impose a minimum sentence (40 years) only in instances where the court determines that life imprisonment is not appropriate for a juvenile offender convicted of a capital felony homicide where the person actually killed, intended to kill, or attempted to kill the victim.[37]

Section 775.082(1) and (3), F.S., also provides that all juvenile offenders are entitled to have their sentence reviewed by the court of original jurisdiction after specified periods of imprisonment. However, a juvenile offender convicted of a capital felony homicide, where the person actually killed, intended to kill, or attempted to kill the victim, is not entitled to review if he or she has previously been convicted of a list of enumerated offenses, or conspiracy to commit one of the enumerated offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence for the capital felony homicide.[38]

Sentencing Proceedings for Juvenile Offenders Sentenced to Life Imprisonment

CS/HB 7035 (2014) created s. 921.1401, F.S., which authorized the court to conduct a separate sentencing hearing to determine whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence for a juvenile offender convicted of one of the above-described homicide or nonhomicide offenses that was committed on or after July 1, 2014.[39] When determining whether such sentence is appropriate, the court is required to consider factors relevant to the offense and to the juvenile offender's youth and attendant circumstances, including, but not limited to the:

[33] Section 775.082(1)(b)1., F.S.
[34] Section 775.082(3)(a)5. and (b), F.S.
[35] Section 775.082(1)(b)2., F.S.
[36] Section 775.082(3)(c), F.S.
[37] Section 775.082(1)(b)1., F.S.
[38] *See* s. 775.082(1) and (3), F.S., providing that reviews of sentences will be conducted in accordance with s. 921.1402, F.S.
[39] Section 921.1401(1), F.S.

- Nature and circumstances of the offense committed by the juvenile offender;
- Effect of crime on the victim's family and on the community;
- Juvenile offender's age, maturity, intellectual capacity, and mental and emotional health at time of offense;
- Juvenile offender's background, including his or her family, home, and community environment;
- Effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the juvenile offender's participation in the offense;
- Extent of the juvenile offender's participation in the offense;
- Effect, if any, of familial pressure or peer pressure on the juvenile offender's actions;
- Nature and extent of the juvenile offender's prior criminal history;
- Effect, if any, of characteristics attributable to the juvenile offender's youth on the juvenile offender's judgment; and
- Possibility of rehabilitating the juvenile offender.[40]

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

Sentence Review Proceedings

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

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

A juvenile offender convicted of a capital felony homicide offense where the person actually killed, intended to kill, or attempted to kill the victim is entitled to a sentence review hearing after 25 years.[41] However, a juvenile offender is not entitled to review if he or she has previously been convicted of one of the following offenses, or conspiracy to commit one of the following offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence for which he or she was sentenced to life:

- Murder;
- Manslaughter;
- Sexual battery;
- Armed burglary;
- Armed robbery;

[40] Section 921.1401(2), F.S.
[41] Section 775.082(1)(b)1., F.S.

- Armed carjacking;
- Home-invasion robbery;
- Human trafficking for commercial sexual activity with a child under 18 years of age;
- False imprisonment under s. 787.02(3)(a), F.S.; or
- Kidnapping.[42]

A juvenile offender convicted of a life felony or first degree felony homicide offense where the person actually killed, intended to kill, or attempted to kill the victim, is entitled to a sentence review hearing after 25 years, if he or she is sentenced to a term of imprisonment for more than 25 years.[43]

A juvenile offender convicted of a capital felony, life felony, or first degree felony homicide offense where the person did not actually kill, intend to kill, or attempt to kill the victim is entitled to have the court review the sentence after 15 years, if he or she is sentenced to a term of imprisonment of more than 15 years.[44]

A juvenile offender convicted of a nonhomicide offense is entitled to have the court review the sentence after 20 years if the juvenile is sentenced to a term of imprisonment of more than 20 years. The juvenile offender is eligible for one subsequent review hearing 10 years after the initial review hearing.[45]

The juvenile offender must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The DOC must notify a juvenile offender of his or her eligibility to request a sentencing review hearing 18 months before the juvenile offender becomes entitled to such review. Additionally, an eligible juvenile offender is entitled to be represented by counsel at the sentence review hearing, including a court appointed public defender, if the juvenile offender cannot afford an attorney.[46]

Section 921.1402(6), F.S., requires the original sentencing court to consider any factor it deems appropriate during the sentence review hearing, including all of the following:
- Whether the offender demonstrates maturity and rehabilitation;
- Whether the offender remains at the same level of risk to society as he or she did at the time of the initial sentencing;
- The opinion of the victim or the victim's next of kin;[47]
- Whether the offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person;
- Whether the offender has shown sincere and sustained remorse for the criminal offense;

[42] Section 921.1402(2)(a), F.S.
[43] Section 921.1402(2)(b), F.S.
[44] Section 921.1402(2)(c), F.S.
[45] Section 921.1402(2)(d), F.S.
[46] Section 921.1402(3)-(5), F.S.
[47] Section 921.1402(6)(c), F.S., further states that the absence of the victim or the victim's next of kin from the resentencing hearing may not be a factor in the court's determination. The victim or victim's next of kin is authorized to appear in person, in writing, or by electronic means. Additionally, if the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentence review hearings.

- Whether the offender's age, maturity, and psychological development at the time of the offense affected his or her behavior;
- Whether the offender has successfully obtained a general educational development certificate or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available;
- Whether the offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense; and
- The results of any mental health assessment, risk assessment, or evaluation of the offender as to rehabilitation.[48]

If a court, after conducting a sentence review hearing, finds that the juvenile offender has been rehabilitated and is reasonably fit to reenter society, the court must modify the offender's sentence and impose a term of probation of at least five years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court must issue an order in writing stating the reasons why the sentence is not being modified.[49]

These sentencing provisions are limited to the juvenile offenders that fall under the strict findings in *Graham* and *Miller*.[50] Thus, the sentence review hearings do not currently apply to persons who were convicted and sentenced to very similar offenses and who are close in age to the juvenile offenders who have received sentence review hearings because of *Graham* and *Miller*.

Case Law Subsequent to CS/HB 7035 (2014)

Valid Sentence Options for *Miller* Offenders

Subsequent to the U.S. Supreme Court's holdings in *Roper* and *Miller*, the options for permissible sentences under Florida law for juveniles who were convicted of such capital and life offenses punishable by life imprisonment without the possibility of parole became unclear. The Florida Fifth District Court of Appeal in *Horsley v. State*,[51] held that the principal of statutory revival should be applied mandating that the last constitutional sentence, life with the possibility of parole after 25 years, should be imposed for convictions of such juveniles. However, in 2015, the Florida Supreme Court heard and overturned this decision in *Horsley*,[52] holding that the proper remedy for such juveniles convicted of offenses classified as capital offenses is to apply the sentencing provisions enacted by CS/HB 7035 (2014), which codified the above-mentioned ss. 775.082, 921.1401, and 921.1402, F.S., rather than utilize statutory revival principles and impose a sentence of life with the possibility of parole after 25 years.[53]

Retroactive Application of *Miller*

Another outstanding question at the time CS/HB 7035 (2014) was implemented was whether *Miller* applied retroactively in the same manner that *Graham* did. Other state and federal courts had issued differing opinions as to whether *Miller* applies retroactively. The question has turned

[48] Section 921.1402(6), F.S.
[49] Section 921.1402(7), F.S.
[50] *See Graham v. Florida*, 130 S.Ct. 2011 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012).
[51] 121 So.3d 1130 (Fla. 5th DCA 2013).
[52] 160 So.3d 393 (Fla. 2015).
[53] Life with the possibility of parole after 25 years is the penalty for capital murder under the 1993 version of s. 775.082(1), F.S., the most recent capital murder penalty statute that was constitutional under *Miller* when applied to a juvenile offender.

on whether *Miller* is considered to be a procedural change in the law that does not apply retroactively to sentences that were final before the opinion was issued or an opinion of fundamental significance, similar to *Graham*.

The Florida Supreme Court decided this issue in *Falcon v. State*.[54] The Court held that *Miller* applied retroactively because the ruling is a development of fundamental significance. The Court held that given that *Miller* invalidated the only statutory means for imposing a sentence of life without the possibility of parole on juveniles convicted of a capital felony it dramatically impacted the ability of Florida to impose a nondiscretionary sentence of life without parole on a juvenile convicted of a capital felony. Therefore, *Falcon* ensured that juvenile offenders whose convictions and sentences were final prior to the *Miller* decision could seek collateral relief based on it.[55]

Impact of Parole or Conditional Release Options for Juvenile Offenders

The U.S. Supreme Court further distinguished the *Graham* and *Miller* progeny of cases with *Virginia v. LeBlanc*, which denied habeas corpus relief for the juvenile offender holding that release programs for prisoners that consider factors in a similar manner as parole, such as Virginia's geriatric release program, did not violate *Graham* or *Miller* because it provides a juvenile offender a meaningful opportunity for release. In *LeBlanc*, the Court reasoned that Virginia's geriatric release program considered individualized factors of the offender, such as the individual's rehabilitation and maturity, history and conduct before and during incarceration, his or her inter-personal relationships with staff and inmates, and development and growth in attitude toward himself, herself, and others.[56]

The Florida Supreme Court has held that the *Graham* and *Miller* rules do not apply to juvenile offenders sentenced to life or lengthy terms of years equal to life, but who are eligible for parole.[57]

Victim Input

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

- Reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary.
- To be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.

[54] 162 So.3d 954 (Fla. 2015).
[55] *Falcon v. State*, 162 So.3d 954, 961 (Fla. 2015).
[56] *Virginia v. LeBlanc*, 137 S.Ct. 1726 (2017).
[57] *See Franklin v. State*, 258 So.3d 1329 (Fla. 2018); *Carter v. State*, 283 So.3d 409 (Fla. 3d DCA 2019); *Brown v. State*, 283 So.3d 424 (Fla. 3d DCA 2019).

- 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.[58]

Effect of the Bill

Juvenile Offenders

As discussed above, a juvenile offender sentenced to a sentence of life without parole for a capital felony[59] where a finding was made that he or she actually killed, intended to kill, or attempted to kill the victim is entitled to a review of his or her sentence after 25 years if he or she has never previously been convicted of a specified enumerated felony.[60] The bill amends the list of enumerated offenses that bar such juvenile offenders from having a sentence review hearing to only include murder. Therefore, a juvenile offender is only prohibited from having a sentence review hearing if he or she has previously been convicted of committing or conspiracy to commit murder, if the murder for which the person was previously convicted was part of a separate criminal transaction or episode than the murder that resulted in the sentence.

The bill also creates s. 921.14021, F.S., providing for the retroactive application of the above mentioned amendment. The bill requires that a juvenile offender is entitled to a review of his or her sentence after 25 years or, if 25 years on the term of imprisonment has already been served by October 1, 2021, the sentence review hearing must be conducted immediately. The bill provides legislative intent related to the retroactive application of such provisions.

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

Young Adult Offenders

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

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

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

[58] Art. 1, s. 16(b)(6)a., b., f., and g., FLA. CONST.
[59] In violation of s. 782.04, F.S.
[60] *See* ss. 775.082(1)(b)1. and 921.1402, F.S.

Eligibility

The bill provides that a young adult offender who is convicted of an offense that is a:

- Life felony or that was reclassified as a life felony, and who is sentenced to more than 20 years[61] is entitled to a review of his or her sentence after 20 years.[62]
- First degree felony or that was reclassified as a first degree felony and who is sentenced to more than 15 years[63] is entitled to a review of his or her sentence after 15 years.

The bill prohibits a young adult offender from a sentence review hearing if he or she has previously been convicted of committing, or of conspiring to commit murder, if such prior murder was part of a separate criminal transaction or episode than the murder that resulted in the sentence under s. 775.082(3)(a)1., 2., 3., 4. or (b)1., F.S.,[64] or than the human trafficking for commercial sexual activity that resulted in the sentence under s. 775.082(3)(a)6., F.S.

Procedures for Initiating the Sentence Review Hearing Process

Similar to the process developed in s. 921.1402(3), F.S., applicable to a juvenile offender, the bill provides that the DOC must notify a young adult offender in writing of his or her eligibility to request a sentence review hearing:

- 18 months before the young adult offender is entitled to a sentence review hearing if such offender is not eligible when the bill becomes effective; or
- Immediately if the offender is eligible as of October 1, 2021.

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

Sentence Review Hearing

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

- Whether the young adult offender demonstrates maturity and rehabilitation.
- Whether the young adult offender remains at the same level of risk to society as he or she did at the time of the initial sentencing.

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

- The opinion of the victim or the victim's next of kin.[65]
- Whether the young adult offender was a relatively minor participant in the criminal offense or whether he or she acted under extreme duress or under the domination of another person.
- Whether the young adult offender has shown sincere and sustained remorse for the criminal offense.
- Whether the young adult offender's age, maturity, or psychological development at the time of the offense affected his or her behavior.
- Whether the young adult offender has successfully obtained a high school equivalency diploma or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available.
- Whether the young adult offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.
- The results of any mental health assessment, risk assessment, or evaluation of the young adult offender as to rehabilitation.[66]

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

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

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

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

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

Subsequent Reviews

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

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

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

Conditional Release for Specified Inmate Populations (Sections 5-19)

Aging Population Statistics

In 2018, 52.4 million adults in the United States were 65 or older and it is estimated that the number will rise to approximately 94.7 million by 2060.[67] The "baby boomers" generation which is generally defined as persons born from 1946 through 1964, will all be 65 and older by 2030.[68] 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.[69] The report also estimated that approximately 14 to 20 percent of the elder population has a mental health or substance abuse disorder, such as depression, dementia, or related psychiatric and behavioral symptoms.[70] Studies estimate that 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."[71] 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.[72]

Special Health Considerations for Inmates

Similarly to aging persons in the community, aging inmates are more likely to experience certain medical and health conditions, including, in part, dementia, impaired mobility, loss of hearing and vision, cardiovascular disease, cancer, osteoporosis, and other chronic conditions.[73] However, such ailments present special challenges within a prison environment and may result in

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[67] U.S. Department of Health and Human Services, Administration for Community Living, *2019 Profile of Older Americans*, May 2020, p. 4., available at https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2019ProfileOlderAmericans508.pdf (last visited January 22, 2021).

[68] United States Census Bureau, *By 2030 All Baby Boomers Will Be Age 65 or Older, 2020 Census Will Help Policymakers Prepare for the Incoming Wave of Aging Boomers*, December 10, 2020, available at https://www.census.gov/library/stories/2019/12/by-2030-all-baby-boomers-will-be-age-65-or-older.html (last visited January 30, 2021).

[69] Eden, J., et al., THE MENTAL HEALTH AND SUBSTANCE USE WORKFORCE FOR OLDER ADULTS (2012), p. 1, available at https://www.ncbi.nlm.nih.gov/books/NBK201410/?report=reader#!po=16.6667 (last visited January 22, 2021).

[70] *Id*. at 4.

[71] Yarnell, S., MD, PhD, Kirwin, P. MD, and Zonana, H. MD, *Geriatrics and the Legal System*, J 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 January 22, 2021).

[72] *Id*.

[73] 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 January 22, 2021).

the need for increased staffing levels and enhanced officer training.[74] Such aging or ill inmates can also require structural accessibility adaptions, such as special housing and wheelchair ramps. For example, in Florida, four facilities serve relatively large populations of older or ill inmates, which help meet special needs such as palliative and long-term care.[75]

Aging Inmate Statistics in Florida

The DOC reports that the elderly inmate[76] population has increased by 608 inmates or 2.6 percent from June 30, 2018 to June 30, 2019 and that this trend has been steadily increasing over the last five years for an overall increase of 2,326 inmates or 10.8 percent.[77] The DOC further reports that during FY 2018-19, there were 3,956 aging inmates admitted to Florida prisons. The majority of elderly inmates in prison on June 30, 2019, are serving time for violent offenses, property crimes, and drug offenses.[78]

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 18,319 in FY 2018-19, and further provided that outside care is generally more expensive than treatment provided within a prison facility.[79] 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.[80]

Aging Inmate Discretionary Release

Many states, the District of Columbia, and the federal government authorize discretionary release programs for certain inmates that are based on an inmate's age without regard to the medical condition of the inmate.[81] The National Conference of State Legislatures (NCSL) reports such discretionary release based on age has been legislatively authorized in 17 states.[82] 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

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[74] The PEW Charitable Trusts Older Prisoners Report.
[75] *Id*.
[76] 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.
[77] The DOC, *2018-19 Annual Report*, p. 19, available at http://www.dc.state.fl.us/pub/annual/1819/FDC_AR2018-19.pdf (last visited January 22, 2021).
[78] *Id*. at p. 21.
[79] *Id*. at. p. 19.
[80] *Id*.
[81] The National Conference of State Legislatures (NCSL), *State Medical and Geriatric Parole Laws*, August 27, 2018, available at http://www.ncsl.org/research/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws.aspx (hereinafter cited as "The NCSL Aging Inmate Statistics"); Code of the District of Columbia, *Section 24-465 Conditions for Geriatric Release*, available at https://code.dccouncil.us/dc/council/code/sections/24-465.html; Section 603(b) of the First Step Act, codified at 18 USC s. 3582. *See also* U.S. Department of Justice, Federal Bureau of Prisons, *Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. Section 3582 and 4205(g)*, January 17, 2019, p. 6-7, available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf (all sites last visited January 22, 2021).
[82] The NCSL Aging Inmate Statistics. In addition, 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.

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.[83]

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.[84] Other states, such as Mississippi and Oklahoma, provide a term of years or a certain percentage of the sentence to be served.[85]

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 that are not eligible for release consideration.

Florida does not currently address discretionary release based on an inmate's age alone, but as discussed below Florida has discretionary release based on an inmate's medical condition.

Conditional Medical Release

Conditional Medical Release (CMR), outlined in s. 947.149, F.S., was created by the Florida Legislature in 1992,[86] as a discretionary release of inmates who are "terminally ill" or "permanently incapacitated" and who are not a danger to themselves or others.[87] The Florida Commission on Offender Review (FCOR), which consists of three members, reviews eligible inmates for release under the CMR program pursuant to the powers established in s. 947.13, F.S.[88] In part, s. 947.149, F.S., authorizes the FCOR to determine what persons will be released on CMR, establish the conditions of CMR, and determine whether a person has violated the conditions of CMR and take actions with respect to such a violation.

Eligibility Criteria

Eligible inmates include inmates designated by the DOC as a:

- "Permanently incapacitated inmate," which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others; or
- "Terminally ill inmate," which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.[89]

[83] *Id*.
[84] *Id*.
[85] *Id*.
[86] Chapter 92-310, L.O.F.
[87] The FCOR, *Release Types, Post Release*, available at https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease (last visited January 22, 2021).
[88] Section 947.149(3), F.S. Section 947.01, F.S., provides that the membership of the FCOR is three-members.
[89] Section 947.149(1), F.S.

Inmates sentenced to death are ineligible for CMR.[90]

Referral Process for Eligible Inmates

The DOC is required to identify inmates who may be eligible for CMR in accordance with the above-mentioned designations. The DOC uses available medical information as a basis for identifying eligible inmates and refers such inmates to the FCOR for consideration. In considering an inmate, the FCOR may require that additional medical evidence be produced or that additional medical examinations be conducted and may require other investigations to be made as it deems necessary.[91]

An inmate does not have a right to CMR or to a medical evaluation to determine eligibility for such release.[92] Additionally, the authority and whether or not to grant CMR and establish additional conditions of release rests solely within the discretion of the FCOR, together with the authority to approve the release plan to include necessary medical care and attention.[93]

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

- Clinical Report, including complete medical information justifying classification of the inmate as "permanently incapacitated" or "terminally ill"; and
- Verifiable release plan, to include necessary medical care and attention.[94]

The referral must be directed to the Office of the Commission Clerk who may docket the case before the FCOR. A decision will be made by a majority of the quorum present and voting.[95] The FCOR is required to approve or disapprove CMR based upon information submitted in support of the recommendation and review of the DOC file. If additional information is needed, the FCOR must continue the case for verification of the release plan, additional medical examinations, and other investigations as directed. The FCOR is required to instruct staff to conduct the appropriate investigation, which must include a written statement setting forth the specific information being requested.[96]

Victim Input for CMR

If a victim or his or her personal representative requests to be notified, the FCOR must provide victim notification of any hearing where the release of the inmate on CMR is considered prior to the inmate's release.[97] As discussed above, Art. I, s. 16 of the Florida Constitution, which was adopted in 2018 by the Florida voters, provides certain rights to victims in the Florida Constitution.[98]

[90] Section 947.149(2), F.S.
[91] Section 947.149(3), F.S.
[92] Section 947.149(2), F.S.
[93] Section 947.149(3), F.S.
[94] Rule 23-24.020(1), F.A.C.
[95] Rule 23-24.020(2), F.A.C.
[96] Rule 23-24.020(3), F.A.C.
[97] Rule 23-24.020(4), F.A.C., further qualifies that this notification occurs when the name and address of such victim or representative of the victim is known by the FCOR.
[98] Art. 1, s. 16(b)(6) FLA. CONST.

The requirement to notify victims was in place prior to the constitutional amendment passage through administrative rule. Rule 23-24.025, F.A.C., provides that a victim, relative of a minor who is a victim, relative of a homicide victim, or victim representative or victim advocate must receive advance notification any time a CMR case is placed on the docket for determination by the FCOR. Notification must be made to the address found in the police report or other criminal report or at a more current address if such has been provided to the FCOR.[99]

A victim of the crime committed by the inmate, or a victim's representative, must be permitted a reasonable time to make an oral statement or submit a written statement regarding whether the victim supports the granting, denying, or revoking of CMR.[100] Additionally, other interested parties may also speak on behalf of victims since the FCOR meetings are public meetings.[101] A victim can also request that the FCOR provide notification of the action taken if he or she does not choose to appear at meetings or make a written statement.[102]

Release Conditions

The release of an inmate on CMR is for the remainder of the inmate's sentence and requires periodic medical evaluations at intervals determined by the FCOR at the time of release.[103] An inmate who has been approved for release on CMR is considered a medical releasee when released. Each medical releasee must be placed on CMR supervision and is subject to the standard conditions of CMR, which, in part, include securing the permission of the CMR officer before changing residences or leaving the county or the state; and permitting the CMR officer to visit the medical releasee's residence, employment, or elsewhere.[104] Additionally, the FCOR can impose special conditions of CMR.[105]

Revocation and Recommitment

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

- That a violation of any condition of the release has occurred; or
- His or her medical or physical condition improves to the point that the offender no longer meets the CMR criteria.[106]

<u>Revocation Due to Improved Medical or Physical Condition</u>

If it is discovered during the CMR release that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for such release,

[99] Rule 23-24.025(1), F.A.C.
[100] Rule 23-24.025(2) and (3), F.A.C. *See* Rule 23-24.025(4), F.A.C., regarding specifics about what is allowed to be submitted or utilized during oral testimony. Rule 23-24.025(7), F.A.C., provides that victims who appear and speak must be advised that any information submitted at FCOR meetings becomes public record.
[101] Rule 23-24.025(3), F.A.C.
[102] Rule 23-24.025(5), F.A.C.
[103] Section 947.149(4), F.S.
[104] Rule 23-24.030(1), F.A.C.
[105] Rule 23-24.030(2), F.A.C.
[106] Section 947.149(5), F.S.

the FCOR may order that the medical releasee be returned to the custody of the DOC for a revocation hearing, in accordance with s. 947.141, F.S. A medical releasee who has his or her CMR revoked due to improvement in medical or physical condition must serve the balance of the sentence with credit for the time served on CMR, but does not forfeit any gain-time[107] accrued prior to release on CMR.[108]

Revocation Due to Violation of CMR Conditions

When there are reasonable grounds to believe that a medical releasee who is on CMR has violated the conditions of the release in a material respect the FCOR is authorized to have a warrant issued for the arrest of the medical releasee. A warrant must be issued if the medical releasee was found to be a sexual predator.[109] Further, if a law enforcement officer has probable cause to believe that a medical releasee who is on CMR supervision has violated the terms and conditions of his or her release by committing a felony offense then the officer must arrest the medical releasee without a warrant and a warrant need not be issued in the case.[110]

A medical releasee who is arrested for a felony must be detained without bond until the initial appearance of the medical releasee at which a judicial determination of probable cause is made. The medical releasee may be released if the trial court judge does not find probable cause existed for the arrest. However, if the court makes a finding of probable cause, such determination also constitutes reasonable grounds to believe that the medical releasee violated the conditions of the CMR release and the chief county correctional officer must notify the FCOR and the DOC of the finding within 24 hours.[111] The medical releasee must continue to be detained without bond for a period not more than 72 hours excluding weekends and holidays after the date of the probable cause determination, pending a decision by the FCOR whether to issue a warrant charging the medical releasee with violation of the conditions of CMR. If the FCOR issues such warrant, the medical releasee must continue to be held in custody pending a revocation hearing.[112]

Revocation Hearing

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

- Alleged violation; and

[107] 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. 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. Section 944.275(1) and (4)(f), F.S.

[108] Section 947.149(5)(a), F.S. Additionally, if the person whose CMR is revoked due to an improvement in medical or physical condition would otherwise be eligible for parole or any other release program, the person may be considered for such release program pursuant to law.

[109] Section 947.141(1), F.S.

[110] Section 947.141(7), F.S.

[111] Section 947.141(2), F.S., further states that the chief county detention officer must transmit to the FCOR and the DOC a facsimile copy of the probable cause affidavit or the sworn offense report upon which the trial court judge's probable cause determination is based.

[112] *Id*.

- Right to:
  - Be represented by counsel.
  - Be heard in person.
  - Secure, present, and compel the attendance of witnesses relevant to the proceeding.
  - Produce documents on his or her own behalf.
  - Access all evidence used against the releasee and confront and cross-examine adverse witnesses.
  - Waive the hearing.[113]

The commissioner, who conducts the hearing, is required to make findings of fact in regard to the alleged violation within a reasonable time following the hearing and at least two commissioners must enter an order determining whether the charge of violation of CMR has been sustained based upon the findings of fact presented by the hearing commissioner or authorized representative. The panel may: revoke CMR, thereby returning the medical releasee to prison to serve the sentence imposed; reinstate the original order granting the release; or enter such other order, as it considers proper.[114]

If CMR is revoked and the medical releasee is ordered to be returned to prison, the medical releasee is deemed to have forfeited all gain-time or commutation of time for good conduct earned up to the date of release. However, if CMR is revoked due to the improved medical or physical condition of the medical releasee, the medical releasee does not forfeit gain-time accrued before the date of CMR.[115] Gain-time or commutation of time for good conduct may be earned from the date of return to prison.

Statistics

The FCOR has approved and released 94 inmates for CMR in the last three fiscal years:
- 35 in FY 2019-20;
- 38 in FY 2018-19; and
- 21 in FY 2017-18.[116]

The DOC has recommended 180 inmates for release in the past three fiscal years:
- 65 in FY 2019-20;
- 76 in FY 2018-19; and
- 39 in FY 2017-18.[117]

Currently, the DOC's role in the CMR process is making the initial designation of medical eligibility, referring the inmate's case to the FCOR for an investigation and final decision, and supervising inmates who are granted CMR.[118]

[113] Section 947.141(3), F.S.
[114] Section 947.141(4), F.S.
[115] Section 947.141(6), F.S.
[116] *See* FCOR, *2020 Annual Report*, p. 8, available at https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202020.pdf; FCOR, *2019 Annual Report*, p. 8, available at https://www.fcor.state.fl.us/docs/reports/AnnualReport2019.pdf; FCOR, *2018 Annual Report*, p. 8, available at https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf; (all sites last visited February 1, 2021).
[117] *Id*.
[118] The FCOR, *Agency Analysis for SB 232*, January 25, 2021, p. 2 (on file with the Senate Committee on Criminal Justice).

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.[119]

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.[120] 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.[121] 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*[122] 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.[123]

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."[124] 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.[125]

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.[126] The DOC has the constitutional and statutory imperative to provide adequate health services to state prison inmates

[119] *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).
[120] The PEW Charitable Trusts, Urahn, S. and Thompson, M., *Prison Health Care: Costs and Quality*, October 2017, p. 4, available at https://www.pewtrusts.org/-/media/assets/2017/10/sfh_prison_health_care_costs_and_quality_final.pdf (last visited January 22, 2021) (hereinafter cited as "The PEW Trusts Prison Health Care Cost Report").
[121] *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 January 22, 2021); *See also Newman et al. v. Alabama et al.*, 349 F. Supp. 278 (M.D. Ala. 1972).
[122] 430 U.S. 325 (1977).
[123] *Id*. The Correctional Medical Authority, 2017-2018 Annual Report and Update on the Status of Elderly Offender's in Florida's Prisons, p. 1, http://www.floridahealth.gov/programs-and-services/correctional-medical-authority/_documents/annual-reports/CorrectionalMedicalAuthority-2017-2018AnnualReport.pdf (last visited January 31, 2021).
[124] The PEW Trusts Prison Health Care Cost Report, p. 4.
[125] *Id*.
[126] Sections 945.04(1) and 945.025(1), F.S.

directly related to this responsibility.[127] This medical care includes comprehensive medical, mental health, and dental services, and all associated ancillary services.[128] 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.[129]

The DOC contracts with the Centurion of Florida, LLC (Centurion) to provide comprehensive statewide medical, mental health, dental services, and operates the DOC's reception medical center. The care provided is under a managed care model. All inmates are screened at a DOC reception center upon arrival from the county jail. The purpose of this intake process is to determine the inmate's current medical, dental, and mental health care needs, which is achieved through assessments, in part, for auditory, mobility and vision disabilities, and the need for specialized mental health treatment.[130]

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.[131]

Federal First Step Act

In December 2018, the United States Congress passed, and President Trump signed into law, the "Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act" or the "FIRST STEP Act" (First Step Act).[132] The law makes a number of changes to the federal criminal justice system and procedures applicable to inmates in the Federal Bureau of Prisons (BOP), including, in part, modifying provisions related to compassionate release to:

- Require inmates be informed of reduction in sentence availability and process;
- Modify the definition of "terminally ill;"
- Require notice and assistance for terminally ill offenders; and
- Require requests from terminally ill offenders to be processed within 14 days.[133]

Specifically, in the case of a diagnosis of a terminal illness, the BOP is required to, subject to confidentiality requirements:

- Notify the defendant's attorney, partner, and family members, not later than 72 hours after the diagnosis, of the defendant's diagnosis of a terminal condition and inform the defendant's

[127] *Crews v. Florida Public Employers Council 79, AFSCME*, 113 So. 3d 1063 (Fla. 1st DCA 2013); *See also* s. 945.025(2), F.S.
[128] The DOC, Office of Health Services, available at http://www.dc.state.fl.us/org/health.html (last visited January 31, 2021).
[129] *Id*.
[130] *Id*. *See also* the DOC Annual Report, p. 19.
[131] *Id*.
[132] The First Step Act of 2018, Pub. L. No. 115-391 (2018).
[133] Section 603(b) of the First Step Act, codified at 18 USC s. 3582. *See also* U.S. Department of Justice, Federal Bureau of Prisons, *Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. Section 3582 and 4205(g)*, January 17, 2019, p. 3-4, available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf (last visited January 22, 2021).

attorney, partner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction;
- Provide the defendant's partner and family members, including extended family, with an opportunity to visit the defendant in person not later than 7 days after the date of the diagnosis;
- Upon request from the defendant or his attorney, partner, or a family member, ensure that BOP employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction; and
- Process a request for sentence reduction submitted on the defendant's behalf by the defendant or the defendant's attorney, partner, or family member not later than 14 days from receipt of a request.[134]

The statutory time frames mentioned above begin once the Clinical Director of an institution makes a terminal diagnosis. Once the diagnosis is made, the Clinical Director will inform the Warden and the appropriate Unit Manager as soon as possible to ensure requirements are met.[135]

Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.[136] Article X, s. 13 of the Florida Constitution allows the Legislature to waive this immunity. Further, s. 768.28(1), F.S., allows for suits in tort against Florida and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct. Section 768.28, F.S., applies only to "injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment ...."[137]

Section 768.28(5), F.S., limits tort recovery from a governmental entity at $200,000 per person and $300,000 per accident.[138] This limitation does not prevent a judgement in excess of such amounts from being entered, but a claimant is unable to collect above the statutory limit unless a claim bill is passed by the Legislature.[139]

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment, unless the damages result from the employee's acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.[140, 141] Thus, the immunity may be pierced only if state employees or agents either act outside the scope of their employment, or act "in bad

[134] *Id*.
[135] *Id*.
[136] The Legal Information Institute, *Sovereign Immunity*, available at https://www.law.cornell.edu/wex/sovereign_immunity (last visited January 22, 2021).
[137] *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.).
[138] Section 768.28(5), F.S.
[139] *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).
[140] *See Peterson v. Pollack*, 2019 WL 6884887 (Fla. 4th DCA December 18, 2019).
[141] Section 768.28(9)(a), F.S.

faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property."[142]

Courts have construed the bad faith prong of s. 768.28, F.S., to mean the actual malice standard, which means the conduct must be committed with "ill will, hatred, spite, [or] an evil intent."[143] Conduct meeting the wanton and willful standard is defined as "worse than gross negligence,"[144] and "more reprehensible and unacceptable than mere intentional conduct."[145, 146]

Effect of the Bill

The bill creates two programs for conditional release within the DOC, CMR and CAIR. The bill repeals s. 947.149, F.S., which establishes the CMR program within the FCOR and creates s. 945.0911, F.S., to establish a CMR program within the DOC. The bill also creates s. 945.0912, F.S., which establishes a CAIR program within the DOC. Both programs have the same stated purpose, which is to:

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

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

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

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

Eligibility Criteria

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

[142] *Eiras v. Fla.*, 239 F. Supp. 3d 1331, 1343 (M.D. Fla. 2017).
[143] *See Parker v. State Bd. of Regents ex rel. Fla. State Univ.*, 724 So.2d 163, 167 (Fla. 1st DCA 1998); *Reed v. State*, 837 So.2d 366, 368–69 (Fla. 2002); and *Eiras v. Fla.*, 239 F. Supp. 3d 1331, 1343 (M.D. Fla. 2017).
[144] *Eiras v. Fla.*, 239, *supra* at 50; *Sierra v. Associated Marine Insts., Inc.*, 850 So.2d 582, 593 (Fla. 2d DCA 2003).
[145] *Eiras v. Fla.*, *supra* at 50; *Richardson v. City of Pompano Beach*, 511 So.2d 1121, 1123 (Fla. 4th DCA 1987).
[146] *See also Kastritis v. City of Daytona Beach Shores*, 835 F.Supp.2d 1200, 1225 (M.D. Fla. 2011) (defining these standards).

CMR

The bill provides that an inmate is eligible for consideration for release under the CMR program when the inmate, because of an existing medical or physical condition, is determined by the DOC to be an inmate with a debilitating illness, a permanently incapacitated inmate, or a terminally ill inmate. The bill provides definitions for such terms, including:

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

CAIR

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

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

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

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

Referral Process

The bill requires that any inmate in the custody of the DOC who meets one or more of the above-mentioned eligibility requirements must be considered for CMR or CAIR, respectively. However, the authority to grant CMR or CAIR rests solely with the DOC. In addition, the bill provides that an inmate does not have a right to release or to a medical evaluation to determine

eligibility for release on CMR pursuant to s. 945.0911, F.S., or a right to release on CAIR pursuant to s. 945.0912, F.S., respectively.

The bill requires the DOC to identify inmates who may be eligible for CMR based upon available medical information and authorizes the DOC to require additional medical evidence, including examinations of the inmate, or any other additional investigations it deems necessary for determining the appropriateness of the eligible inmate's release. Further, the DOC must identify inmates who may be eligible for CAIR. In considering an inmate for the CAIR program, the DOC may require the production of additional evidence or any other additional investigations that the DOC deems necessary for determining the appropriateness of the eligible inmate's release.

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

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

Determination of Release

The bill requires the three-member panel established in s. 945.0911(1), F.S., or s. 945.0912(2), F.S., whichever is applicable, to conduct a hearing within a specified time after receiving the referral to determine whether CMR or CAIR, respectively, is appropriate for the inmate. The bill specifies that the hearing must be conducted by the panel:

- By April 1, 2022, if the inmate is immediately eligible for consideration for the CMR program or the CAIR program when the provisions take effect on October 1, 2021.
- By July 1, 2022, if the inmate becomes eligible for consideration for the CMR program or the CAIR program after October 1, 2021, but before July 1, 2022.
- Within 45 days after receiving the referral if the inmate becomes eligible for the CMR program or the CAIR program any time on or after July 1, 2022.

Before the hearing for an inmate being referred for the CMR program, the director of inmate health services or his or her designee must review any relevant information, including, but not limited to, medical evidence, and provide the panel with a recommendation regarding the appropriateness of releasing the inmate on CMR.

A majority of the panel members must agree that release on CMR or CAIR is appropriate for the inmate. If CMR or CAIR is approved, the inmate must be released by the DOC to the community within a reasonable amount of time with necessary release conditions imposed.

The bill provides that an inmate who is granted CMR is considered a medical releasee upon release to the community. Similarly, the bill provides that an inmate released on CAIR is considered an aging releasee upon release to the community.

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

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

Inmate's Diagnosis of a Terminal Condition - CMR

If an inmate is diagnosed with a terminal medical condition that makes him or her eligible for consideration for release while in the custody of the DOC, subject to confidentiality requirements, the DOC must:

- Notify the inmate's family or next of kin and attorney, if applicable, of such diagnosis within 72 hours after the diagnosis.
- Provide the inmate's family, including extended family, an opportunity to visit the inmate in person within 7 days after the diagnosis.
- Initiate a review for CMR, as stated above, immediately upon the diagnosis.

If the inmate has mental and physical capacity, he or she must consent to release of confidential information for the DOC to comply with the notification requirements required.

Release Conditions

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

- Supervision by an officer trained to handle special offender caseloads.
- Active electronic monitoring, if such monitoring is determined to be necessary to ensure the safety of the public and the releasee's compliance with release conditions.
- Any conditions of community control provided for in s. 948.101, F.S.[147]
- Any other conditions the DOC deems appropriate to ensure the safety of the community and compliance by the medical releasee or aging releasee.

[147] Some examples of community control conditions required under s. 948.101, F.S., include: to maintain specified contact with the parole and probation officer; confinement to an agreed-upon residence during hours away from employment and public service activities; mandatory public service; and supervision by the DOC by means of an electronic monitoring device or system.

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

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

Revocation of Conditional Release and Recommitment to the DOC

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

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

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

Revocation Based on Medical or Physical Improvement - CMR

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

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

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

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

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

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

Revocation Based on Violation of Conditions

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

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

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

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

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

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

Revocation Hearing Process

CMR

If the medical releasee subject to revocation for either basis elects to proceed with a hearing, the medical releasee must be informed orally and in writing of certain rights, including the releasee's:

- Alleged basis for the pending revocation proceeding against the releasee.
- Right to:
  - Be represented by counsel.[148]
  - Be heard in person.
  - Secure, present, and compel the attendance of witnesses relevant to the proceeding.
  - Produce documents on his or her own behalf.
  - Access all evidence used to support the revocation proceeding against the releasee and confront and cross-examine adverse witnesses.
  - Waive the hearing.

CAIR

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

- Alleged violation with which he or she is charged.
- Right to:
  - Be represented by counsel.[149]
  - Be heard in person.
  - Secure, present, and compel the attendance of witnesses relevant to the proceeding.
  - Produce documents on his or her own behalf.
  - Access all evidence used against the releasee and confront and cross-examine adverse witnesses.
  - Waive the hearing.

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

Sovereign Immunity

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

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

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

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

These provisions of the bill are effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 1 of the bill relating to electronic recording of custodial interrogations may result in indeterminate local fund expenditures for equipment, maintenance, and operation. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal laws are exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

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 has not reviewed the bill, however the Office of Economic and Demographic Research (EDR) did provide a Preliminary Estimate of the

bill's impact. The EDR estimates that the bill as a whole would have a negative significant prison bed impact (i.e. a decrease of more than 25 prison beds).[150]

Custodial Interrogations (Section 1)

The requirements of the bill relating to electronic recording of custodial interrogations may have an indeterminate fiscal impact on local law enforcement agencies if agencies determine that expenditures to purchase recording equipment, retain recorded statements, and store electronic recordings are necessary to comply with the requirements of the bill relating to electronically recording custodial interrogations.

Sentence Review Hearings for Specified Offenders (Sections 2-4)

The bill modifies the list of enumerated offenses that exclude juvenile offenders convicted of capital murder from a sentence review hearing to allow some the opportunity to have a sentence review hearing. The bill also creates a new sentence review hearing opportunity for certain young adult offenders. The EDR's Preliminary Estimate for the bill reports there are currently 7,400 inmates potentially eligible for a sentence review under the bill. The EDR cannot estimate how courts will rule in these hearings therefore the prison bed impact cannot be quantified. However, the EDR did report that given the large pool of potentially eligible inmates the bill will likely have a significant impact.[151]

Conditional Release for Certain Inmates (Sections 5-6)

Conditional Medical Release (CMR)

The EDR Preliminary Estimate for the bill found there are approximately 112 inmates that would meet the bill's CMR program criteria. The EDR estimates the CMR program will likely result in a negative significant prison bed impact (i.e. a decrease of more than 25 prison beds).[152]

The bill removes any role of determining the appropriateness of an inmate's release on CMR from the FCOR and places such comparable duties within the DOC. In Fiscal Year 2019-2020, FCOR conducted 72 CMR determinations. They report that they spent 933 hours on the investigation/determination, 164 hours on victim assistance, and 394 hours on revocations for CMR. The FCOR reports that this equates to less than 1 FTE.[153]

Conditional Aging Inmate Release (CAIR)

The EDR Preliminary Estimate for the bill found there are potentially 272 inmates who would meet the criteria for the CAIR program. The EDR estimated that the CAIR

[150] The EDR, *SB 232 Preliminary Estimate*, January 21, 2021 (on file with the Senate Committee on Criminal Justice).
[151] *Id.*
[152] *Id.*
[153] The FCOR, *Agency Analysis for SB 232*, January 25, 2021, p. 4 (on file with the Senate Committee on Criminal Justice).

program will likely result in a negative indeterminate prison bed impact (i.e. an unquantifiable decrease in prison beds).[154]

Conditional Medical Release (CMR) and Conditional Aging Inmate Release (CAIR)

According to the DOC, the overall fiscal impact to the department is significant but indeterminate.[155]

The DOC reports that when the inmate population is impacted in small increments statewide, the Fiscal Year 2019-2020 inmate variable per diem of $22.29 is the most appropriate to use to determine the fiscal impact. The variable per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The DOC's Fiscal Year 2019-2020 average per diem for community supervision was $6.01.[156]

The DOC provides the department will need 7 additional staff to coordinate the implementation and administration of the CMR and CAIR programs.[157] The staff requested by the DOC is as follows:

- 1 Attorney $60,907 (salary and benefits)
- 1 Correctional Program Administrator $77,849 (salary and benefits)
- 1 Correctional Services Consultant $66,986 (salary and benefits)
- 1 Correctional Services Assistant Consultant $55,233 (salary and benefits)
- 1 Government Operations Consultant II $60,146 (salary and benefits)
- 2 Government Operations Consultant I $58,203 (salary and benefits).[158]

The DOC reports the following other costs:

- Recurring expense – Prof light travel $23,646
- Non-recurring expense – Prof light travel $31,003
- Human Recourses Services $2,310
- Information Technology $26,100.[159]

The DOC specifies that the total cost of the CMR and CAIR programs on the department will be $595,709, $534,177 in recurring costs and $61,532 in non-recurring costs.[160]

VI. Technical Deficiencies:

None.

[154] The EDR, *SB 232 Preliminary Estimate*, January 21, 2021 (on file with the Senate Committee on Criminal Justice).
[155] The DOC, *2021 Agency Bill Analysis for SB 232*, February 1, 2021, p. 13 (on file with the Senate Committee on Criminal Justice).
[156] *Id.*at 15.
[157] *Id.*
[158] *Id.*
[159] *Id.*
[160] *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

The 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, 921.1402, 944.605, 944.70, 947.13, and 947.141.

The bill creates the following sections of the Florida Statutes: 900.06, 921.14021, 921.1403, 945.0911, and 945.0912.

This bill repeals section 947.149 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 February 3, 2021:
The Committee Substitute fixed an incorrect statute citation which clarifies that a young adult offender is not entitled to have his or her sentence reviewed if he or she has a prior murder conviction and is currently in prison serving a separate life sentence for the offense of human trafficking for commercial sexual activity.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2021	.	
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	.	
	.	

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

Senate Amendment

Delete line 399

and insert:

2., 3., or 4. or (b)1. or than the human trafficking for commercial sexual activity that resulted in the sentence under s. 775.082(3)(a)6.

By Senator Brandes

24-00288-21 2021232__

A bill to be entitled

An act relating to criminal justice; creating s. 900.06, F.S.; defining terms and specifying covered offenses; requiring that a custodial interrogation conducted at a place of detention in connection with covered offenses be electronically recorded in its entirety; requiring law enforcement officers who do not comply with the electronic recording requirement or who conduct custodial interrogations at a location other than a place of detention to prepare specified reports; providing exceptions to the electronic recording requirement; requiring a court to consider a law enforcement officer's failure to comply with the electronic recording requirement in determining the admissibility of a statement, unless an exception applies; requiring a court, upon the request of a defendant, to give certain cautionary instructions to a jury under certain circumstances; providing immunity from civil liability to law enforcement agencies that enforce certain rules; providing that a cause of action is not created against a law enforcement officer; reenacting and amending s. 921.1402, F.S.; revising the circumstances under which a juvenile offender is not entitled to a review of his or her sentence after a specified timeframe; creating s. 921.14021, F.S.; providing legislative intent; providing for retroactive application of a specified provision relating to a review of sentence for juvenile offenders convicted of murder; providing for

24-00288-21 2021232__

immediate review of certain sentences; creating s. 921.1403, F.S.; providing legislative intent for retroactive application; defining the term "young adult offender"; precluding eligibility for a sentence review for young adult offenders who previously committed, or conspired to commit, murder; providing timeframes within which young adult offenders who commit specified crimes are entitled to a review of their sentences; providing applicability; requiring the Department of Corrections to notify young adult offenders in writing of their eligibility for a sentence review within certain timeframes; requiring a young adult offender seeking a sentence review or a subsequent sentence review to submit an application to the original sentencing court and request a hearing; providing for legal representation of eligible young adult offenders; providing for one subsequent review hearing for a young adult offender after a certain timeframe if he or she is not resentenced at the initial sentence review hearing; requiring the original sentencing court to hold a sentence review hearing upon receiving an application from an eligible young adult offender; requiring the court to consider certain factors in determining whether to modify a young adult offender's sentence; authorizing a court to modify the sentence of certain young adult offenders if the court makes certain determinations; requiring the court to issue a written order stating certain information in specified circumstances;

creating s. 945.0911, F.S.; providing legislative findings; establishing the conditional medical release program within the department; establishing a panel to consider specified matters; defining terms; providing for program eligibility; authorizing an inmate to be released on conditional medical release before serving 85 percent of his or her term of imprisonment; requiring any inmate who meets certain criteria to be considered for conditional medical release; providing that an inmate does not have a right to release or to a certain medical evaluation; requiring the department to identify eligible inmates; requiring the department to refer certain inmates to the panel for consideration; providing for victim notification under certain circumstances; requiring the panel to conduct a hearing within specified timeframes; specifying requirements for the hearing; providing conditions for release; requiring that inmates who are approved for conditional medical release be released from the department within a reasonable amount of time; providing a review process for an inmate who is denied conditional medical release; providing that an inmate is considered a medical releasee upon release from the department into the community; requiring medical releasees to comply with specified conditions; providing that medical releasees are considered to be in the custody, supervision, and control of the department; providing that the department does not have a duty to provide medical care to a medical

releasee; providing that a medical releasee is eligible to earn or lose gain-time; prohibiting a medical releasee or his or her community-based housing from being counted in the prison system population and the prison capacity figures, respectively; providing for the revocation of a medical releasee's conditional medical release; authorizing a medical releasee to be returned to the department's custody if his or her medical or physical condition improves; authorizing the department to order a medical releasee to be returned for a revocation hearing or to remain in the community pending such hearing; authorizing the department to issue a warrant for the arrest of a medical releasee under certain circumstances; authorizing a medical releasee to admit to the allegation that his or her medical or physical condition improved or to proceed to a revocation hearing; requiring such hearing to be conducted by the panel; requiring certain evidence to be reviewed and a recommendation to be made before such hearing; requiring a majority of the panel members to agree that revocation of medical release is appropriate; requiring a medical releasee to be recommitted to the department to serve the balance of his or her sentence if a conditional medical release is revoked; providing that gain-time is not forfeited for revocation based on improvement in the medical releasee's condition; providing a review process for a medical releasee who has his or her release revoked; authorizing a medical

releasee to be recommitted if he or she violates any conditions of the release; authorizing certain persons to issue a warrant for the arrest of a medical releasee if certain conditions are met; authorizing a law enforcement or probation officer to arrest a medical releasee without a warrant under certain circumstances; requiring that a medical releasee be detained without bond if a violation is based on certain circumstances; authorizing a medical releasee to admit to the alleged violation or to proceed to a revocation hearing; requiring such hearing to be conducted by the panel; requiring a majority of the panel members to agree that revocation of medical release is appropriate; requiring specified medical releasees to be recommitted to the department upon the revocation of the conditional medical release; authorizing the forfeiture of gain-time if the revocation is based on certain violations; providing a review process for a medical releasee who has his or her release revoked; requiring that a medical releasee be given specified information in certain instances; requiring the panel to provide a written statement as to evidence relied on and reasons for revocation under certain circumstances; requiring a medical releasee whose conditional medical release is revoked and who is recommitted to the department to comply with the 85 percent requirement upon recommitment; requiring the department to notify certain persons within a specified timeframe of an inmate's diagnosis of a

terminal medical condition; requiring the department to allow a visit between an inmate and certain persons within 7 days of a diagnosis of a terminal medical condition; requiring the department to initiate the conditional medical release review process immediately upon an inmate's diagnosis of a terminal medical condition; requiring an inmate to consent to release of information under certain circumstances; providing that members of the panel have sovereign immunity related to specified decisions; providing rulemaking authority; creating s. 945.0912, F.S.; providing legislative findings; establishing the conditional aging inmate release program within the department; establishing a panel to consider specified matters; providing for program eligibility; providing that an inmate may be released on conditional aging inmate release before serving 85 percent of his or her term of imprisonment; prohibiting certain inmates from being considered for conditional aging inmate release; requiring that an inmate who meets certain criteria be considered for conditional aging inmate release; providing that an inmate does not have a right to release; requiring the department to identify eligible inmates; requiring the department to refer certain inmates to the panel for consideration; providing victim notification requirements under certain circumstances; requiring the panel to conduct a hearing within specified timeframes; specifying requirements for the hearing; requiring that inmates

who are approved for conditional aging inmate release be released from the department within a reasonable amount of time; providing a review process for an inmate who is denied conditional aging inmate release; providing that an inmate is considered an aging releasee upon release from the department into the community; providing conditions for release; providing that aging releasees are considered to be in the custody, supervision, and control of the department; providing that the department does not have a duty to provide medical care to an aging releasee; providing that an aging releasee is eligible to earn or lose gain-time; prohibiting an aging releasee or his or her community-based housing from being counted in the prison system population and the prison capacity figures, respectively; providing for the revocation of conditional aging inmate release; authorizing the department to issue a warrant for the arrest of an aging releasee under certain circumstances; authorizing a law enforcement or probation officer to arrest an aging releasee without a warrant under certain circumstances; requiring that an aging releasee be detained without bond if a violation is based on certain circumstances; requiring the department to order an aging releasee subject to revocation to be returned to department custody for a revocation hearing; authorizing an aging releasee to admit to his or her alleged violation or to proceed to a revocation hearing; requiring such hearing to be

conducted by the panel; requiring a majority of the panel to agree that revocation is appropriate; authorizing the forfeiture of gain-time if the revocation is based on certain violations; requiring an aging releasee whose conditional aging inmate release is revoked and who is recommitted to the department to comply with the 85 percent requirement upon recommitment; providing a review process for an aging releasee who has his or her released revoked; requiring an aging releasee to be given specified information in certain instances; requiring the panel to provide a written statement as to evidence relied on and reasons for revocation under certain circumstances; providing that members of the panel have sovereign immunity related to specified decisions; providing rulemaking authority; repealing s. 947.149, F.S., relating to conditional medical release; amending ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 900.06, Florida Statutes, is created to read:

900.06 Recording of custodial interrogations for certain offenses.—

(1) As used in this section, the term:

(a) "Covered offense" includes:

1. Arson.

2. Sexual battery.

3. Robbery.

4. Kidnapping.

5. Aggravated child abuse.

6. Aggravated abuse of an elderly person or a disabled adult.

7. Aggravated assault with a deadly weapon.

8. Murder.

9. Manslaughter.

10. Aggravated manslaughter of an elderly person or a disabled adult.

11. Aggravated manslaughter of a child.

12. The unlawful throwing, placing, or discharging of a destructive device or bomb.

13. Armed burglary.

14. Aggravated battery.

15. Aggravated stalking.

16. Home-invasion robbery.

17. Carjacking.

(b) "Custodial interrogation" means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency.

(c) "Electronic recording" means an audio recording or an

audio and video recording that accurately records a custodial interrogation.

(d) "Place of detention" means a police station, sheriff's office, correctional facility, prisoner holding facility, county detention facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual.

(e) "Statement" means a communication that is oral, written, electronic, nonverbal, or in sign language.

(2)(a) A custodial interrogation at a place of detention, including the giving of a required warning, the advisement of the rights of the individual being questioned, and the waiver of any rights by the individual, must be electronically recorded in its entirety if the interrogation is related to a covered offense.

(b) If a law enforcement officer conducts a custodial interrogation at a place of detention without electronically recording the interrogation, the officer must prepare a written report explaining why he or she did not record the interrogation.

(c) As soon as practicable, a law enforcement officer who conducts a custodial interrogation at a location other than a place of detention shall prepare a written report explaining the circumstances of the interrogation and summarizing the custodial interrogation process and the individual's statements.

(d) Paragraph (a) does not apply:

1. If an unforeseen equipment malfunction prevents the recording of the custodial interrogation in its entirety;

2. If a suspect refuses to participate in a custodial

interrogation if his or her statements are to be electronically recorded;

3. If an equipment operator error prevents the recording of the custodial interrogation in its entirety;

4. If the statement is made spontaneously and not in response to a custodial interrogation question;

5. If the statement is made during the processing of the arrest of a suspect;

6. If the custodial interrogation occurs when the law enforcement officer participating in the interrogation does not have any knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed a covered offense;

7. If the law enforcement officer conducting the custodial interrogation reasonably believes that making an electronic recording would jeopardize the safety of the officer, the individual being interrogated, or others; or

8. If the custodial interrogation is conducted outside of this state.

(3) Unless a court finds that one or more of the circumstances specified in paragraph (2)(d) apply, the court must consider the circumstances of an interrogation conducted by a law enforcement officer in which he or she did not electronically record all or part of a custodial interrogation in determining whether a statement made during the interrogation is admissible. If the court admits into evidence a statement made during a custodial interrogation which was not electronically recorded as required under paragraph (2)(a), the court must, upon request of the defendant, give cautionary

instructions to the jury regarding the law enforcement officer's failure to comply with that requirement.

(4) A law enforcement agency in this state which has adopted rules that are reasonably designed to ensure compliance with the requirements of this section is not subject to civil liability for damages arising from a violation of this section provided the agency enforces such rules. This section does not create a cause of action against a law enforcement officer.

Section 2. Paragraph (a) of subsection (2) of section 921.1402, Florida Statutes, is amended, and subsection (4) of that section is reenacted, to read:

921.1402 Review of sentences for persons convicted of specified offenses committed while under the age of 18 years.—

(2)(a) A juvenile offender sentenced under s. 775.082(1)(b)1. is entitled to a review of his or her sentence after 25 years. However, a juvenile offender is not entitled to a review if he or she has previously been convicted of committing ~~one of the following offenses~~, or of conspiracy to commit ~~one of the following offenses~~, murder if the murder offense for which the person was previously convicted was part of a separate criminal transaction or episode than the murder that ~~which~~ resulted in the sentence under s. 775.082(1)(b)1.~~:~~

~~1. Murder;~~

~~2. Manslaughter;~~

~~3. Sexual battery;~~

~~4. Armed burglary;~~

~~5. Armed robbery;~~

~~6. Armed carjacking;~~

~~7. Home-invasion robbery;~~

~~8. Human trafficking for commercial sexual activity with a child under 18 years of age;~~

~~9. False imprisonment under s. 787.02(3)(a); or~~

~~10. Kidnapping.~~

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

Section 3. Section 921.14021, Florida Statutes, is created to read:

921.14021 Retroactive application relating to s. 921.1402; legislative intent; review of sentence.—

(1) It is the intent of the Legislature to retroactively apply the amendments made to s. 921.1402 which are effective on October 1, 2021, only as provided in this section, to juvenile offenders convicted of a capital offense and sentenced under s. 775.082(1)(b)1. who have been ineligible for sentence review hearings because of a previous conviction of an offense enumerated in s. 921.1402(2)(a), thereby providing such juvenile offenders with an opportunity for consideration by a court and an opportunity for release if deemed appropriate under law.

(2) A juvenile offender, as defined in s. 921.1402, who was convicted for a capital offense and sentenced under s. 775.082(1)(b)1., and who was ineligible for a sentence review hearing pursuant to s. 921.1402(2)(a)2.-10. as it existed before

October 1, 2021, is entitled to a review of his or her sentence after 25 years or, if on October 1, 2021, 25 years have already passed since the sentencing, immediately.

Section 4. Section 921.1403, Florida Statutes, is created to read:

921.1403 Review of sentences for persons convicted of specified offenses committed while under 25 years of age.—

(1) It is the intent of the Legislature to retroactively apply the amendments to this section which take effect October 1, 2021.

(2) As used in this section, the term "young adult offender" means a person who committed an offense before he or she reached 25 years of age and for which he or she is sentenced to a term of years in the custody of the Department of Corrections, regardless of the date of sentencing.

(3) A young adult offender is not entitled to a sentence review under this section if he or she has previously been convicted of committing, or of conspiring to commit, murder if the murder offense for which the person was previously convicted was part of a separate criminal transaction or episode than the murder that resulted in the sentence under s. 775.082(3)(a)1., 2., 3., 4., or 6. or (b)1.

(4)(a)1. A young adult offender who is convicted of an offense that is a life felony, that is punishable by a term of years not exceeding life imprisonment, or that was reclassified as a life felony and he or she is sentenced to a term of more than 20 years under s. 775.082(3)(a)1., 2., 3., 4., or 6., is entitled to a review of his or her sentence after 20 years.

2. This paragraph does not apply to a person who is

eligible for sentencing under s. 775.082(3)(a)5. or s. 775.082(3)(c).

(b) A young adult offender who is convicted of an offense that is a felony of the first degree or that was reclassified as a felony of the first degree and who is sentenced to a term of more than 15 years under s. 775.082(3)(b)1. is entitled to a review of his or her sentence after 15 years.

(5) The Department of Corrections must notify a young adult offender in writing of his or her eligibility to request a sentence review hearing 18 months before the young adult offender is entitled to a sentence review hearing or notify him or her immediately in writing if the offender is eligible as of October 1, 2021.

(6) A young adult offender seeking a sentence review hearing under this section must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The young adult offender must submit a new application to the court of original jurisdiction to request a subsequent sentence review hearing pursuant to subsection (8). The sentencing court shall retain original jurisdiction for the duration of the sentence for this purpose.

(7) A young adult offender who is eligible for a sentence review hearing under this section is entitled to be represented by counsel, and the court shall appoint a public defender to represent the young adult offender if he or she cannot afford an attorney.

(8) If the young adult offender seeking a sentence review under paragraph (4)(a) or paragraph (4)(b) is not resentenced at the initial sentence review hearing, he or she is eligible for

one subsequent review hearing 5 years after the initial review hearing.

(9) Upon receiving an application from an eligible young adult offender, the original sentencing court must hold a sentence review hearing to determine whether to modify the young adult offender's sentence. When determining if it is appropriate to modify the young adult offender's sentence, the court must consider any factor it deems appropriate, including, but not limited to:

(a) Whether the young adult offender demonstrates maturity and rehabilitation.

(b) Whether the young adult offender remains at the same level of risk to society as he or she did at the time of the initial sentencing.

(c) The opinion of the victim or the victim's next of kin. The absence of the victim or the victim's next of kin from the sentence review hearing may not be a factor in the determination of the court under this section. The court must allow the victim or victim's next of kin to be heard in person, in writing, or by electronic means. If the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or previous sentencing review hearings.

(d) Whether the young adult offender was a relatively minor participant in the criminal offense or whether he or she acted under extreme duress or under the domination of another person.

(e) Whether the young adult offender has shown sincere and sustained remorse for the criminal offense.

(f) Whether the young adult offender's age, maturity, or psychological development at the time of the offense affected his or her behavior.

(g) Whether the young adult offender has successfully obtained a high school equivalency diploma or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available.

(h) Whether the young adult offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.

(i) The results of any mental health assessment, risk assessment, or evaluation of the young adult offender as to rehabilitation.

(10)(a) If the court determines at a sentence review hearing that the young adult offender who is seeking a sentence review under paragraph (4)(a) has been rehabilitated and is reasonably believed to be fit to reenter society, the court may modify the sentence and impose a term of probation of at least 5 years.

(b) If the court determines at a sentence review hearing that the young adult offender who is seeking a sentence review under paragraph (4)(b) has been rehabilitated and is reasonably believed to be fit to reenter society, the court may modify the sentence and impose a term of probation of at least 3 years.

(c) If the court determines that the young adult offender seeking a sentence review under paragraph (4)(a) or paragraph (4)(b) has not demonstrated rehabilitation or is not fit to reenter society, the court must issue a written order stating the reasons why the sentence is not being modified.

Section 5. Section 945.0911, Florida Statutes, is created to read:

945.0911 Conditional medical release.—

(1) FINDINGS.—The Legislature finds that the number of inmates with terminal medical conditions or who are suffering from severe debilitating or incapacitating medical conditions who are incarcerated in the state's prisons has grown significantly in recent years. Further, the Legislature finds that the condition of inmates who are terminally ill or suffering from a debilitating or incapacitating condition may be exacerbated by imprisonment due to the stress linked to prison life. The Legislature also finds that recidivism rates are greatly reduced with inmates suffering from such medical conditions who are released into the community. Therefore, the Legislature finds that it is of great public importance to find a compassionate solution to the challenges presented by the imprisonment of inmates who are terminally ill or are suffering from a debilitating or incapacitating condition while also ensuring that the public safety of Florida's communities remains protected.

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

on the inmate releases.

(3) DEFINITIONS.—As used in this section, the term:

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

(b) "Permanently incapacitated inmate" means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to himself or herself or to others.

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

(4) ELIGIBILITY.—An inmate is eligible for consideration for release under the conditional medical release program when the inmate, because of an existing medical or physical condition, is determined by the department to be an inmate with a debilitating illness, a permanently incapacitated inmate, or a terminally ill inmate. Notwithstanding any other law, an inmate who meets this eligibility criteria may be released from the custody of the department pursuant to this section before

serving 85 percent of his or her term of imprisonment.

(5) REFERRAL FOR CONSIDERATION.—

(a)1. Notwithstanding any law to the contrary, any inmate in the custody of the department who meets one or more of the eligibility requirements under subsection (4) must be considered for conditional medical release.

2. The authority to grant conditional medical release rests solely with the department. An inmate does not have a right to release or to a medical evaluation to determine eligibility for release pursuant to this section.

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

(c) The department must refer an inmate to the panel established under subsection (2) for review and determination of conditional medical release upon his or her identification as potentially eligible for release pursuant to this section.

(d) If the case that resulted in the inmate's commitment to the department involved a victim, and the victim specifically requested notification pursuant to s. 16, Art. I of the State Constitution, the department must notify the victim of the inmate's referral to the panel 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.

(6) DETERMINATION OF RELEASE.—

(a) The panel established in subsection (2) must conduct a hearing to determine whether conditional medical release is appropriate for the inmate. Before the hearing, the director of inmate health services or his or her designee must review any relevant information, including, but not limited to, medical evidence, and provide the panel with a recommendation regarding the appropriateness of releasing the inmate pursuant to this section. The hearing must be conducted by the panel:

1. By April 1, 2022, if the inmate is immediately eligible for consideration for the conditional medical release program when this section takes effect on October 1, 2021.

2. By July 1, 2022, if the inmate becomes eligible for consideration for the conditional medical release program after October 1, 2021, but before July 1, 2022.

3. Within 45 days after receiving the referral if the inmate becomes eligible for conditional medical release any time on or after July 1, 2022.

(b) A majority of the panel members must agree that the inmate is appropriate for release pursuant to this section. If conditional medical release is approved, the inmate must be released by the department to the community within a reasonable amount of time with necessary release conditions imposed pursuant to subsection (7).

(c)1. An inmate who is denied conditional medical release by the panel may elect to have the decision reviewed by the department's general counsel and chief medical officer, who must make a recommendation to the secretary. The secretary must

review all relevant information and make a final decision about the appropriateness of conditional medical release pursuant to this section. The decision of the secretary is a final administrative decision not subject to appeal.

2. An inmate who requests to have the decision reviewed in accordance with this paragraph must do so in a manner prescribed by rule. An inmate who is denied conditional medical release may subsequently be reconsidered for such release in a manner prescribed by department rule.

(7) RELEASE CONDITIONS.—

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

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

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

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

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

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

(b) A medical releasee is considered to be in the custody, supervision, and control of the department, which, for purposes of this section, does not create a duty for the department to provide the medical releasee with medical care upon release into the community. The medical releasee remains eligible to earn or lose gain-time in accordance with s. 944.275 and department rule. The medical releasee may not be counted in the prison system population and the medical releasee's approved community-based housing location may not be counted in the capacity figures for the prison system.

(8) REVOCATION HEARING AND RECOMMITMENT.—

(a) The department may terminate a medical releasee's conditional medical release and return him or her to the same or another institution designated by the department.

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

2. A medical releasee may admit to the allegation of

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

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

4. A medical releasee whose conditional medical release is revoked pursuant to this paragraph may elect to have the decision reviewed by the department's general counsel and chief medical officer, who must make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of the revocation of conditional medical release pursuant to this

paragraph. The decision of the secretary is a final administrative decision not subject to appeal.

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

2. If a duly authorized representative of the department has reasonable grounds to believe that a medical releasee has violated the conditions of his or her release in a material respect, such representative may cause a warrant to be issued for the arrest of the medical releasee. A law enforcement officer or a probation officer may arrest the medical releasee 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 his or her conditional medical release. The law enforcement officer must report the medical releasee's alleged violations to the supervising probation office or the department's emergency action center for initiation of revocation proceedings as prescribed by department rule.

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

4. The department must order that the medical releasee

subject to revocation under this paragraph be returned to department custody for a conditional medical release revocation hearing. A medical releasee may admit to the alleged violation of the conditions of conditional medical release or may elect to proceed to a revocation hearing. The revocation hearing must be conducted by the panel established in subsection (2).

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

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

(d)1. If the medical releasee subject to revocation under paragraph (b) or paragraph (c) elects to proceed with a hearing,

the medical releasee must be informed orally and in writing of the following:

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

b. The releasee's right to be represented by counsel. However, this sub-subparagraph does not create a right to publicly funded legal counsel.

c. The releasee's right to be heard either in person or by electronic audiovisual device in the discretion of the department.

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

e. The releasee's right to produce documents on his or her own behalf.

f. The releasee's right of access to all evidence used to support the revocation proceeding against the releasee and to confront and cross-examine adverse witnesses.

g. The releasee's right to waive the hearing.

2. If the panel approves the revocation of the medical releasee's conditional medical release under paragraph (a) or paragraph (b), the panel must provide a written statement as to evidence relied on and reasons for revocation.

(e) A medical releasee whose conditional medical release is revoked and who is recommitted to the department under this subsection must comply with the 85 percent requirement in accordance with ss. 921.002 and 944.275 upon recommitment.

(9) SPECIAL REQUIREMENTS UPON AN INMATE'S DIAGNOSIS OF A TERMINAL CONDITION.—

(a) If an inmate is diagnosed with a terminal medical

condition that makes him or her eligible for consideration for release under paragraph (3)(c) while in the custody of the department, subject to confidentiality requirements, the department must:

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

2. Provide the inmate's family, including extended family, an opportunity to visit the inmate in person within 7 days after the diagnosis.

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

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

(10) SOVEREIGN IMMUNITY.—Unless otherwise provided by law and in accordance with s. 13, Art. X of the State Constitution, members of the panel established in subsection (2) who are involved with decisions that grant or revoke conditional medical release are provided immunity from liability for actions that directly relate to such decisions.

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

Section 6. Section 945.0912, Florida Statutes, is created to read:

945.0912 Conditional aging inmate release.—

(1) FINDINGS.—The Legislature finds that the number of aging inmates incarcerated in the state's prisons has grown

significantly in recent years. Further, the Legislature finds that imprisonment tends to exacerbate the effects of aging due to histories of substance abuse and inadequate preventive care before imprisonment and stress linked to prison life. The Legislature also finds that recidivism rates are greatly reduced with older inmates who are released into the community. Therefore, the Legislature finds that it is of great public importance to find a compassionate solution to the challenges presented by the imprisonment of aging inmates while also ensuring that the public safety of Florida's communities remains protected.

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

(3) ELIGIBILITY.—

(a) An inmate is eligible for consideration for release under the conditional aging inmate release program when the inmate has reached 65 years of age and has served at least 10 years on his or her term of imprisonment. Notwithstanding any other law, an inmate who meets this criteria as prescribed in this subsection may be released from the custody of the department pursuant to this section before serving 85 percent of his or her term of imprisonment.

(b) An inmate may not be considered for release through the conditional aging inmate release 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. Any offense classified or that was reclassified as a capital felony, life felony, or first degree felony punishable by a term of years not exceeding life imprisonment.

2. Any violation of law which resulted in the killing of a human being.

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

4. 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.

(c) An inmate who has previously been released on any form of conditional or discretionary release and who was recommitted to the department as a result of a finding that he or she subsequently violated the terms of such conditional or discretionary release may not be considered for release through the program.

(4) REFERRAL FOR CONSIDERATION.—

(a)1. Notwithstanding any law to the contrary, an inmate in the custody of the department who is eligible for consideration pursuant to subsection (3) must be considered for the conditional aging inmate release program.

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

right to such release.

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

(c) The department must refer an inmate to the panel established under subsection (2) for review and determination of conditional aging inmate release upon his or her identification as potentially eligible for release pursuant to this section.

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

(5) DETERMINATION OF RELEASE.—

(a) The panel established in subsection (2) must conduct a hearing to determine whether the inmate is appropriate for conditional aging inmate release. The hearing must be conducted by the panel:

1. By April 1, 2022, if the inmate is immediately eligible for consideration for the conditional aging inmate release program when this section takes effect on October 1, 2021.

2. By July 1, 2022, if the inmate becomes eligible for

consideration for the conditional aging inmate release program after October 1, 2021, but before July 1, 2022.

3. Within 45 days after receiving the referral if the inmate becomes eligible for conditional aging inmate release any time on or after July 1, 2022.

(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 (6).

(c)1. An inmate who is denied conditional aging inmate release by the panel may elect to 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.

2. An inmate who requests to have the decision reviewed in accordance with this paragraph must do so in a manner prescribed by rule. An inmate who is denied conditional aging inmate release may be subsequently reconsidered for such release in a manner prescribed by rule.

(6) RELEASE CONDITIONS.—

(a) An inmate granted release pursuant to this section is released for a period equal to the length of time remaining on his or her term of imprisonment on the date the release is granted. Such inmate is considered an aging releasee upon

release from the department into the community. The aging releasee must comply with all reasonable conditions of release the department imposes, which must include, at a minimum:

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

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

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

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

(b) An aging releasee is considered to be in the custody, supervision, and control of the department, which, for purposes of this section, does not create a duty for the department to provide the aging releasee with medical care upon release into the community. The aging releasee 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.

(7) 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. The department may terminate the aging releasee's conditional aging inmate release and return him or

her to the same or another institution designated by the department.

2. If a duly authorized representative of the department has reasonable grounds to believe that an aging releasee has violated the conditions of his or her release in a material respect, such representative may cause a warrant to be issued for the arrest of the aging releasee. A law enforcement officer or a probation officer may arrest the aging releasee 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 his or her conditional aging inmate release. The law enforcement officer must report the aging releasee's alleged violations to the supervising probation office or the department's emergency action center for initiation of revocation proceedings as prescribed by department rule.

3. 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. A judicial determination of probable cause also constitutes reasonable grounds to believe that the aging releasee violated the conditions of the release.

4. The department must order that the aging releasee subject to revocation under this subsection be returned to department custody for a conditional aging inmate release revocation hearing as prescribed by rule. An aging releasee may admit to the alleged violation of the conditions of conditional

aging inmate release or may elect to proceed to a revocation hearing. The revocation hearing must be conducted by the panel established in subsection (2).

5. A majority of the panel members must agree that revocation is appropriate for the aging releasee's conditional aging inmate release to be revoked. If conditional aging inmate release is revoked pursuant to this subsection, the aging releasee must serve the balance of his or her sentence in an institution designated by the department with credit for the actual time served on conditional aging inmate release. However, the aging releasee's gain-time accrued before recommitment may be forfeited pursuant to s. 944.28(1). An aging releasee whose conditional aging inmate release is revoked and is recommitted to the department under this subsection must comply with the 85 percent requirement in accordance with ss. 921.002 and 944.275. If the aging releasee whose conditional aging inmate release is revoked subject to this subsection would otherwise be eligible for parole or any other release program, he or she may be considered for such release program pursuant to law.

6. An aging releasee whose release has been revoked pursuant to this subsection may elect to 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 subsection. The decision of the secretary is a final administrative decision not subject to appeal.

(b) If the aging releasee subject to revocation under this

subsection elects to proceed with a hearing, the aging releasee must be informed orally and in writing of the following:

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

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

3. The releasee's right to be heard either in person or by electronic audiovisual device in the discretion of the department.

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

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

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

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

(c) If the panel approves the revocation of the aging releasee's conditional aging inmate release, the panel must provide a written statement as to evidence relied on and reasons for revocation.

(8) SOVEREIGN IMMUNITY.—Unless otherwise provided by law and in accordance with s. 13, Art. X of the State Constitution, members of the panel established in subsection (2) who are involved with decisions that grant or revoke conditional aging inmate release are provided immunity from liability for actions that directly relate to such decisions.

(9) RULEMAKING AUTHORITY.—The department may adopt rules as

necessary to implement this section.

Section 7. Section 947.149, Florida Statutes, is repealed.

Section 8. Subsection (6) of section 316.1935, Florida Statutes, is amended to read:

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

(6) Notwithstanding s. 948.01, a court may not ~~no court may~~ suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of this section. A person convicted and sentenced to a mandatory minimum term of incarceration under paragraph (3)(b) or paragraph (4)(b) is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, ~~or~~ conditional medical release under s. 945.0911 ~~s. 947.149~~, or conditional aging inmate release under s. 945.0912, before ~~prior to~~ serving the mandatory minimum sentence.

Section 9. 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 s. 945.0911, or conditional aging inmate release under s. 945.0912 ~~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 is ~~shall~~ not ~~be~~ eligible for parole, control release, or any form of early release.

Section 10. Paragraph (b) of subsection (2) and paragraph (b) of subsection (3) of section 775.087, Florida Statutes, are amended to read:

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

(2)

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

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

release under s. 945.0911 ~~s. 947.149~~, or conditional aging inmate release under s. 945.0912, before ~~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 may ~~shall~~ not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, ~~or~~ conditional medical release under s. 945.0911 ~~s. 947.149~~, or conditional aging inmate release under s. 945.0912, before ~~prior to~~ serving the minimum sentence.

Section 11. 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 may ~~shall~~ not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, ~~or~~ conditional medical release under s. 945.0911 ~~s. 947.149~~, or conditional aging inmate release under s. 945.0912, before ~~prior to~~ serving the minimum sentence.

Section 12. Subsection (1) of section 790.235, Florida Statutes, is amended to read:

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

(1) Any person who meets the violent career criminal criteria under s. 775.084(1)(d), regardless of whether such person is or has previously been sentenced as a violent career criminal, who owns or has in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or carries a concealed weapon, including a tear gas gun or chemical weapon or device, commits a felony of the first degree, punishable as provided in s. 775.082, s.

775.083, or s. 775.084. A person convicted of a violation of this section shall be sentenced to a mandatory minimum of 15 years' imprisonment; however, if the person would be sentenced to a longer term of imprisonment under s. 775.084(4)(d), the person must be sentenced under that provision. A person convicted of a violation of this section is not eligible for any form of discretionary early release, other than pardon, executive clemency, ~~or~~ conditional medical release under s. 945.0911, or conditional aging inmate release under s. 945.0912 ~~s. 947.149~~.

Section 13. Subsection (7) of section 794.0115, Florida Statutes, is amended to read:

794.0115 Dangerous sexual felony offender; mandatory sentencing.—

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

Section 14. Paragraphs (b), (c), and (g) of subsection (1) and subsection (3) of section 893.135, Florida Statutes, are amended to read:

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

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

(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is

knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in s. 893.03(2)(a)4., or of any mixture containing cocaine, but less than 150 kilograms of cocaine or any such mixture, commits a felony of the first degree, which felony shall be known as "trafficking in cocaine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

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

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

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

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

this paragraph:

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

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

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

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

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or

mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

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

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

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

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

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

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

$100,000.

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

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

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

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

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

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

d. Is 100 grams or more, but less than 30 kilograms, such

person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

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

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

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

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

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

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

(VI) A controlled substance analog, as described in s. 893.0356, of any substance described in sub-sub-subparagraphs (I)-(V); or

(VII) A mixture containing any substance described in sub-sub-subparagraphs (I)-(VI),

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

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

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

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

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

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

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

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

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall

also be sentenced to pay the maximum fine provided under subparagraph 1.

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

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

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

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

$100,000.

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

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits the first degree felony of trafficking in flunitrazepam. A person who has been convicted of the first degree felony of trafficking in flunitrazepam under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 945.0911 ~~s. 947.149~~. However, if the court determines that, in addition to committing any act specified in this paragraph:

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

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

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

(3) Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section. A person sentenced to a mandatory minimum term of imprisonment under this section is not eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 945.0911 ~~s. 947.149~~, prior to serving the mandatory minimum term of imprisonment.

Section 15. Subsection (2) of section 921.0024, Florida Statutes, is amended to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(2) The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure. The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. When the total sentence points exceeds 44 points, the lowest permissible sentence in prison months shall be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. The total sentence points shall be calculated only as a means of determining the lowest permissible sentence. The permissible range for sentencing shall be the lowest permissible sentence up to and

including the statutory maximum, as defined in s. 775.082, for the primary offense and any additional offenses before the court for sentencing. The sentencing court may impose such sentences concurrently or consecutively. However, any sentence to state prison must exceed 1 year. If the lowest permissible sentence under the code exceeds the statutory maximum sentence as provided in s. 775.082, the sentence required by the code must be imposed. If the total sentence points are greater than or equal to 363, the court may sentence the offender to life imprisonment. An offender sentenced to life imprisonment under this section is not eligible for any form of discretionary early release, except executive clemency or conditional medical release under s. 945.0911 ~~s. 947.149~~.

Section 16. Paragraph (b) of subsection (7) of section 944.605, Florida Statutes, is amended to read:

944.605 Inmate release; notification; identification card.—

(7)

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

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

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

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

4. Are not in the physical custody of the department at or

within 180 days before release.

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

Section 17. Paragraph (b) of subsection (1) of section 944.70, Florida Statutes, is amended to read:

944.70 Conditions for release from incarceration.—

(1)

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

1. Upon expiration of the person's sentence;

2. Upon expiration of the person's sentence as reduced by accumulated meritorious or incentive gain-time;

3. As directed by an executive order granting clemency;

4. Upon placement in a conditional release program pursuant to s. 947.1405 or a conditional medical release program pursuant to s. 945.0911 ~~s. 947.149~~; or

5. Upon the granting of control release, including emergency control release, pursuant to s. 947.146.

Section 18. Paragraph (h) of subsection (1) of section 947.13, Florida Statutes, is amended to read:

947.13 Powers and duties of commission.—

(1) The commission shall have the powers and perform the duties of:

(h) Determining what persons will be released on conditional medical release under s. 945.0911 ~~s. 947.149~~, establishing the conditions of conditional medical release, and determining whether a person has violated the conditions of conditional medical release and taking action with respect to

such a violation.

Section 19. Subsections (1), (2), and (7) of section 947.141, Florida Statutes, are amended to read:

947.141 Violations of conditional release, control release, or conditional medical release or addiction-recovery supervision.—

(1) If a member of the commission or a duly authorized representative of the commission has reasonable grounds to believe that an offender who is on release supervision under s. 945.0911, s. 947.1405, s. 947.146, ~~s. 947.149,~~ or s. 944.4731 has violated the terms and conditions of the release in a material respect, such member or representative may cause a warrant to be issued for the arrest of the releasee; if the offender was found to be a sexual predator, the warrant must be issued.

(2) Upon the arrest on a felony charge of an offender who is on release supervision under s. 945.0911, s. 947.1405, s. 947.146, ~~s. 947.149~~, or s. 944.4731, the offender must be detained without bond until the initial appearance of the offender at which a judicial determination of probable cause is made. If the trial court judge determines that there was no probable cause for the arrest, the offender may be released. If the trial court judge determines that there was probable cause for the arrest, such determination also constitutes reasonable grounds to believe that the offender violated the conditions of the release. Within 24 hours after the trial court judge's finding of probable cause, the detention facility administrator or designee shall notify the commission and the department of the finding and transmit to each a facsimile copy of the

probable cause affidavit or the sworn offense report upon which the trial court judge's probable cause determination is based. The offender must continue to be detained without bond for a period not exceeding 72 hours excluding weekends and holidays after the date of the probable cause determination, pending a decision by the commission whether to issue a warrant charging the offender with violation of the conditions of release. Upon the issuance of the commission's warrant, the offender must continue to be held in custody pending a revocation hearing held in accordance with this section.

(7) If a law enforcement officer has probable cause to believe that an offender who is on release supervision under s. 945.0911, s. 947.1405, s. 947.146, ~~s. 947.149,~~ or s. 944.4731 has violated the terms and conditions of his or her release by committing a felony offense, the officer shall arrest the offender without a warrant, and a warrant need not be issued in the case.

Section 20. This act shall take effect October 1, 2021.

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THE FLORIDA SENATE

APPEARANCE RECORD

2/3/21
Meeting Date

232
Bill Number (if applicable)

Topic Criminal Justice reforms

Amendment Barcode (if applicable)

Name Jessica Yeary

Job Title Public Defender, 2nd Judicial Circuit

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Street

Phone 850-606-1000

Tallahassee FL 32301
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Email jessica.yeary@flpd2.com

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.

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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)

Meeting Date

Bill Number (if applicable)

Topic SB 232

Amendment Barcode (if applicable)

Name Alexandra Barry

Job Title S

Address 5891 Montarerra
Street

Phone 561-568-7094

LakeWorth FL, 33463
City State 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

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S-001 (10/14/14)

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Reset Form

THE FLORIDA SENATE

APPEARANCE RECORD

February 3, 2021
Meeting Date

232
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Criminal Justice

Name Pamela Burch Fort

Job Title

Address 104 S. Monroe Street
Street

Phone 850-425-1344

Tallahassee — *City* | 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 NAACP Florida State Conference

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

02/03/21
Meeting Date

232
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate Director for Social Concerns & Respect Life

Address 201 W. Park Ave.
Street

Phone

Tallahassee FL 32301
City *State* *Zip*

Email idelgado@flaccb.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference of Catholic Bishops

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)

3 Feb 21
Meeting Date

232
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI

Job Title Legislative Liaison

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/21
Meeting Date

232
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title

Address
Street

Phone

City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Rising

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/21
Meeting Date

232
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title

Address
Street

Phone

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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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/21
Meeting Date

232
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Kara Gross

Job Title

Address
Street

Phone

City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU

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)

SB 232

Meeting Date | *Bill Number (if applicable)*

Topic Criminal Justice Reform

Amendment Barcode (if applicable)

Name Denise Rock

Job Title Founder

Address _____ Phone _____

Street

City *State* *Zip*

Email denise@floridacares charity.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

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

Representing Florida Cares Charity

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/21
Meeting Date

232
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Criminal Justice

Name Greg Newburn

Job Title Florida Policy Director

Address ~~PO~~ *Street*

Phone 352-682-2542

Email gnewburn@famm.org

City *State* *Zip*

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)

1/9
Meeting Date

SB 232
Bill Number (if applicable)

Topic SB 232

Amendment Barcode (if applicable)

Name Anne Williams

Job Title

Address 4835 Andrade
Street

Phone 850-712-0100

Pensacola, FL
City *State* *Zip*

Email annewilliamstn@

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Self

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)

Meeting Date

Bill Number (if applicable)

Topic HB 232 Conditional Aging Release

Amendment Barcode (if applicable)

Name Karen Roberts

Job Title

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Street

Phone 727-366-4088

Orange City FL 32763
City *State* *Zip*

Email ucfs7cpa@gmail.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Self

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)

2/3/21
Meeting Date

SB 232
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Amy McCourt

Job Title

Address 2911 SE Morning Side Dr
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City *State* *Zip*

Phone 954-253-4928

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing myself

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)

Meeting Date	Bill Number (if applicable)
	232

Topic Prison Reform

Amendment Barcode (if applicable)

Name Rebecca McMichael

Job Title

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Jun Beach FL 33708 City State Zip

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Speaking: [X] For [ ] Against [ ] Information

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

Representing

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

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/21
Meeting Date

232
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Laurette Phillipson

Job Title

Address 7240 Westwind drive
Street

Port Richey FL 34668
City *State* *Zip*

Phone

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing myself

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)

2/3/21
Meeting Date

SB 232
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Chrystal Camacho

Job Title self employed

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Phone 9546653468

Palm Coast FL 32164
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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

Committee Agenda Request

To: Senator Jason Pizzo, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: December 18, 2020

I respectfully request that **Senate Bill # 232**, relating to Criminal Justice, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

File signed original with committee office

S-020 (03/2004)

2021 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Commission on Offender Review

BILL INFORMATION	
BILL NUMBER:	SB 232
BILL TITLE:	Criminal Justice
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	10/01/2021

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

CURRENT COMMITTEE
Criminal Justice

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

PREVIOUS LEGISLATION	
BILL NUMBER:	556
SPONSOR:	Senator Brandes
YEAR:	2020
LAST ACTION:	Died in Appropriations

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

Is this bill part of an agency package?
No.

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	01/25/2021
LEAD AGENCY ANALYST:	Alec Yarger, Legislative Affairs Director
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
LEGAL ANALYST:	Lisa Martin, General Counsel
FISCAL ANALYST:	Gina Giacomo, Director of Administration

POLICY ANALYSIS

EXECUTIVE SUMMARY

Requiring that a custodial interrogation conducted at a place of detention in connection with covered offenses be electronically recorded in its entirety; providing for retroactive application of a specified provision relating to a review of sentence for juvenile offenders convicted of murder; precluding eligibility for a sentence review for young adult offenders who previously committed, or conspired to commit, murder; establishing the conditional medical release program within the Department of Corrections; establishing the conditional aging inmate release program within the department; repealing provisions relating to conditional medical release, etc.

SUBSTANTIVE BILL ANALYSIS

PRESENT SITUATION:

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

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

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

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

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

The Department of Corrections has referred 180 inmates for Conditional Medical Release in the last three fiscal years. FCOR granted release to 94, or 52.2%, of those inmates referred by the Department of Corrections. In FY 2019-20, FCOR granted release to 35 of the 65 inmates referred for conditional medical release, or 53.8%.

EFFECT OF THE BILL:

Section 7 of the bill repeals s. 947.149, F.S., deleting the existing Conditional Medical Release program within the Florida Commission on Offender Review.

Section 5 of the bill creates s. 945.0911, F.S., to reestablish the Conditional Medical Release program within the Department of Corrections, placing the authority to grant conditional medical release solely with the Department of Corrections.

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 repeals 947.149(6), F.S., a statute that requires FCOR to adopt rules to implement the conditional medical release program.
Is the change consistent with the agency's core mission?	Y☐ N☐

Rule(s) impacted (provide references to F.A.C., etc.):	Chapter 23-24 Conditional Medical Release Program

WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

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

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

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

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

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

FISCAL ANALYSIS

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

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

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

Revenues:	N/A

Expenditures:	This bill would have a minimal, but negative fiscal impact to the Commission on Offender Review (FCOR) by reducing the number of discretionary release determinations. In FY1920, FCOR calculated that the per unit cost for a discretionary release determination was $740.32. In FY1920, FCOR made 72 Conditional Medical Release (CMR) determinations. During this time, 933 hours were spent on the investigation/determination, 164 hours were spent on victim services, and 394 hours were spent on revocations for CMR. This adds up to a total of 1,491 hours (less than 1 FTE). There is no position at FCOR that deals exclusively with Conditional Medical Release. The process for CMR is similar enough to other releases that the individuals who process parole cases process CMR cases as well.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

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

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

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

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

TECHNOLOGY IMPACT

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

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

FEDERAL IMPACT

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

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

ADDITIONAL COMMENTS

Click or tap here to enter text.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	A concern with the transfer of release authority from FCOR to FDC is that there is the potential for a conflict of interest if the legal custodian is also the release authority.

2021 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

BILL INFORMATION	
BILL NUMBER:	SB 232
BILL TITLE:	Criminal Justice
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	October 1, 2021

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

CURRENT COMMITTEE

SIMILAR BILLS	
BILL NUMBER:	
SPONSOR:	

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

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No.

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	February 1, 2021
LEAD AGENCY ANALYST:	Michelle Palmer
ADDITIONAL ANALYST(S):	Mary Le, Laura Carter, Debra Arrant, Angella New, Lee Adams, Shana Lasseter, Antoinette McCaskill
LEGAL ANALYST:	Ryan Orbe, Ian Carnahan, Danial Burke, Andrew Stover
FISCAL ANALYST:	Tommy Milito

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill creates s. 900.06, F.S., requiring that a custodial interrogation conducted at a place of detention in connection with covered offenses be electronically recorded in its entirety.

The bill reenacts and amends s. 921.1402, F.S. to revise the circumstances under which a juvenile offender is not entitled to a review of his or her sentence after a specified timeframe. The bill also creates s. 921.14021, F.S.; providing for retroactive application of a specified provision relating to review of sentence for juvenile offenders convicted of murder and providing for immediate review of certain sentences.

The bill creates s. 921.1403; F.S., providing entitlement for young adult offenders meeting specified criteria to receive a sentencing review after a certain timeframe and provides for retroactive application.

The bill creates s. 945.0911, F.S., establishing conditional medical release program within the Florida Department of Corrections for inmates with specified medical conditions and repeals s. 947.149, F.S., the current conditional medical release program overseen by the Florida Commission on Offender Review (FCOR).

The bill creates s. 945.0912, F.S., establishing a conditional aging inmate release program within the FDC for inmates 65 years of age or older who meet certain criteria.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Recording of Custodial Interrogations:
The Department's Office of the Inspector General (OIG) is given statutory authority in FS 944.31 to investigate all criminal offenses dealing with the FDC. Note: A Memorandum of Understanding between FDC OIG and the Florida Department of Law Enforcement is in effect, whereby most homicides are investigated by FDLE with an Investigative Assist provided by FDC OIG.

By directive, the Office of the Inspector General for the Department of Corrections (OIG-FDC) currently requires electronically recording of all investigative interviews, whether criminal or administrative, and regardless of the interviewee's status as a witness or suspect. The same OIG-FDC directive provides for exceptions to electronically recording an investigative interview which are similar to the exceptions provided in proposed s. 900.06(2)(d)1-8.

Juvenile/Sentencing Reviews:

In 2014, the Legislature passed chapter 2014–220, Laws of Florida, which provided, in part, judicial review for juvenile offenders who were tried as adults and received more than 20 years' incarceration, with exceptions. The hearing provides for a review by the court to determine whether the juvenile offender has been rehabilitated and is deemed fit to re-enter society.

The courts have held that sentences with the possibility of parole after twenty-five years do not violate the Eighth Amendment of the United States Constitution as set forth in Graham v. Florida, 560 U.S. 48 (2010), Miller v. Alabama, 567 U.S. 460 (2012), and Virginia v. LeBlanc, 137 S. Ct. 1726 (2017), and therefore, such juvenile offenders are not entitled to resentencing under s. 921.1402, F.S. (See Michel v. State No. SC16-2187, Franklin v. State No. SC14-1442). In addition, multiple court decisions have ruled that s. 921.1401, F.S., and s. 921.1402, F.S., must be applied retroactively to inmates who were juveniles at the time of the offense.

Under current law, juvenile offenders sentenced before the enactment of chapter 14-220 are ineligible for sentencing under these statutes if they were not originally sentenced to a life or de-facto life sentence (See Pedroza v State, 291 So.3d 541).

Under s. 921.1402, F.S., the term "juvenile offender" is defined as a person sentenced to imprisonment in the custody of the Department for an offense committed on or after July 1, 2014 and committed before he or she attained 18 years of age. The Florida Supreme Court has held that applying chapter 2014–220, Laws of Florida, to all juvenile offenders whose sentences are unconstitutional is the appropriate remedy; thus, applying chapter 2014-220 retroactively. (See *State v Horsley* 160 So.3d 393 (Fla.2015), *Falcon v. State* 162 So.3d 954 (Fla. 2015)

S. 921.1402, F.S., provides that a juvenile offender sentenced under s. 775.082, F.S., is entitled to review of his or her sentence after 25 years, 20 years, 15 years, as follows:

Homicide

- **Capital Convictions under s. 782.04, F.S.: Kill or Intend to kill or Attempt to kill** - 25-year Sentence Review

  A juvenile offender convicted of a capital felony murder offense is not entitled to review if he or she has previously been convicted of one of the following offenses, or conspiracy to commit one of the following offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence for which he or she was sentenced to life:

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

- **Capital Convictions under s. 782.04, F.S.: No Intent to Kill or Attempt to kill -** 15-year Sentence Review

- **Life or Punishable by Life Felony Convictions**

  Kill or Intend to kill or Attempt to kill - 25-year Sentence Review

  No Intent to Kill or Attempt to kill - 15-year Sentence Review

Non-homicide offenses (Life felonies or punishable by life felonies):20-year sentence review

Pursuant to s. 921.1402, F.S., the Department currently provides notice of eligibility for judicial review to juvenile offenders who have satisfied the time-served requirements of the sentence(s) that qualify for judicial review.

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

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

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

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

Young Adult Offender Sentencing Review:

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

Conditional Medical Release:

Currently, s. 947.149, F.S., provides for the release of inmates on Conditional Medical Release (CMR) by the FCOR based on the medical condition of the inmate as determined by Department medical staff. To qualify an inmate must be "terminally ill" or "permanently incapacitated". There are no criminal history or prison adjustment criteria for eligibility.

These existing CMR medical categories are defined as follows:

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

The FDC Office of Health Services has specific guidelines for institutional medical directors to identify inmates that meet the criteria for conditional medical release outlined in s. 947.149, F.S. Inmates that meet the criteria are submitted to the FCOR for consideration for release under the Conditional Medical Release (CMR) program.

FDC provides FCOR with a release plan and clinical reports of the patient's condition and life expectancy and future special needs. FCOR has the authority to grant CMR and establish additional conditions. Inmates approved for CMR are released from FDC custody for the remainder of the inmate's sentence. During FY 18-19 and FY 19-20, FDC recommended 142 inmates to FCOR for consideration of release under CMR. Of those inmates, 72 (51%) were granted CMR.

Release under CMR is solely within the discretion of FCOR. If release is granted, the offender is supervised by Department probation officers with administrative oversight by FCOR until the end of the court-imposed sentence. The offender can be returned to custody either for violating the terms of release, or if his/her medical condition improves to the extent he/she is no longer eligible for CMR.

There is no individual staff member at FCOR that deals exclusively with CMR. The process for CMR involves numerous hours spent on investigation/determination, victim services and revocations. The CMR process is similar enough to that of parole that the individuals who handle parole cases are capable of handling CMR as well. How many people are involved in processing a CMR case depends on the specific case, but it is typically 2-4 (not including the three commissioners):

• 1 Operations Analyst to docket the case (Office of the Commission Clerk);
• 1 Commission Investigator to investigate the release plan (Field Services);
• 1 Victim Advocate if applicable (Victims Services); and
• 1 Revocations Specialist if applicable (Office of Revocations)

FCOR calculates a per unit cost for discretionary release determinations (parole and CMR). In FY 19-20, the per unit cost for a discretionary release was $740.32. "Per unit cost" pertains to the LBR requirement that all agencies must complete the SCHEDULE XI/EXIBIT VI: Agency level cost summary.

The FCOR Victim Services Unit currently handles contacting victims for hearings, accompanying victims to the hearings, etc.

One of the current obstacles faced with Conditional Medical release is locating appropriate housing to meet the medical needs of the releasing inmates. This becomes more challenging should the inmate need a nursing home level of care.

Conditional Aging Inmate Release:

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 after October 1, 1995 except for Conditional Medical Release, s. 947.149, F.S., which is overseen by the FCOR.

2. EFFECT OF THE BILL:

Creation of s. 900.06, F.S., – Recording of Custodial Interrogations:

Under the current language of the bill, law enforcement officer is not defined. It is unclear if the definition of law enforcement officer as provided in s. 943.10, F.S., would apply.

Under the current definitions outlined in s. 943.10, F.S., only FDC Office of the Inspector General Inspectors are "law enforcement officers," specifically while conducting criminal investigations involving any of the offenses enumerated in the bill.

Certain Office of Inspector General procedures will be impacted and will require changes to ensure the statute is properly implemented. Rulemaking, however, will not be required for that purpose because the bill is sufficiently clear, therefore, no substantial impact to the Department is anticipated.

It should be noted that law enforcement agencies frequently make contact with FDC Correctional Probation Officers for assistance in locating offenders on supervision in order to conduct interviews/interrogations. These interviews/interrogations frequently occur in the probation offices where the probation officer may be present, although not engaging in the interrogation. It is unclear in the bill if such interview/interrogations by a law enforcement officer that occur at an FDC probation office would be considered custodial interrogations and would require recording as outlined in the bill.

Juvenile Sentencing Review:

The bill amends s. 921.1402, F.S., (Juvenile Sentencing Review), striking previously listed exclusions for committing or conspiring to commit manslaughter, sexual battery, armed burglary armed robbery, armed car-jacking, home invasion robbery, human trafficking for commercial sexual activity with a child under the age of 18, false imprisonment under s. 787.02(3)(a) F.S., or kidnapping for individuals serving sentences for capital murder and who were under 18 years of age at the time of their offense. Therefore, the only exemption that would prohibit a juvenile offender serving a sentence for capital murder from eligibility for a sentence review hearing is if he or she was previously convicted of committing or conspiracy to commit murder, if the murder for which the person was previously convicted was part of a separate criminal transaction or episode than the murder that resulted in the current sentence. This would allow for those inmates who had prior convictions for the above previous exclusions to qualify for sentence review under the proposed change.

This would appear to have minimal impact on the current prison population as the Department has identified only 5 inmates who would appear to meet the criteria (Under 18, currently serving a capital murder conviction, prior conviction for committing or conspiring to commit manslaughter, sexual battery, armed burglary armed robbery, armed car-jacking, home invasion robbery, human trafficking for commercial sexual activity with a child under the age of 18, false imprisonment under s. 787.02(3)(a) F.S., or kidnapping) for resentencing under the new language of the bill.

The proposed legislation creates s. 921.14021, F.S., allowing for retroactive application of the changes made to s. 921.1402(2)(a), F.S., to allow for review and resentencing for persons previously excluded. If 25 years have passed, those impacted would be entitled to a review immediately. Of the current prison population, there are no inmates that have satisfied the 25-year period as of the time of this analysis.

Young Adult Offender Sentencing Review

The bill creates s. 921.1403, F.S., allowing a new category of inmates that would be eligible for sentence review: "young adult offenders"— "a person who committed an offense before he or she reached 25 years of age and for which he or she is sentenced to a term of years in the custody of the Department of Corrections."; expanding the sentence review hearing process previously created under s.921.1402 for juveniles. The bill provides for retroactive application of such sentencing review.

The bill provides for judicial review for certain felony convictions as follows:

- Life felony – review after 20 years for sentences greater than 20 years (this excludes individuals eligible for juvenile resentencing under s. 775.082(3)(a)5, F.S., or s. 775.082(3)(c), F.S.
- 1st degree felony – review after 15 years for sentences greater than 15 years.

The bill states in s. 921.1403, F.S., that a young adult offender is not entitled to a sentencing review if he or she has previously been convicted of a murder that "was part of a separate criminal transaction or episode that the murder that resulted in the sentence under s. 775.082 (3)(a) 1., 2., 3., 4., or 6. or (b) 1, F.S." (Life and 1st degree felonies). This is significant wording because it would appear to indicate that only those young adult offenders currently in custody for murder and who have a prior conviction for murder would not be entitled to a sentencing review, while allowing sentencing review for young adult offenders with current convictions for non-homicide related capital, life or first degree felonies even if the young adult offender has a prior conviction for murder.

In order for a juvenile offender to be resentenced under Chapter 2014-220, Laws of Florida, they must first demonstrate a violation of Graham or Miller. There is no categorical rule guiding courts in determining what

constitutes a de facto life sentence; therefore, it is possible that some juvenile offenders currently convicted and sentenced prior to the enactment of Chapter 2014-220, Laws of Florida, would not receive the benefit of a sentencing review under s. 921.1402, F.S., thus allowing for resentencing for those juveniles under proposed s. 921.1403, F.S.

The bill provides that the Department must notify a young adult offender in writing of his or her eligibility to request a sentence review hearing:

- 18 months before the young adult offender is entitled to a sentence review hearing if such offender is not eligible when the bill becomes effective; or
- Immediately if the offender is eligible as of October 1, 2021

The Department has identified over 8,400 inmates that appear to meet the criteria for sentence review as outlined in the bill as follows: (Note: These inmates may have multiple sentences which cross age groups and felony classes and may have a sentence that is not eligible for sentence review that is controlling the inmate's overall release date).

Juvenile Under 18:

1,100 inmates that were juveniles at the time of the offense, that have been convicted for life, first degree punishable by life or first-degree felonies (racketeering offenses were excluded as were inmates with prior convictions for murder or attempted murder). For the purposes of this analysis, this number does not include juvenile offenders who have sentences greater than 60 years and are parole ineligible, as it appears they would be eligible for resentencing under 775.082(3)(c). Some courts have declined to review/resentence juvenile offenders who committed their crime prior to the enactment of Chapter 2014-220, leaving these inmates without remedy. (See Pedroza). As it is still unclear what sentence length qualifies as a de facto life sentence, the Department cannot determine precisely who may qualify for review under the proposed s.921.1403; however, in order to give a reasonable potential impact (based on recent court decisions), the Department has identified juvenile inmates who are serving less than 60 years. Juvenile offenders who are parole eligible are also included in this number, as it is unclear if the decisions in *Franklin and Michel* (see present situation) would extend to the young adult offender sentence reviews.

Age 18 to under 25:

Based on the Department's automated records, there appears to be over 7,300 inmates in the young adult offender category who appear to be eligible for a sentence review under the proposed section.

An inmate meeting specified requirements as a young adult offender will have to submit an application to the court of original jurisdiction requesting the sentence review hearing. The original sentencing court retains jurisdiction for the duration of the sentence for this purpose.

A young adult offender eligible for a sentencing review under this section is entitled to be represented by counsel. If the initial sentence review is denied, the offender will be eligible for a subsequent review hearing 5 years after the initial hearing.

A hearing is mandatory for any inmate who is eligible under the bill's criteria. The bill outlines specific criteria the court must take into consideration if it deems appropriate. One of the factors to be considered by the court is, "Whether the young adult offender demonstrates maturity and rehabilitation", which typically would require participation in some type of educational, vocational or self-betterment programming. The Department attempts to optimize limited program resources by prioritizing inmates relatively near their anticipated release. However, to facilitate the similar judicial review process for juvenile offenders under s. 921.1402, F.S., exceptions are made to the guidelines for program assignment of these inmates. When a judicial review is approaching, juvenile offenders are placed in programs they would not ordinarily qualify for based on their established release dates. The Department would attempt to provide the same types of opportunities for program participation to the YAO population. However, given the limited program slots and the number of inmates that could be entitled to review as young adult offenders, it may not be possible to meet the programming needs for both the YAOs and the remainder of inmates with impending release dates. This would depend largely on how many inmates were eligible for judicial review under the bill, and in what time frame review would take place.

If the court determines an offender has been rehabilitated, the court may modify the sentence and impose a term of probation of at least 5 years or 3 years based on if the young adult offender was were seeking sentencing review under paragraph (4)(a) or (4)(b). If the court determines the offender seeking a sentencing review under (4)(a) or (4)(b) has not demonstrated rehabilitation or is not fit to reenter society, it must enter a written order stating the reasons why the sentence is not being modified.

The creation of s. 921.1403, F.S., will increase the workload in the Court Order Unit in the Bureau of Admission and Release. Based on the number of inmates that would require notification or resentencing, the Department would need one Correctional Services Consultant to perform these duties.

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

Conditional Medical Release:

The bill repeals s. 947.149, F.S., and transfers the authority of reviewing, granting, and revoking conditional medical release (CMR) to the Department by creating s. 945.0911, F.S. The bill requires the establishment of a panel of at least three members, as appointed by the Secretary or his/her designee, who would be responsible for determining appropriateness for release under the program and conducting revocation hearings for program violators. The authority to grant conditional medical release would rest solely with the Department.

Eligibility:
In addition to specifying that inmates meeting CMR criteria may be released under CMR prior to serving 85 percent of his or her sentence, the bill provides expanded criteria for CMR eligibility, to include debilitating illnesses and a redefinition of a terminally ill inmate. The criteria for CMR would be as follows:

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

Referral Process:
The bill requires that any inmate who is eligible, must be considered for CMR. The Department may require additional evidence or investigations deemed necessary to determine appropriateness of release under the program. The bill does not contain language allowing inmates to voluntarily opt-out of consideration for release under this program. These eligibility requirements do not include a requirement that the inmate have a viable release plan, possibly resulting in the panel reviewing inmates who in all probability cannot be released on the program.

Victim Notifications/Input:
Victims, if specifically requested, will be notified of an inmate's referral to the panel immediately upon identification of the inmate's potential eligibility for release. The victim must be afforded the right to be heard during the hearing process, including revocation hearings. Currently, FDC uses VINE as a victim notification mechanism, FDC maintains full confidentiality of victim information in order to be in full compliance with Section 16, FL Constitution requirements that pertain to the Department. The VINE system allows for anyone to register for notification of an inmate's release. Programmatic changes would be required to the system in order to include the identification of CMR eligible inmates for notification, which would include anyone registered in VINE. Such notification may raise concern of HIPAA violations. Bill also requires immediate notification to victims which would equate to an immediate notification in VINE regardless of time of day or night. Alternatively, manual notification of victims would ensure compliance with this section and allow for a reasonable time of contact.

Panel Review Hearing:
The bill requires that the panel conduct a hearing to determine the appropriateness for CMR within the following timeframes:

- By April 1, 2022 for inmates immediately eligible for consideration on October 1, 2021.
- By July 1, 2022 for inmates becoming eligible for consideration between October 1, 2021 – July 1, 2022
- Within 45 days of receiving the referral for inmates becoming eligible at any time on or after July 1, 2022.

Approval for release under CMR requires a majority decision of the panel with the inmate being released to the community “within a reasonable amount of time with necessary release conditions”.

The bill provides a process for an inmate to appeal a denial of CMR by requesting a review by the Department’s General Counsel and Chief Medical Officer whose recommendation would be submitted to the Secretary for final review and decision. Reconsiderations will be handled as prescribed by department rule.

Supervision/Conditions:
Inmates granted CMR will be referred to as medical releasees upon release and will be supervised for the period of time remaining on his or her term of imprisonment on the date release is granted. The Department would be required to set specific conditions of release to include periodic medical evaluations, supervision by an officer trained to handle special offender caseloads, active electronic monitoring (if deemed necessary), conditions of community control and any other conditions as determined by FDC.

While periodic medical evaluations would be a required condition of CMR, the bill does not specify requirements for these evaluations. It is not specified if the Department would be responsible for providing these evaluations or if they could be conducted by a medical professional of the medical releasee’s choosing. It is also unclear who would be responsible for costs associated with such evaluations.

The bill also requires that medical releasees would be subject to 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.

Medical releasees are still considered to be in the care, custody, supervision, and control of the Department and remain eligible to earn or lose gain time but may not be counted in the prison population. Therefore, the bill will allow an inmate to continue service of their sentence outside of the secure perimeter of an FDC facility in a community setting. It is specified in the bill that the Department would not have a duty to provide the medical releasee with medical care once he or she has been released into the community. As medical releasees would still be eligible to earn or lose gain time while in the community, database programming and training of community supervision staff would be required.

Arrests/Revocations:
Revocations may be issued if the supervision officer reports any improvements of medical or physical conditions that would change the inmate’s eligibility with much the same process as in the current statute. The Department may either order that the releasee be returned to Department custody to proceed with a revocation hearing or may allow the releasee to remain in the community pending the hearing. Should the Department choose to have the releasee returned to custody, the Department would be authorized to issue a warrant for the releasee’s arrest. The releasee may admit to the allegation of improved condition or may elect to proceed with a revocation hearing.

Revocations may also be issued if the releasee violates the conditions of supervision, to include a new law violation. The bill allows that a duly authorized representative of the Department may cause a warrant to be issued for the medical releasee’s arrest if there are reasonable grounds to believe the releasee has violated the conditions of his or her supervision under the program. The bill also states that a law enforcement officer or probation officer may arrest the aging releasee without a warrant “in accordance with s. 948.06, F.S.,” and requiring that a law enforcement officer making such an arrest to report the alleged violations to either the supervising probation office or the department’s emergency action center for initiation of revocation proceedings. It should be noted that current language in s. 948.06, F.S., pertains only to probation and community control, both of which are “court-imposed” types of supervision. Existing language in statute providing warrantless arrest powers for those on conditional release or other discretionary forms of supervision is contained in s. 947.22, F.S.

If a new violation of law is the basis for the violation of CMR, the releasee is required to be detained without bond until initial appearance. A probable cause determination requires the inmate to be returned to FDC custody for a revocation hearing. The medical releasee may admit to the violation or may elect to proceed to a revocation hearing. Releasees are afforded due process rights if they choose to proceed with a revocation hearing.

Revocations Panel Hearing:
If CMR is revoked due to improvement in the releasees medical or physical condition, the inmate will be credited with time served while on CMR and without forfeiture of gain time. If CMR is revoked due to a technical or new law violation, the inmate will be credited with time served while on CMR and gain-time accrued prior to release

may be forfeited pursuant to s. 944.28(1), F.S. Since the conditional medical release is being granted under a new s. 945.0911, F.S., the authority to forfeit gain time for revocation is not provided by s. 944.28(1), F.S., which references “Conditional release as described in s. 947, F.S”.

Revocations require a majority decision by the panel. Inmates may request that a revocation be reviewed by the FDC General Counsel and Chief Medical Officer who must make a recommendation to the Secretary, whose decision is final. The bill allows that a releasee whose CMR is revoked under this program but who is eligible for parole or any other release program may be considered for release under such programs.

Special Requirements for Inmates Diagnosed with a Terminal Condition:
The bill outlines special requirements upon an inmate being diagnosed with a terminal condition that makes him or her eligible for consideration for CMR release. Upon such a diagnosis, the Department would be required to notify the inmate’s family or next of kin and attorney, if applicable, within 72 hours of diagnosis, The Department would also be required to provide the inmate’s family, to include extended family, an opportunity to visit the inmate in person within 7 days of being diagnosed with a terminal medical condition. Finally, the Department would be required to initiate a review for CMR immediately upon the inmate’s diagnosis of such a condition. If the inmate has mental capacity, consent for the release of HIPAA protected health information is required for the Department to make these notifications.

Admissions Prison/Supervision Impact:
During FY 18-19 and FY 19-20, FDC recommended 142 inmates to FCOR for consideration of release under CMR. Of these inmates, 72 (51%) were granted CMR. With responsibility shifting from FCOR to FDC, the percentages of inmates approved for release could potentially change. As inmates with debilitating illnesses are being added for consideration for release under CMR, it is possible that a larger number of inmates would be released under CMR as proposed in the bill.

FDC’s Research & Data Analysis Bureau has identified 581 currently incarcerated inmates with a permanent physical disability that would require a records review and potential consideration by the panel since they meet one or more of the eligibility requirements as set forth in this bill (i.e., permanently incapacitated). This does not include those inmates that have been diagnosed with a debilitating illness (i.e., Alzheimer’s, traumatic brain injury, cognitively impaired, neuro-muscular disorders, etc.).

Approximately 220 inmates appear to be immediately eligible for referral to the proposed panel, with 120 becoming eligible over the next year. Since the criteria for CMR is health related and need based, projections beyond the 1st year are not available.

The bill provides immunity to panel members who are involved with decisions that grant or revoke release under the CMR program from liability for actions that directly relate to such decisions. The Department is also authorized under the bill to adopt rules to implement the CMR program.

The bill amends references to s. 947.149, F.S., to s. 945, F.S., ss. 316.1935, F.S., s. 775.084, F.S., s. 775.087, F.S., s. 784.07, F.S., s. 790.235, F.S., s. 794.0115, F.S. s. 893.135, F.S., s. 921.0024, F.S., s. 944.605, F.S., s. 944.70, F.S., s. 947.13, F.S., and s. 947.171, F.S. conforming provisions update references to Conditional Medical Release from s. 947.149, F.S., to reflect the proposed s. 945.0911, F.S. It should be noted that s. 947.13, F.S., pertains to powers and duties of the FCOR and s. 947.141, F.S., pertains to violations and supervision types overseen by FCOR. Leaving any reference to Conditional Medical Release in this section would make it appear that FCOR would still retain the authority to establish the conditions for CMR as well as issue warrants for Conditional Medical Release violators.

Implementation of this portion of the bill would require programming changes to identify potentially eligible inmates.

The impact of this portion of the bill is anticipated to be significant but is overall indeterminate as it is impossible to determine how many inmates would be granted release under CMR.

Conditional Aging Inmate Release:

The bill creates s. 945.0912, F.S., a conditional aging inmate release (CAIR) program within the FDC. The bill requires the Department to establish a panel of at least three members, as appointed by the Secretary or his/her designee, who would be responsible for determining appropriateness for release under the program and

conducting revocation hearings for program violators. The authority to grant release under the CAIR program would rest solely with the Department.

Eligibility:
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 65 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:
    - Any offense classified or reclassified as a capital felony, life felony or first-degree felony that is punishable by life.
    - A violation of law resulting in the actual killing of a human being
    - Any felony violation that serves as a predicate to registration as a sexual offender under s. 943.0435, F.S.
    - Any similar offense committed in another jurisdiction which would be an offense listed above if committed in this state

The bill eliminates individuals from consideration who have previously been released on any form of conditional or discretionary release but later recommitted to the Department as a result of violating the terms of release. There is no language in the bill to specify that such a release and recommitment must have occurred on the current incarceration; therefore, it is unclear if the Department is to consider violations on prior incarcerations as well. It is also unclear in the bill language if individuals who have violated court-imposed supervision and returned to Department custody would be ineligible for consideration. Depending on the interpretation, this could greatly impact the number of potentially eligible inmates. At present, FDC interprets the language to exclude inmates with recommitments occurring during previous incarcerations as well as current incarcerations on active sentences.

Inmates that meet eligibility criteria may be released under the CAIR program prior to satisfying the 85% minimum service requirement of his or her imprisonment.

Referral Process:
The Department must identify inmates who may be eligible for CAIR and may require additional evidence or investigations deemed necessary for determining the appropriateness of release. Any inmate determined to be eligible must be referred to the panel for consideration. The bill does not contain language allowing inmates to voluntarily opt-out of consideration for release under this program. Eligibility requirements also do not include a requirement that the inmate have a viable release plan, possibly resulting in the panel reviewing inmates who in all probability cannot be released on the program.

Victim Notifications/Input:
Victims who have specifically requested notifications pursuant to s. 16, Art. I of the State Constitution will be notified of an inmate's referral to the panel immediately upon identification of the inmate's potential eligibility for release. The victim must be afforded the right to be heard during the hearing process, including revocation hearings. Currently, the Department uses VINE as a victim notification mechanism and maintains full confidentiality of victim information in order to be in full compliance with s.16 of the Florida Constitution's requirements. The VINE system allows for anyone to register for notification of an inmate's release. Programmatic changes would be required to the system in order to include the identification of CAIR eligible inmates for notification, which would include anyone registered in VINE. Such notification may raise HIPAA concerns or other confidentiality issues involving the disclosure of inmate health information. The bill also requires immediate notification to victims which would equate to an immediate notification in VINE regardless of time of day or night. Alternatively, manual notification of victims would ensure compliance with this section and allow for a reasonable time of contact.

Panel Review Hearing:
The bill requires that the panel conduct a hearing to determine the appropriateness for CAIR within the following timeframes:

- By April 1, 2022 for inmates immediately eligible for consideration on October 1, 2021.
- By July 1, 2022 for inmates becoming eligible for consideration between October 1, 2021 – July 1, 2022
- Within 45 days of receiving the referral for inmates becoming eligible at any time on or after July 1, 2022.

An inmate may request a review of a denial of release under CAIR by the Department's General Counsel, whose recommendation would be submitted to the Secretary for final review and decision. The Secretary's final decision would not be subject to appeal. The inmate could request such a review in a manner prescribed by rule.

Supervision/Conditions:
Inmates granted release under CAIR will be referred to as aging releasees upon release and will be supervised for the period of time remaining on his or her term of imprisonment on the date release is granted. The Department would be required to set specific conditions of release to include, supervision by an officer trained to handle special offender caseloads, active electronic monitoring (if deemed necessary), conditions of community control and any other conditions as determined by FDC. 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.

Aging releasees are still considered to be in the custody, supervision, and control of the Department and remain eligible to earn or lose gain time but may not be counted in the prison population. Therefore, the bill will allow an inmate to continue service of the sentence outside of the secure perimeter of an FDC facility in a community setting. The bill states that the Department would not have a duty to provide an aging releasee with medical care once he or she has been released in the community. As aging releasees would still be eligible to earn or lose gain time while in the community, database programming and training of community supervision staff would be required.

Arrests/Revocations:
Revocations may be issued for a violation of any condition of the release conditions established by Department, including new law violations and allows that a duly authorized representative of the Department may cause a warrant to be issued if he or she has reasonable grounds to believe that the aging releasee has violated the conditions of CAIR. The bill provides that the Department may terminate the aging releasee's CAIR and return him or her to either the same institution where he or she or he was previously incarcerated or to another institution designated by the Department.

The bill allows that a duly authorized representative of the Department may cause a warrant to be issued for the aging releasee's arrest if there are reasonable grounds to believe the aging releasee has violated the conditions of his or her supervision under the program. The bill also states that a law enforcement officer or probation officer may arrest the aging releasee without a warrant "in accordance with s. 948.06, F.S.," and requiring that a law enforcement officer making such an arrest to report the alleged violations to either the supervising probation office or the Department's emergency action center for initiation of revocation proceedings. It should be noted that current language in s. 948.06, F.S., pertains only to probation and community control, both of which are "court-imposed" types of supervision. Existing language in statute providing warrantless arrest powers for those on conditional release or other discretionary forms of supervision is contained in s. 947.22, F.S.

The bill requires that the Department must order that the aging releasee subject to revocation be returned to Department custody for a revocation hearing and allows that the aging releasee may admit to the violation or elect to proceed with a revocation hearing. Releasees are afforded due process rights if they choose to proceed with a revocation hearing.

Revocations Panel Hearing:
Revocations require a majority decision by the panel and the panel must provide a written statement as to evidence relied on and reasons for the revocation. Aging releasees whose supervision is revoked will receive credit for time served on the CAIR program, however, any previously earned gain-time may be forfeited pursuant to section 944.28(1), F.S. Since the conditional aging inmate release is being granted under a new s. 945.0912, F.S., the authority to forfeit gain time for revocation is not provided by s. 944.28(1), F.S., which references "Conditional release as described in s. 947, F.S".

A releasee whose supervision is revoked and who is recommitted to the Department must serve the balance of his or her sentence in an institution designated by the Department and comply with the 85 percent service requirement in accordance with s. 921.002, F.S., and s.944.275, F.S. The bill does allow that a releasee whose is revoked under this program but who is eligible for parole or any other release program may still be considered for release under such programs.

If supervision under the CAIR program is revoked, the aging releasee may request that a revocation be reviewed by the FDC General Counsel who must make a recommendation to the Secretary, whose decision is final.

Admissions Prison/Supervision Impact:
Proposed s. 945.0912, F.S., (Conditional Aging Inmate Release), could cause a decrease in inmate population and potential increase to supervision admissions based on the following estimates:

As of December 2020, there are a total of 4,169 inmates age 65 or older in the custody of FDC. The below reflects the primary offenses for this group of inmates:

1 -MURDER/MANSLAUGHTER	1,402
2 -SEXUAL/LEWD BEHAVIOR	1,395
3 -ROBBERY	348
4 -VIOLENT, OTHER	271
5 -BURGLARY	251
6 -PROPERTY THEFT/FRAUD/DAMAGE	119
7 -DRUGS	235
8 -WEAPONS	49
9 -OTHER	99
	4,169

Of these 4,169 inmates, based solely on a review of the Department's automated record, only 282 inmates met criteria for possible release immediately under CAIR with additional inmates becoming potentially eligible in subsequent years as outlined below. These estimates exclude any inmates who have a revocation of any form of discretionary release in the past, including on a prior commitment. This number will likely be reduced when manual, individual reviews are completed because it does not take into account prior convictions which did not result in a commitment to FDC (jail sentences, other jurisdiction convictions).

Immediately Potentially Eligible	282
Year 1	76
Year 2	77
Year 3	81
Year 4	93
Year 5	112

At the Criminal Justice Impact Conference held on 02/10/2020, the Conference determined the impact of Cs/CS/SB 574, which had similar language to the current bill's section on Conditional Aging Inmate Release. The impact was determined to be "Negative significant".

The bill provides immunity to panel members who are involved with decisions that grant or revoke release under CAIR program from liability for actions that directly relate to such decisions and authorizes the Department to adopt rules to implement the CAIR program.

The bill amends ss. 316.1935, F.S., s. 775.084,F.S., s. 775.087, F.S., s. 784.07, F.S., s. 790.235, F.S., conforming provisions to changes made by the bill to allow for individuals serving minimum mandatory sentences under sections to be released under the CAIR program.

The impact of this portion of the bill is anticipated to be significant in terms of programming changes and staffing needs, however, because release would be at the discretion of the panel, the is overall impact is indeterminate as there is no way to know how many inmates would be granted release under CAIR.

Overall impacts and proposed staffing needs:

Custodial Interrogations:

No substantial impact to the Department is anticipated.

Juvenile Sentence Review/Young Adult Offender Sentence Review:

An anticipated reduction in prison population and an increase in supervision population will lead to the need for additional Correctional Probation Officers, however, as the number of inmates who may be resentenced is unknown the overall impact is indeterminate.

Programming will be necessary to identify potentially eligible inmates.

Proposed staffing needs:

- 1 Correctional Services Consultant (pay grade 023) – to handle review and notification of young adult offenders eligible for resentencing.

Conditional Medical Release/Conditional Aging Inmate Release

Significant programming changes will be necessary to identify eligible inmates, document hearings, approval and revocation processes, and allow for addition and loss of gain time while releasees are in the community.

Proposed staffing needs:

- Panel members - appointed from existing Department staff. (NOTE: Panel members and proposed support staff would handle the requirements of both the conditional medical release and conditional aging inmate release programs).
- 1 Attorney (pay grade 220) – to provide legal support for panel members.

- 1 Correctional Program Administrator (pay grade 425)
- 1 Correctional Services Consultant (pay grade 023)
- 1 Correctional Services Assistant Consultant (pay grade 021)
  Three positions to handle rule development, policy and procedure development and creation of database management as it relates to affected inmates, coordination of training and implementation across program areas, preparation of packets for panel members, scheduling hearings, liaison with victim services, community corrections staff and classification staff, preparation of revocation packets, etc.

- 1 Government Operations Consultant II (pay grade 023) - To assist with policy and procedure development, creation of database management or tools as it relates to victims to include: contact, notifications, requests scheduling, travel and reimbursement for victims if eligible.
- 2 Government Operations Consultant I (pay grade 021) – to coordinate victim services notification requirements for CMR and CAIR.
- Correctional Probation Senior Officers –As there is no way to determine how many inmates will be released to CMR or CAIR, the number of positions needed is indeterminate. CMR and CAIR require supervision by an officer trained to handle special offender caseloads as well community control conditions would be required for any inmates released under CMR and CAIR. 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.

Additional costs would include OBIS programming, travel for revocation hearings, hearing rooms and increased monitoring costs

As the bill allows for electronic monitoring, if deemed necessary, appropriations would need to be increased by $1,642.50 per year for each person released under CMR and CAIR to accommodate for the cost of electronic monitoring.

The overall impact of the bill is significant but indeterminate.

The bill provides and effective date of October 1, 2021.

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 the department to adopt rules as necessary to implement CMR and CAIR.
Is the change consistent with the agency's core mission?	Y☐ N☐

Rule(s) impacted (provide references to F.A.C., etc.):	

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

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

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

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

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

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

FISCAL ANALYSIS

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

Revenues:	Unknown
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

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

Revenues:	Unknown

Expenditures:

If this bill is passed, it is anticipated that there will be a decrease in inmate population and an increase in community supervision. However, the Department cannot provide the specific number of immediate releases within the limited time frames of this analysis, thus the fiscal impact to the inmate and community supervision population is indeterminate.

When inmate population is impacted in small increments statewide, the FY 19-20 inmate variable per diem of $22.29 is the most appropriate to use for computing savings. 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 19-20 average per diem for community supervision was $6.01.

Proposed staffing to review and notify offenders of their eligibility for these programs and provide other support functions, the Department will require the following positions:

Class Title	Class Code	Salary & Benefits	FTE #	Year 1 Annual Costs
Juvenile Sentence Review/Young Adult Offender Sentence Review:				
Correctional Services Consultant	8058	$ 66,986	1	66,986
Total salaries & benefits			**1**	**66,986**
Recurring expense - Prof light travel		$ 3,378		3,378
Non-recurring expense - Prof light travel		4,429		4,429
Total expenses				**7,807**
Human Resource Services		$ 330		330
Issue subtotal				**75,123**
Conditional Medical Release/Conditional Aging Inmate Release:				
Attorney	7736	$ 60,907	1	60,907
Correctional Program Administrator	8094	77,849	1	77,849
Correctional Services Consultant	8058	66,986	1	66,986
Correctional Services Assistant Consultant	8055	55,233	1	55,233
Government Operations Consultant II	2236	60,146	1	60,146
Government Operations Consultant I	2234	58,203	2	116,406
Total salaries & benefits			**7**	**437,527**
Recurring expense - Prof light travel		$ 3,378		23,646
Non-recurring expense - Prof light travel		4,429		31,003
Total expenses				**54,649**
Human Resource Services		$ 330		2,310
Issue subtotal				**494,486**
Information Technology				26,100
Total			**8**	**$ 595,709**

Summary of Costs

Recurring	$ 534,177
Non-recurring	61,532
Total	**$ 595,709**

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.	Implementation of this bill would require significant programming changes that could reach at least 300 hours minimum of programming (approx. 5 one shots to identify categories of inmates listed in the bill and changes to the release calculator). Cost Estimate: Estimated Hours 300 Estimated Cost Per Hour: $87.00 Estimated Total Cost: $26,100

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.	N/A

ADDITIONAL COMMENTS

N/A.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	**Section 1** There is no current statutory requirement to electronically record custodial interrogations. By directive, the Office of the Inspector General for the Department of Corrections (OIG-FDC) currently requires electronically recorded interviews of all investigative interviews, whether criminal or administrative, and regardless of the interviewee's status as a witness or suspect. The same OIG-FDC directive provides for exceptions to electronically recording an investigative interview, similar to the exceptions provided in SB 232's draft of FS 900.06(2)(d)1-8. The bill will impact the OIG-FDC by making the current internal practice (directive) of electronically recording custodial interrogations a matter of law. However, FDC OIG's directive will remain broader in scope, as SB 232/ FS 900.06's requirement to electronically record custodial interrogations is limited to 17 felony offenses. In this regard the impact on OIG-FDC practice is minimal. The extent to which such procedures being codified will result in otherwise admissible statements being held inadmissible in criminal prosecutions remains undetermined, although it will likely be less impactful than if SB 296 had amended FS 90.803, the Florida

	Hearsay Exceptions, back in 2017. For instance, 2017's SB 296 also proposed placing an unquantified standard of quality on the actual recording device, an unqualified level of competency on the operator of the recording device, and an unqualified assurance that the recording had not been altered. None of these unqualified standards are proposed in 2021's SB 232/ FS 900.06. Thus, important factual issues are left to be determined on a case by case basis by the trier of fact, as opposed to unqualified standards becoming a matter of law. **Section 2** Section 2 would amend s. 921.1402 (2)(a), F.S., to eliminate a number of offenses that precluded a juvenile offender convicted of capital murder sentenced to life or 40 years from a sentence review after 25 years. A prior separate murder related conviction would remain as the only offense barring the juvenile offender from a right to a rehearing. **Section 3** Section 3 creates a retroactivity for s. 921.1402, F.S., so that a juvenile offender convicted of a capital offense and sentenced under s. 775.082(1)(b), F.S.,1. who had been ineligible for a sentence review hearing due to having committed an enumerated prohibitive offenses (manslaughter, sexual battery, armed burglary, etc.) would also be eligible. **The Department is already required to notify an offender under s. 921.1402((3), F.S., 18 months before an eligible juvenile offender is entitled to a sentence review hearing. If this provision became law on October 1, 2021, the Department would be required to notify new categories of offenders who on or after 7/1/2014 committed various offenses while under the age of 18. **Section 4** Section 4 creates a new s. 921.1403, F.S., to allow for sentence review hearings for a category of young adult offenders who were under age 25 at the time of they committed certain offenses. There may be an error on line 398 in subsection (3) where the word "murder" is used. It does not seem that 2 murders are required so it is unclear why the phrase "than the murder…." Is used. A young adult offender who committed any offense that is a life felony [not capital] sentenced to more than 20 years under s. 775.082(3)(a)1.,2.,3.,4., or 6, F.S., is entitled to a sentence review after 20 years. (Lines 400-405) Again, a prior separate murder conviction disqualifies such an offender from entitlement to a sentence review. (Lines 393-399) It also appears that any young adult offender convicted of any offense that is a first degree felony and sentenced to more than 15 years under s. 775.082(3)(b), F.S. 1. is entitled to a sentence review after 15 years. It seems as though this provision creates a sentence review hearing eligibility for a high percentage of offenders: anyone who committed a first degree felony under the age of 25 so long as the sentence exceeded 15 years. The Department is required again to notify 18 months before eligible OR immediately if eligible on the date this bill would become law on 10/1/2021. Unlike the Juvenile Offender analogous provision in s. 921.1402(3), F.S., this bill specifies the Department's notification to the young adult offender must be *in writing*. (Lines 414-419) The remainder of Section 4 in s. 921.1403(6)-(10), F.S., pertains to the sentence review hearing. (Lines 420-493) A provision that would have an unknown impact on the Department's prison population is a court's ability at a resentencing hearing, (10(a) and (b) to modify sentences at the hearings and impose probation for offenders believed to be fit to reenter society. (Lines 478-488) **Section 5** 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.

	Section 5 of this bill creates a Conditional Medical Release program within FDC. Subsection 2 (lines 514-523) – creates the administrative "panel" who are appointed by the Secretary of Corrections. However, this section does not set the specific term lengths by which an appointee may serve. As noted above, the Florida Constitution permits only terms "not to exceed six years." Rulemaking will be necessary to ensure appointee term lengths are compliant with the Florida Constitution. Subsection 6 (lines 582-618) – this section establishes the release hearing process. Lines 127-128 have an error (the appropriate statutory title for the "director of inmate health services" is "assistant secretary for health services." See s. 945.42(8), F.S., s. 945.6034, F.S., s. 945.6035, F.S. Even though the bill creates a "panel" which has the authority to determine whether or not an inmate is granted CMR, based upon case law and the current language of the bill, the panel would be engaging in "decision making authority" and thus subject to and need to comport with Chapter 286, Florida Statutes unless specifically exempted from those requirements. Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So. 3d 755, 762 (Fla. 2010). Given that panel hearings are compulsory once an inmate is identified as potentially being eligible for CMR, this requirement will likely impact Department's status as a covered entity under HIPAA. 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. ss. 164.502, F.S. 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 will likely 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. Under the current framework, the panel does not have authority to issue orders or subpoenas, and a hearing would still be required regardless of whether an inmate authorizes release of protected health information or not. This subsection also has an appeal mechanism by which the General Counsel and the Chief Medical Officer review decisions made by the panel denying release. It is likely that these appeal mechanisms would have to be conducted in the sunshine as well. Subsection 8 (lines 649-780) – this section sets forth the process by which revocation hearings occur. The US Supreme Court considered in Morrissey v. Brewer, 408 U.S. 471 (1972), what due process mechanisms must be in place for revocation hearings. Those minimal due processes mechanisms are 1) written notice of the claimed violations of eligibility criteria, 2) disclosure to the releasee of evidence against him or her, 3) opportunity to be heard in person and to present witnesses and documentary evidence, 4) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation), 5) a "neutral and detached" hearing body, and 6) a written statement by the factfinders at to the evidence relied on and reasons for revoking the conditional release. While most of the Morrissey criteria appears to be contained in this subsection, others appear to be left out. Rulemaking will be necessary to ensure that the minimum Constitutional requirements for revocation hearings are met. Also, these hearings would likely have to be conducted in the sunshine as well, potentially presenting the same issues addressed in the analysis of subsection 6. **Section 6** Section 6 of this bill creates the Conditional Aging Release program within FDC. Subsection 2 (lines 824-832) – creates the administrative "panel" who are appointed by the Secretary of Corrections. However, this section does not set the specific term lengths by which an appointee may serve. As noted above, the Florida Constitution permits only terms "not to exceed six years." Failure to designate the length of the term may run afoul of the Florida Constitution. Rulemaking will be necessary to ensure compliance with the Florida Constitution. Subsection 5 (lines 891-923) – 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 subject to and need to comport with Chapter 286, Florida Statutes unless specifically exempted from those requirements. Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So. 3d 755, 762 (Fla. 2010). Given that panel hearings are compulsory once an inmate is identified as potentially being eligible for CAR, this requirement could impact Department's status as a covered entity under HIPAA if medical conditions are discussed before the panel. 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. ss. 164.502, F.S.. 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. It is likely that these appeal mechanisms would have to be conducted in the sunshine as well. Subsection 7 (952-1037) – this section sets forth the process by which revocation hearings occur. The US Supreme Court considered in Morrissey v. Brewer, 408 U.S. 471 (1972) what due process mechanisms must be in place for revocation hearings. Those minimal due processes mechanisms are 1) written notice of the claimed violations of eligibility criteria, 2) disclosure to the releasee of evidence against him or her, 3) opportunity to be heard in person and to present witnesses and documentary evidence, 4) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation), 5) a "neutral and detached" hearing body, and 6) a written statement by the factfinders at to the evidence relied on and reasons for revoking the conditional release. While most of the Morrissey criteria appears to be contained in the bill, others appear to be left out. Rulemaking will 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, potentially presenting the same issues addressed in the analysis of subsection 5. **Section 7** Section 7 repeals s. 947.149 F.S., Conditional Medical Release. This is necessary as Section 5's s. 945.0911, F.S., and Section 6's s. 945.0912 F.S., replace 947.149 F.S. **Section 8-19** Sections 8 through 19 conform the changes of Section 5 and Section 6 throughout all Florida Statutes that reference s. 947.149, F.S., release eligibility.

SB 232 – Criminal Justice

This bill amends s. 941.1402(2)(a), F.S. to read as follows for when a juvenile is not entitled to a review of his or her sentence after 25 years: “if he or she has previously been convicted of committing, or of conspiracy to commit, murder if the murder offense for which the person was previously convicted was part of a separate criminal transaction or episode than the murder that resulted in the sentence under s. 775.082(1)(b)1, F.S.” The other offenses currently listed for when a juvenile is not entitled to a review are deleted.

The bill also creates s. 921.14021, F.S., stating that “a juvenile offender, as defined in s. 921.1402, F.S., who was convicted for a capital offense and sentenced under s. 775.082(1)(b)1., F.S., and who was ineligible for a sentence review hearing pursuant to s. 921.1402(2)(a)2.-10., F.S. as it existed before October 1, 2021, is entitled to a review of his or her sentence after 25 years or, if on October 1, 2021, 25 years have already passed since the sentencing, immediately.”

Furthermore, the bill creates s. 921.1403, F.S., stating that “it is the intent of the Legislature to retroactively apply the amendments to this section which take effect October 1, 2021” and defining young adult offender as someone who committed an offense prior to reaching 25 years of age and establishing when he or she is eligible for a sentence review. It is initially stated that “a young adult offender is not entitled to a sentence review under this section if he or she has previously been convicted of committing, or of conspiring to commit, murder if the murder offense for which the person was previously convicted was part of a separate criminal transaction or episode than the murder that resulted in the sentence under s. 775.082(3)(a)1., 2., 3.,4., or 6., or (b)1., F.S.”

Two scenarios exist where he or she would be eligible. The first states the following: “A young adult offender who is convicted of an offense that is a life felony, that is punishable by a term of years not exceeding life imprisonment, or that was reclassified as a life felony and he or she is sentenced to a term of more than 20 years under s. 775.082(3)(a)1., 2., 3., 4., or 6., F.S. , is entitled to a review of his or her sentence after 20 years.” This would not apply to a person eligible for sentencing under s. 775.082(3)(a)5, F.S. or s. 408 775.082(3)(c), F.S. The second states that “a young adult offender who is convicted of an offense that is a felony of the first degree or that was reclassified as a felony of the first degree and who is sentenced to a term of more than 15 years under s. 775.082(3)(b)1., F.S. is entitled to a review of his or her sentence after 15 years.” The process of the sentence review is outlined, with the option of the court to modify the sentence once complete, with at least a 5 year probation term for a sentence of more than 20 years (first scenario) and at least a 3 year probation term for a sentence of more than 15 years (second scenario).

Per DOC, there are currently 7,400 inmates who are potentially eligible for sentencing review under the amended language. It is not known how the courts will respond to those who are potentially eligible, therefore the impact on prison beds cannot be

quantified. However, given the large number of inmates currently fitting this criteria, there is expected to be a significant impact.

EDR PROPOSED ESTIMATE: Negative Significant

This bill also creates s. 945.0911, F.S., establishing a conditional medical release program within the Florida Department of Corrections and stating that “an inmate is eligible for consideration for release under the conditional medical release program when the inmate, because of an existing medical or physical condition, is determined by the department to be an inmate with a debilitating illness, a permanently incapacitated inmate, or a terminally ill inmate. Notwithstanding any other law, an inmate who meets this eligibility criteria may be released from the custody of the department pursuant to this section before serving 85 percent of his or her term of imprisonment.” Definitions are provided for each of these terms. “Permanently incapacitated inmate” and “terminally ill inmate” currently exist under s. 947.149, F.S., though the newly created statute replaces the requirement that death be imminent for a terminally ill inmate, adding that death “is expected within 12 months.” Also, this bill creates additional eligibility for an “inmate with a debilitating illness,” defined as “an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to himself or herself or to others.” This expands the pool of those eligible for conditional medical release. Finally, by repealing s. 947.149, F.S., it is no longer FCOR’s responsibility to determine which eligible inmates are released, but rather DOC’s responsibility.

Per DOC, there are approximately 112 inmates currently fitting the criteria described in the bill. In the past, FCOR approved on average 40% of eligible inmates per calendar year under current conditional medical release (2014 through 2016). In FY 18-19, approval was at 56%, and in FY 19-20, approval was at 51%. However, with responsibilities shifting to DOC, the percentages approved for release could potentially change.

EDR PROPOSED ESTIMATE: Negative Significant

This bill also 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 65 years of age and has served at least 10 years on his or her term of imprisonment. Notwithstanding any other law, an inmate who meets this criteria as prescribed in this subsection may be released from the custody of the department pursuant to this section before serving 85 percent of 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 including an "offense classified or that was reclassified as a capital felony, life felony, or first degree felony punishable by a term of years not exceeding life imprisonment," an offense involving the killing of a human being, and those offenses 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 272 inmates potentially eligible under the criteria outlined in the bill. Furthermore, these inmates do not overlap with those potentially eligible under the creation of s. 945.0911, F.S. 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 for those who are denied by the panel, it is not known how many of the potentially eligible inmates would be part of this program.

EDR PROPOSED ESTIMATE: Negative Indeterminate

EDR PROPOSED ESTIMATE FOR ENTIRE BILL: Negative Significant

Requested by: Senate

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:	SB 246
INTRODUCER:	Senator Brandes
SUBJECT:	Public Meetings and Records/Conditional Aging Medical Release Program
DATE:	February 2, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Jones	CJ	**Favorable**
2.			ACJ	
3.			AP	

I. Summary:

SB 246, which is linked to SB 232, adds a new subsection to s. 945.0912, F.S., as created in the linked bill, to exempt from public disclosure certain records and exempting from open meetings requirements portions of public meetings from the related conditional aging inmate release (CAIR) program.

Specifically, the bill provides that the portion of a panel review hearing conducted under s. 945.0912, F.S., during which the panel determining release into or revocation from the CAIR program will discuss information that is exempt under state law or confidential under federal law is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution. The bill also requires that certain requirements be met if the panel must discuss exempt information during the course of its meeting.

The bill also provides that the portion of the records the panel uses to determine the appropriateness of CAIR, which includes any of the inmate's protected information, is confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

Further, the bill makes confidential and exempt from public disclosure any portion of the audio or video recording of, any transcript of, and any minutes and notes generated during, a closed hearing of the panel or closed portion of a hearing of the panel. The bill requires that such audio or video recording and minutes and notes be retained pursuant to s. 119.021, F.S.

The bill authorizes certain persons to be present during the closed portion of the meeting and provides that any closure of the meetings must be limited so that the public meetings policy of the state is maintained.

The bill provides that the exemptions in the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public meetings and public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by the Department of Corrections (DOC) in closing such meetings and responding to public records requests regarding these exemptions should be offset by savings realized through the CAIR program. See Section V. Fiscal Impact Statement.

The bill is effective on the same date that SB 232 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes a law. SB 232 takes effect October 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

General exemptions from the public records requirements are contained in the Public Records Act.[10] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[11]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.[12] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[13]

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.[14] Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.[15] This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.[16]

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including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).

[8] Section 119.07(1)(a), F.S.

[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

[10] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

[11] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

[12] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

[13] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

[14] FLA. CONST., art. I, s. 24(b).

[15] *Id*.

[16] FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings,

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law,"[17] or the "Sunshine Law,"[18] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.[19] The board or commission must provide the public reasonable notice of such meetings.[20] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[21] Minutes of a public meeting must be promptly recorded and open to public inspection.[22] Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.[23] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[24]

Constitutional Requirements for Passage of Public Records or Open Meetings Exemptions

The Legislature may create an exemption for public records or open meetings requirements by passing a general law by a two-thirds vote of both the House and the Senate.[25] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[26] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[27]

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between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."

[17] *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

[18] *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

[19] Section 286.011(1)-(2), F.S.

[20] *Id*.

[21] Section 286.011(6), F.S.

[22] Section 286.011(2), F.S.

[23] Section 286.011(1), F.S.

[24] Section 286.011(3), F.S.

[25] FLA. CONST. art. I, s. 24(c).

[26] *Id*. *See, e.g.*, *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

[27] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

Open Government Sunset Review Act

The Open Government Sunset Review Act[28] (the Act) prescribes a legislative review process for newly created or substantially amended[29] public records or open meetings exemptions, with specified exceptions.[30] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[31]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[32] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[33]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[34] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[35]

The Act also requires specified questions to be considered during the review process.[36] In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[37] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote

[28] Section 119.15, F.S.
[29] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[30] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[31] Section 119.15(3), F.S.
[32] Section 119.15(6)(b), F.S.
[33] Section 119.15(6)(b)1., F.S.
[34] Section 119.15(6)(b)2., F.S.
[35] Section 119.15(6)(b)3., F.S.
[36] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[37] *See generally* s. 119.15, F.S.

for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[38]

Special Health Considerations for Aging Inmates

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.[39] However, such ailments present special challenges within a prison environment and may result in the need for increased staffing levels and enhanced officer training.[40] Such aging or ill inmates can also require structural accessibility adaptions, such as special housing and wheelchair ramps. For example, in Florida, four facilities serve relatively large populations of older or ill inmates, which help meet special needs such as palliative and long-term care.[41]

Aging Inmate Statistics in Florida

The DOC reports that the elderly inmate[42] population has increased by 608 inmates or 2.6 percent from June 30, 2018 to June 30, 2019 and that this trend has been steadily increasing over the last five years for an overall increase of 2,326 inmates or 10.8 percent.[43] The DOC further reports that during FY 2018-19, there were 3,956 aging inmates admitted to Florida prisons. The majority of elderly inmates in prison on June 30, 2019, are serving time for violent offenses, property crimes, and drug offenses.[44]

Aging Inmate Discretionary Release

Many states, the District of Columbia, and the federal government authorize discretionary release programs for certain inmates that are based on an inmate's age without regard to the medical condition of the inmate.[45] The National Conference of State Legislatures (NCSL) reports such

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[38] Section 119.15(7), F.S.
[39] 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 January 22, 2021).
[40] The PEW Charitable Trusts Older Prisoners Report.
[41] *Id*.
[42] 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.
[43] The DOC, *2018-19 Annual Report*, p. 19, available at http://www.dc.state.fl.us/pub/annual/1819/FDC_AR2018-19.pdf (last visited January 22, 2021).
[44] *Id*. at p. 21.
[45] 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*

discretionary release based on age has been legislatively authorized in 17 states.[46] 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.[47]

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.[48] Other states, such as Mississippi and Oklahoma, provide a term of years or a certain percentage of the sentence to be served.[49]

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 that are not eligible for release consideration.

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

Conditional Aging Inmate Release Program Created By SB 232

SB 232, to which this bill is linked, creates s. 945.0912, F.S., to establish a conditional aging inmate release (CAIR) program within the DOC with the purpose of determining whether such release is appropriate for specified 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.

The DOC must identify inmates who may be eligible for CAIR and, upon such identification, the DOC must refer such inmate to the panel. 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. This production can cover protected or confidential information, such as medical records.

The bill requires the panel to conduct a hearing to determine, by a majority, whether CAIR is appropriate for the inmate and creates a process for an inmate who is denied CAIR by the panel to have the decision reviewed. Confidential records that are produced in the above-mentioned

Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. Section 3582 and 4205(g), January 17, 2019, p. 6-7, available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf (all sites last visited January 22, 2021).

[46] The NCSL Aging Inmate Statistics. In addition, 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.

[47] *Id*.

[48] *Id*.

[49] *Id*.

investigation may be discussed in the hearings by the panel members to aide in the determination of whether the inmate is appropriate for release.

Further, the bill provides that CAIR may be revoked for a violation of any release conditions the DOC establishes, and requires the panel to conduct 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 panel may need to discuss confidential information in a similar manner during the revocation hearings as is possible during the original release hearing.

III. Effect of Proposed Changes:

The bill adds a new subsection to s. 945.0912, F.S., to create an exemption to the public records and public meetings requirements related to the hearings conducted for the CAIR program. Specifically, the bill provides that the portion of a panel review hearing conducted in accordance with s. 945.0912, F.S., during which the panel will discuss information that is exempt under state law or confidential under federal law, such as protected health information covered by the Health Insurance Portability and Protection Act, is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution. The bill also provides that certain requirements must be met if the panel must discuss exempt or confidential information during the course of its meeting, including that:

- The panel must announce at the public meeting that, in connection with the performance of the panel's duties, exempt or confidential information must be discussed;
- The panel must declare the specific reasons that it is necessary to close the meeting, or a portion thereof, in a document that is a public record and filed with the official records of the program; and
- The entire closed hearing must be recorded where the recording, which must be maintained by the DOC, includes the times of commencement and termination of the closed hearing or portion thereof, all discussion and proceedings, and the names of the persons present.

The bill also provides that the portion of the records the panel uses to determine the appropriateness of CAIR, which includes any of the inmate's exempt or confidential information, is confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

Further, the bill provides that any audio or video recording of, any transcript of, and any minutes and notes generated during, a closed hearing of the panel or closed portion of a hearing of the panel are confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. The bill requires that such audio or video recording, transcript, and minutes and notes be retained pursuant to s. 119.021, F.S.

The bill authorizes certain persons to be present during the closed portion of the meeting, including members of the panel, staff supporting the panel's functions, the inmate for whom the panel has convened, and licensed medical personnel the panel has called to provide testimony. The panel must limit any closure of its meetings so that the public meetings policy of the state is maintained.

The bill provides that the exemptions in the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution, which notes:

> The Legislature finds that it is a public necessity that the hearings or portions of hearings during which exempt or confidential information is discussed by the review panel considering an inmate's conditional aging inmate release be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The Legislature finds that the rights of an inmate afforded under other state or federal laws that deem certain personal information confidential, such as protected health information covered by the Health Insurance Portability and Protection Act, be upheld and that the inmate's personal information not be disclosed to the public during such hearings. The Legislature also finds that the recordings of a panel review hearing and the records used by the panel to make its determination be made confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Article I of the State Constitution. The inmate's exempt or confidential information, if publicly available, could be used to invade his or her personal privacy. Making these reports and discussions of such information confidential and exempt from disclosure will protect information of a sensitive personal nature, the release of which could cause unwarranted damage to the privacy rights of the inmate. The Legislature therefore finds that it is a public necessity that such information remain confidential and exempt.

The bill is effective on the same date that SB 232 or similar legislation takes effect, if such legislation is enacted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records or open meeting requirements. This bill enacts a new exemption for portions of a panel meeting that discusses exempt or confidential information related to an inmate being considered for release into the CAIR program from open meetings

requirements as well as any records that are created in support of such exemptions. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding an exemption to the public records or open meeting requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires an exemption to the public records requirements and open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect exempt or confidential information of an inmate or aging releasee who is being considered for the CAIR program or for revocation of the release, respectively. This bill exempts only that portion of a panel meeting that discusses such exempt or confidential information related to the inmate or releasee from open meetings requirements. The bill also only makes confidential and exempt the records that include exempt or confidential information, or the audio or video recording or transcript or any notes that are created in support of such exemptions. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

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 does not appear to have a fiscal impact on state or local governments. Costs incurred by the DOC in closing such meetings and responding to public records requests

regarding these exemptions should be offset by savings realized through the CAIR program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 945.0912 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.

By Senator Brandes

24-00290A-21 2021246__

A bill to be entitled

An act relating to public meetings and records; amending s. 945.0912, F.S.; exempting from public meetings requirements that portion of a panel review hearing at which the exempt or confidential information of specified inmates being considered for the conditional aging inmate release program is discussed; exempting from public records requirements certain records used by the review panel to make a determination of the appropriateness of conditional aging inmate release and the recordings and transcripts of closed panel review hearings; providing for legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Present subsections (7) through (9) of section 945.0912, Florida Statutes, as created by SB 232 or similar legislation, 2021 Regular Session, are redesignated as subsections (8) through (10), respectively, and a new subsection (7) is added to that section, to read:

945.0912 Conditional aging inmate release.—

(7) PUBLIC MEETINGS AND RECORDS EXEMPTIONS.—

(a) That portion of a panel review hearing conducted in accordance with this section during which the panel will discuss information that is exempt from public inspection and copying requirements under state law or confidential under federal law,

24-00290A-21 2021246__

such as protected health information covered by the Health Insurance Portability and Accountability Act, is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. If the panel must discuss exempt or confidential information during the course of its meeting, the following requirements must be met:

1. The panel must announce at the public meeting that, in connection with the performance of the panel's duties, exempt or confidential information must be discussed;

2. The panel must declare the specific reasons that it is necessary to close the meeting, or a portion thereof, in a document that is a public record and filed with the official records of the program; and

3. The entire closed hearing must be recorded. The recording must include the times of commencement and termination of the closed hearing or portion thereof, all discussion and proceedings, and the names of the persons present.

(b)1. That portion of the records the panel uses to determine the appropriateness of conditional aging inmate release which includes any exempt or confidential information is confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Any audio or video recording or transcript of, and any minutes and notes generated during, a closed hearing of the panel or closed portion of a hearing of the panel are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such audio or video recording, transcript, minutes, and notes must be retained pursuant to the requirements of s. 119.021.

(c) Only members of the panel, staff supporting the panel's

functions, the inmate for whom the panel has convened, and licensed medical personnel called by the panel to provide testimony regarding exempt or confidential information must be allowed to attend the closed portions of panel hearings. The panel shall ensure that any closure of its meetings as authorized by this section is limited so that the policy of the state in favor of public meetings is maintained.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the hearings or portions of hearings during which exempt or confidential information is discussed by the review panel considering an inmate's conditional aging inmate release be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The Legislature finds that the rights of an inmate afforded under other state or federal laws that deem certain personal information confidential, such as protected health information covered by the Health Insurance Portability and Accountability Act, should be upheld and that the inmate's exempt or confidential information should not be disclosed to the public during such hearings. The Legislature also finds that it is a public necessity that the recordings and transcripts of a panel review hearing and the records used by the panel to make its determination be made confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The inmate's exempt or confidential information, if publicly available, could

be used to invade his or her personal privacy. Making these reports and discussions of such information confidential and exempt from disclosure will protect information of a sensitive personal nature, the release of which could cause unwarranted damage to the privacy rights of the inmate. The Legislature therefore finds that it is a public necessity that such information be made confidential and exempt.

Section 3. This act shall take effect on the same date that SB 232 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/21
Meeting Date

SB 246
Bill Number (if applicable)

Topic SB 246 / Criminal Justice

Amendment Barcode (if applicable)

Name Courtney Sanchez

Job Title School Counselor

Address 12 Seaman TRL N
Street

Palm Coast FL 32164
City *State* *Zip*

Phone 305-632 6763

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing SB 246

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)

3 Feb 21
Meeting Date

246
Bill Number (if applicable)

Topic Public Meetings

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI

Job Title Legislative Liaison

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: [X] For [ ] Against [ ] Information

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

Representing Americans for Prosperity

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

Lobbyist registered with Legislature: [X] 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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

2/3/21
Meeting Date

246
Bill Number (if applicable)

Topic Conditional Aging Medical Release

Amendment Barcode (if applicable)

Name Jessica Yeary

Job Title Public Defender, 2nd Judicial Circuit

Address 301 S. Monroe St.
Street

Phone 850-606-1000

Tallahassee FL 32301
City *State* *Zip*

Email jessica.yeary@flpd2.com

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 Jason Pizzo, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 8, 2021

I respectfully request that **Senate Bill # 246**, relating to Public Meetings and Records/Conditional Aging Medical Release Program, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

File signed original with committee office

S-020 (03/2004)

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:	SB 248
INTRODUCER:	Senator Brandes
SUBJECT:	Public Meetings and Records/Conditional Medical Release Program
DATE:	February 2, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Jones	CJ	**Favorable**
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

SB 248, which is linked to SB 232, adds a new subsection to s. 945.0911, F.S., as created in the linked bill, exempting certain records and portions of public meetings from the related conditional medical release (CMR) program.

Specifically, the bill provides that the portion of a panel review hearing conducted in accordance with s. 945.0911, F.S., during which the panel determining release into or revocation from the CMR program will discuss information that is exempt under state law or confidential under federal law is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution. The bill also provides that certain requirements must be met if the panel must discuss exempt information during the course of its meeting.

The bill also provides that the portion of the records the panel uses to determine the appropriateness of CMR which includes any of the inmate's protected information is confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

Further, the bill exempts from public records requirements any portion of the audio or video recording of, any transcript of, and any minutes and notes generated during, a closed hearing of the panel or closed portion of a hearing of the panel. The bill requires that such audio or video recording and minutes and notes be retained pursuant to s. 119.021, F.S.

The bill authorizes certain persons to be present during the closed portion of the meeting and provides that any closure of the meetings must be limited so that the public meetings policy of the state is maintained.

The bill provides that the exemptions in the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public meetings and public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by the Department of Corrections (DOC) in closing such meetings and responding to public records requests regarding these exemptions should be offset by savings realized through the CMR program. See Section V. Fiscal Impact Statement.

The bill is effective on the same date that SB 232 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes a law. SB 232 takes effect October 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

General exemptions from the public records requirements are contained in the Public Records Act.[10] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[11]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.[12] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[13]

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[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).

[8] Section 119.07(1)(a), F.S.

[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

[10] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

[11] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

[12] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

[13] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.[14] Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.[15] This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.[16]

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law,"[17] or the "Sunshine Law,"[18] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.[19] The board or commission must provide the public reasonable notice of such meetings.[20] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[21] Minutes of a public meeting must be promptly recorded and open to public inspection.[22] Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.[23] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[24]

Constitutional Requirements for Passage of Public Records or Open Meetings Exemptions

The Legislature may create an exemption for public records or open meetings requirements by passing a general law by a two-thirds vote of both the House and the Senate.[25] The exemption must state with specificity the public necessity justifying the exemption and must be no broader

[14] FLA. CONST., art. I, s. 24(b).
[15] *Id*.
[16] FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."
[17] *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).
[18] *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).
[19] Section 286.011(1)-(2), F.S.
[20] *Id*.
[21] Section 286.011(6), F.S.
[22] Section 286.011(2), F.S.
[23] Section 286.011(1), F.S.
[24] Section 286.011(3), F.S.
[25] FLA. CONST. art. I, s. 24(c).

than necessary to accomplish the stated purpose of the exemption.[26] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[27]

Open Government Sunset Review Act

The Open Government Sunset Review Act[28] (the Act) prescribes a legislative review process for newly created or substantially amended[29] public records or open meetings exemptions, with specified exceptions.[30] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[31]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[32] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[33]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[34] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[35]

[26] *Id*. *See, e.g.*, *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

[27] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

[28] Section 119.15, F.S.

[29] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

[30] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

[31] Section 119.15(3), F.S.

[32] Section 119.15(6)(b), F.S.

[33] Section 119.15(6)(b)1., F.S.

[34] Section 119.15(6)(b)2., F.S.

[35] Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.[36] In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[37] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[38]

Conditional Medical Release

Conditional Medical Release (CMR), outlined in s. 947.149, F.S., was created by the Florida Legislature in 1992,[39] as a discretionary release of inmates who are "terminally ill" or "permanently incapacitated" and who are not a danger to themselves or others.[40] The Florida Commission on Offender Review (FCOR), which consists of three members, reviews eligible inmates for release under the CMR program pursuant to the powers established in s. 947.13, F.S.[41] In part, s. 947.149, F.S., authorizes the FCOR to determine what persons will be released on CMR, establish the conditions of CMR, and determine whether a person has violated the conditions of CMR and take actions with respect to such a violation.

Florida Statistics for CMR

The FCOR has approved and released 94 inmates for CMR in the last three fiscal years:
- 35 in FY 2019-20;
- 38 in FY 2018-19; and
- 21 in FY 2017-2018.[42]

The DOC has recommended 180 inmates for release in the past three fiscal years:
- 65 in FY 2019-20;
- 76 in FY 2018-19; and

[36] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[37] *See generally* s. 119.15, F.S.
[38] Section 119.15(7), F.S.
[39] Chapter 92-310, L.O.F.
[40] The FCOR, *Release Types, Post Release*, available at https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease (last visited January 22, 2021).
[41] Section 947.149(3), F.S. Section 947.01, F.S., provides that the membership of the FCOR is three-members.
[42] *See* FCOR, *2020 Annual Report*, p. 8, available at https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202020.pdf; FCOR, *2019 Annual Report*, p. 8, available at https://www.fcor.state.fl.us/docs/reports/AnnualReport2019.pdf; FCOR, *2018 Annual Report*, p. 8, available at https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf; (all sites last visited February 1, 2021).

- 39 in FY 2017-2018.[43]

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

Conditional Medical Release Program Created By SB 232

SB 232 repeals s. 947.149, F.S., which establishes the CMR program within the FCOR and creates s. 945.0911, F.S., to establish a CMR program within the DOC with the purpose of determining whether release is appropriate for eligible inmates, supervising the released inmates, and conducting revocation hearings. The CMR program established within the DOC retains similarities to the program currently in existence within the FCOR, including that the CMR program must include a panel of at least three people.

The bill provides that an inmate is eligible for consideration for release under the CMR program when the inmate, because of an existing medical or physical condition, is determined by the DOC to meet a specific definition enumerated in SB 232. The bill requires the DOC to identify inmates who may be eligible for CMR based upon available medical information and authorizes the DOC to require additional medical evidence, including examinations of the inmate, or any other additional investigations it deems necessary for determining the appropriateness of the eligible inmate's release.

The bill requires the director of inmate health services to review specified evidence and provide a recommendation to the three-member panel, who must conduct a hearing within 45 days of the referral to determine whether CMR is appropriate for the inmate. A majority of the panel members must agree that release on CMR is appropriate for the inmate. Confidential records that are produced in the above-mentioned investigation may be discussed in the hearings by the panel members to aide in the determination of whether the inmate is appropriate for release.

Additionally, SB 232 establishes a process for the revocation of CMR which may be based on two specified circumstances. The revocation hearing must be conducted by the three-member panel discussed above and a majority of the panel members must agree that revocation is appropriate for the medical releasee's CMR to be revoked. The bill requires the director of inmate health services or his or her designee to review any medical evidence pertaining to the medical releasee and provide the panel with a recommendation regarding the medical releasee's improvement and current medical or physical condition.

The panel may need to discuss confidential information in a similar manner during the revocation hearings as is possible during the original release hearing.

III. Effect of Proposed Changes:

The bill adds a new subsection to s. 945.0911, F.S., to create an exemption to the public records and public meetings requirements related to the hearings conducted for the CMR program. Specifically, the bill provides that the portion of a panel review hearing conducted in accordance with s. 945.0911, F.S., during which the panel will discuss protected information that is exempt

[43] *Id*.

under state law or confidential under federal law, such as protected health information covered by the Health Insurance Portability and Protection Act, is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution. The bill also provides that certain requirements must be met if the panel must discuss exempt or confidential information during the course of its meeting, including that:

- The panel must announce at the public meeting that, in connection with the performance of the panel's duties, exempt or confidential information must be discussed;
- The panel must declare the specific reasons that it is necessary to close the meeting, or a portion thereof, in a document that is a public record and filed with the official records of the program; and
- The entire closed hearing must be recorded where the recording, which must be maintained by the DOC, includes the times of commencement and termination of the closed hearing or portion thereof, all discussion and proceedings, and the names of the persons present.

The bill also provides that the portion of the records the panel uses to determine the appropriateness of CMR which includes any of the inmate's exempt or confidential information is confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

Further, the bill provides that any audio or video recording of, any transcript of, and any minutes and notes generated during, a closed hearing of the panel or closed portion of a hearing of the panel are confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. The bill requires that such audio or video recording, transcript, and minutes and notes be retained pursuant to s. 119.021, F.S.

The bill authorizes certain persons to be present during the closed portion of the meeting, including members of the panel, staff supporting the panel's functions, the inmate for whom the panel has convened, and licensed medical personnel the panel has called to provide testimony. The panel must limit any closure of its meetings so that the public meetings policy of the state is maintained.

The bill provides that the exemptions in the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution, which notes:

> The Legislature finds that it is a public necessity that the hearings or portions of hearings during which exempt or confidential information is discussed by the review panel considering the inmate's conditional medical release be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The Legislature finds that the rights of an inmate afforded under other state or federal laws that deem certain personal information confidential, such as protected health information covered by the Health Insurance Portability and Accountability Act, be upheld and that the inmate's personal information

not be disclosed to the public during such hearings. The Legislature also finds that the recordings of a panel review hearing and the records used by the panel to make its determination be made confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The inmate's exempt or confidential information, if publicly available, could be used to invade his or her personal privacy. Making these reports and discussions of such information confidential and exempt from disclosure will protect information of a sensitive personal nature, the release of which could cause unwarranted damage to the privacy rights of the inmate. The Legislature therefore finds that it is a public necessity that such information remain confidential and exempt.

The bill is effective on the same date that SB 232 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records or open meeting requirements. This bill enacts a new exemption for portions of a panel meeting that discusses exempt or confidential information related to an inmate being considered for release into the CMR program from open meetings requirements as well as any records that are created in support of such exemptions. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding an exemption to the public records or open meeting requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires an exemption to the public records requirements and open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect exempt or confidential information of an inmate or medical releasee who is being considered for the program or for revocation of the release, respectively. This bill exempts only that portion

of a panel meeting that discusses such exempt or confidential information related to the inmate or releasee from open meetings requirements. The bill also only makes confidential and exempt the records that include exempt or confidential information, or the audio or video recording or transcript or any notes that are created in support of such exemptions. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

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 does not appear to have a fiscal impact on state or local governments. Costs incurred by the DOC in closing such meetings and responding to public records requests regarding these exemptions should be offset by savings realized through the CMR program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 945.0911 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.

By Senator Brandes

24-00289A-21 2021248__

A bill to be entitled

An act relating to public meetings and records; amending s. 945.0911, F.S.; exempting from public meetings requirements that portion of a panel review hearing at which the exempt or confidential information of specified inmates being considered for the conditional medical release program is discussed; exempting from public records requirements certain records used by the review panel to make a determination of the appropriateness of conditional medical release and the recordings and transcripts of closed panel review hearings; providing for legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Present subsections (9) through (11) of section 945.0911, Florida Statutes, as created by SB 232 or similar legislation, 2021 Regular Session, are redesignated as subsections (10) through (12), respectively, and a new subsection (9) is added to that section, to read:

945.0911 Conditional medical release.—

(9) PUBLIC MEETINGS AND RECORDS EXEMPTIONS.—

(a) That portion of a panel review hearing conducted in accordance with this section during which the panel will discuss information that is exempt from public inspection and copying requirements under state law or confidential under federal law,

24-00289A-21 2021248__

such as protected health information covered by the Health Insurance Portability and Accountability Act, is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. If the panel must discuss exempt or confidential information during the course of its meeting, the following requirements must be met:

1. The panel must announce at the public meeting that, in connection with the performance of the panel's duties, exempt or confidential information must be discussed;

2. The panel must declare the specific reasons that it is necessary to close the meeting, or a portion thereof, in a document that is a public record and filed with the official records of the program; and

3. The entire closed hearing must be recorded. The recording must include the times of commencement and termination of the closed hearing or portion thereof, all discussion and proceedings, and the names of the persons present.

(b)1. That portion of the records the panel uses to determine the appropriateness of conditional medical release which includes any exempt or confidential information is confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Any audio or video recording or transcript of, and any minutes and notes generated during, a closed hearing of the panel or closed portion of a hearing of the panel are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such audio or video recording, transcript, minutes, and notes must be retained pursuant to the requirements of s. 119.021.

(c) Only members of the panel, staff supporting the panel's

functions, the inmate for whom the panel has convened, and licensed medical personnel called by the panel to provide testimony regarding exempt or confidential information must be allowed to attend the closed portions of panel hearings. The panel shall ensure that any closure of its meetings as authorized by this section is limited so that the policy of the state in favor of public meetings is maintained.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the hearings or portions of hearings during which exempt or confidential information is discussed by the review panel considering an inmate's conditional medical release be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The Legislature finds that the rights of an inmate afforded under other state or federal laws that deem certain personal information confidential, such as protected health information covered by the Health Insurance Portability and Accountability Act, should be upheld and that the inmate's exempt or confidential information should not be disclosed to the public during such hearings. The Legislature also finds that it is a public necessity that the recordings and transcripts of a panel review hearing and the records used by the panel to make its determination be made confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The inmate's exempt or confidential information, if publicly available, could

be used to invade his or her personal privacy. Making these reports and discussions of such information confidential and exempt from disclosure will protect information of a sensitive personal nature, the release of which could cause unwarranted damage to the privacy rights of the inmate. The Legislature therefore finds that it is a public necessity that such information be made confidential and exempt.

Section 3. This act shall take effect on the same date that SB 232 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3 Feb 21
Meeting Date

248
Bill Number (if applicable)

Topic Public Meetings & Records

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI

Job Title Legislative Liaison

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: [X] For [ ] Against [ ] Information

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

Representing Americans For Prosperity

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

Lobbyist registered with Legislature: [X] 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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

2/3/21
Meeting Date

248
Bill Number (if applicable)

Topic Conditional Medical Release

Amendment Barcode (if applicable)

Name Jessica Yeary

Job Title Public Defender, 2nd Judicial Circuit

Address 301 S. Monroe St.
Street

Phone 850-606-1000

Tallahassee FL
City *State* *Zip*

Email jessica.yeary@flpd2.com

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 Jason Pizzo ,Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 8, 2021

I respectfully request that **Senate Bill # 248**, relating to Public Meetings and Records/Conditional Aging Medical Release Program, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

File signed original with committee office

S-020 (03/2004)

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:	SPB 7012
INTRODUCER:	Criminal Justice Committee
SUBJECT:	OGSR/Criminal History Information of Juveniles
DATE:	February 3, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones		**CJ Submitted as Comm. Bill/Fav**

I. Summary:

SPB 7012 amends ss. 943.053 and 985.04, F.S., to save from repeal the current exemptions from public records disclosure for certain criminal history information of juveniles.

The original public necessity statement for the bill states that it is in the best interest of the public that individuals with juvenile misdemeanor records be given the opportunity to become contributing members of society. Therefore, prohibiting the unfettered release of juvenile misdemeanor records and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program is of greater importance than any public benefit that may be derived from the full disclosure and release of such arrest records and information.

Sections 943.053 and 985.04, F.S., relating to criminal history information of juveniles, are subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from the repeal through reenactment by the Legislature. This bill removes this repeal language.

This bill does not appear to have a fiscal impact on state or local governments.

This bill is effective October 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three

[1] FLA. CONST. art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[10] The exemption must state

[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

General exemptions from the public records requirements are contained in the Public Records Act.[12] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[13]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.[14] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[15]

Open Government Sunset Review Act

The Open Government Sunset Review Act[16] (the Act) prescribes a legislative review process for newly created or substantially amended[17] public records or open meetings exemptions, with specified exceptions.[18] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[19]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[20] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[21]

[11] *Id*. *See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[12] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[13] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[14] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[15] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[16] Section 119.15, F.S.
[17] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[18] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[19] Section 119.15(3), F.S.
[20] Section 119.15(6)(b), F.S.
[21] Section 119.15(6)(b)1., F.S.

- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

The Act also requires specified questions to be considered during the review process.[24] In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[25] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[26]

The Criminal Justice Information Program

The Criminal Justice Information Program (CJIP) is a program established under the Florida Department of Law Enforcement (FDLE).[27] The CJIP must:

- Establish and maintain a communication system capable of transmitting criminal justice information to and between criminal justice agencies.
- Establish, implement, and maintain a statewide automated biometric identification system.
- Initiate a crime information system that is responsible for preparing and disseminating reports, providing data, and developing and maintaining an offender based transaction system.
- Adopt rules to implement, administer, manage, maintain, and use the automated biometric system and uniform offense reports and arrest reports.
- Establish, implement, and maintain a Domestic and Repeat Violence Injunction Statewide Verification System capable of electronically transmitting information to and between criminal justice agencies.
- Establish, implement, and maintain a system for transmitting to and between criminal justice agencies information about writs of bodily attachment issues.

[22] Section 119.15(6)(b)2., F.S.
[23] Section 119.15(6)(b)3., F.S.
[24] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.
[27] Sections 20.201(2)(b) and 943.05, F.S.

- In certain circumstances, retain fingerprints submitted by criminal and noncriminal justice agencies to the department for a criminal history background screening as provided by rule and enter the fingerprints in the statewide automated biometric identification system.[28]

Public Records Exemption for Criminal History Information Relating to a Juvenile

In 2016, the Legislature amended ss. 943.053, and 985.04, F.S., to make the same criminal history information of juveniles confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.[29] Section 943.053(3)(b), F.S., provides that criminal history information relating to juveniles compiled by the CJIP is confidential and exempt, except when the juvenile has been taken into custody for, charged with, or found guilty of, a felony offense, or the juvenile has been transferred to adult court.

Section 943.053(3)(c), F.S., provides that criminal history information relating to juveniles, even if confidential and exempt, must be available to:
- Criminal justice agencies for criminal justice purposes;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates provided that such a person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(6)[30] or 943.059(6), F.S.[31]

Except as otherwise provided, all information obtained under ch. 985, F.S., relating to juveniles, is confidential and exempt.[32] Section 985.04(2), F.S., provides that the name, photograph, address, and crime or arrest report of a juvenile is not confidential and exempt when the juvenile has been taken into custody for, charged with, or found guilty of, a felony offense, or the juvenile has been transferred to adult court. Prior to the amendment in 2016, the statute's language did not protect, or make confidential and exempt, the records of a juvenile who had committed three

[28] Section 943.05, F.S.
[29] Section 943.053(3)(b), F.S.; Chapter 2016-78, L.O.F.
[30] Section 943.0585(6), F.S., provides that a person may not deny or fail to acknowledge an arrest that has been expunged if he or she is: a candidate for employment with a criminal justice agency; a defendant in a criminal prosecution; currently or subsequently petitions for relief under this section, s. 943.0583, F.S., or s. 943.059, F.S.; is a candidate for admission to the Florida Bar; is seeking to be employed or licensed by or to contract with specified agencies or entities; is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services; or is seeking to be appointed as a guardian pursuant to s. 744.3125, F.S.
[31] Section 943.059(6), F.S., provides that a criminal history record of a minor or adult which is sealed by a court is confidential and exempt and is only available to the following: the subject of the record; the subjects attorney; criminal justice agencies; judges in the state courts system; specified agencies for their respective licensing access authorization and employment purposes. Additionally, a person may not deny or fail to acknowledge an arrest that has been expunged if he or she is: a candidate for employment with a criminal justice agency; a defendant in a criminal prosecution; currently or subsequently petitions for relief under this section, s. 943.0583, F.S., or s. 943.059, F.S.; is a candidate for admission to the Florida Bar; is seeking to be employed or licensed by or to contract with specified agencies or entities; is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check; is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services; or is seeking to be appointed as a guardian pursuant to s. 744.3125, F.S; or is seeking to be licensed by the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or concealed firearm.
[32] Section 985.04(1), F.S.

or more misdemeanor offenses. The 2016 bill expanded the public records exemption by removing this exception, thereby making these records confidential and exempt.

Sections 943.053(3)(b) and 985.04(2), F.S., are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

In creating the exemption, the Legislature articulated the following reasons for the exemption:

> [I]t is a public necessity that the criminal history information of juveniles, who have not been adjudicated delinquent of a felony or who have been found only to have committed misdemeanor offenses and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution under ss. 985.04 and 943.053, Florida Statutes. Many individuals who have either completed their sanctions and received treatment or who were never charged in the juvenile justice system have found it difficult to obtain employment. The presence of an arrest or a misdemeanor record in these individuals' juvenile past and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program creates an unnecessary barrier to becoming productive members of society, thus frustrating the rehabilitative purpose of the juvenile system. The Legislature found that it is in the best interest of the public that individuals with juvenile misdemeanor records are given the opportunity to become contributing members of society. Therefore, prohibiting the unfettered release of juvenile misdemeanor records and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program is of greater importance than any public benefit that may be derived from the full disclosure and release of such arrest records and information.[33]

Staff Surveys/Meeting with FDLE Regarding Exemptions Under Review

During the 2020 interim, Senate and House professional staff contacted the FDLE regarding the exemption under review relating to criminal history information relating to juveniles compiled by the CJIP in s. 943.053, F.S. The FDLE requested to reenact the public records exemption and had no suggested amendments.

During the interim, surveys were sent to the Department of Juvenile Justice, county sheriff's departments, and local police departments regarding the exemption under review in s. 985.04, F.S. All of the responding agencies that reported collecting the criminal history information of juveniles requested to reenact the public records exemption. An overwhelming majority requested to reenact the exemption as is. Only two responding requested reenactment with changes.

[33] Chapter 2016-78, L.O.F.

III. Effect of Proposed Changes:

The bill amends ss. 943.053 and 985.04, F.S., to save from repeal the current exemptions from public records disclosure for certain criminal history information of juveniles.

This bill deletes the scheduled repeal of the current public records exemptions for the criminal history information of juveniles.

This bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. If an exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues the current public records exemptions under sunset review; it does not expand this exemption or create a new exemption. Therefore, the bill does not require a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the exemptions is to protect the release of juvenile misdemeanor records and certain criminal history information relating to juveniles. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

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:

This bill does not appear to have a fiscal impact on state or local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.053 and 985.04.

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.

FOR CONSIDERATION By the Committee on Criminal Justice

591-00894-21 20217012pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending ss. 943.053 and 985.04, F.S.; abrogating the scheduled repeals of provisions relating to criminal history information of juveniles; providing an effective date.

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

Section 1. Subsection (3) of section 943.053, Florida Statutes, is amended to read:

943.053 Dissemination of criminal justice information; fees.—

(3)(a) Criminal history information relating to an adult, compiled by the Criminal Justice Information Program from intrastate sources shall be available on a priority basis to criminal justice agencies for criminal justice purposes free of charge. After providing the program with all known personal identifying information, persons in the private sector and noncriminal justice agencies may be provided criminal history information upon tender of fees as established in this subsection and in the manner prescribed by rule of the Department of Law Enforcement.

(b)~~1.~~ Criminal history information relating to a juvenile compiled by the Criminal Justice Information Program from intrastate sources shall be released as provided in this section. Such information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, unless such juvenile has been:

591-00894-21 20217012pb

1.~~a.~~ Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

2.~~b.~~ Charged with a violation of law which, if committed by an adult, would be a felony;

3.~~c.~~ Found to have committed an offense which, if committed by an adult, would be a felony; or

4.~~d.~~ Transferred to adult court pursuant to part X of chapter 985,

and provided the criminal history record has not been expunged or sealed under any law applicable to such record.

~~2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(c)1. Criminal history information relating to juveniles, including criminal history information consisting in whole or in part of information that is confidential and exempt under paragraph (b), shall be available to:

a. A criminal justice agency for criminal justice purposes on a priority basis and free of charge;

b. The person to whom the record relates, or his or her attorney;

c. The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or

d. An agency or entity specified in s. 943.0585(6) or s.

943.059(6), for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

2. After providing the program with all known personal identifying information, the criminal history information relating to a juvenile which is not confidential and exempt under this subsection may be released to the private sector and noncriminal justice agencies not specified in s. 943.0585(6) or s. 943.059(6) in the same manner as provided in paragraph (a). Criminal history information relating to a juvenile which is not confidential and exempt under this subsection is the entire criminal history information relating to a juvenile who satisfies any of the criteria listed in subparagraphs (b)1.-4. ~~sub-subparagraphs (b)1.a.-d.~~, except for any portion of such juvenile's criminal history record which has been expunged or sealed under any law applicable to such record.

3. All criminal history information relating to juveniles, other than that provided to criminal justice agencies for criminal justice purposes, shall be provided upon tender of fees as established in this subsection and in the manner prescribed by rule of the Department of Law Enforcement.

(d) The fee for access to criminal history information by the private sector or a noncriminal justice agency shall be assessed without regard to the size or category of criminal history record information requested.

(e) The fee per record for criminal history information provided pursuant to this subsection and s. 943.0542 is $24 per name submitted, except that the fee for the guardian ad litem

program and vendors of the Department of Children and Families, the Department of Juvenile Justice, the Agency for Persons with Disabilities, and the Department of Elderly Affairs shall be $8 for each name submitted; the fee for a state criminal history provided for application processing as required by law to be performed by the Department of Agriculture and Consumer Services shall be $15 for each name submitted; and the fee for requests under s. 943.0542, which implements the National Child Protection Act, shall be $18 for each volunteer name submitted. The state offices of the Public Defender shall not be assessed a fee for Florida criminal history information or wanted person information.

Section 2. Subsection (2) of section 985.04, Florida Statutes, is amended to read:

985.04 Oaths; records; confidential information.—

(2)(a)~~1.~~ Notwithstanding any other provisions of this chapter, the name, photograph, address, and crime or arrest report of a child:

1.~~a.~~ Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

2.~~b.~~ Charged with a violation of law which, if committed by an adult, would be a felony;

3.~~c.~~ Found to have committed an offense which, if committed by an adult, would be a felony; or

4.~~d.~~ Transferred to adult court pursuant to part X of this chapter,

are not considered confidential and exempt from s. 119.07(1)

solely because of the child's age.

(b)~~2.~~ A public records custodian may choose not to electronically publish on the custodian's website the arrest or booking photographs of a child which are not confidential and exempt under this section or otherwise restricted from publication by law; however, this paragraph ~~subparagraph~~ does not restrict public access to records as provided by s. 119.07.

~~(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 3. This act shall take effect October 1, 2021.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

2/3/21
Meeting Date

7012
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Confidential Juvenile Records

Name Jessica Yeary

Job Title Public Defender, 2nd Judicial Circuit

Address 301 S. Monroe St.
Street

Phone 850-606-1000

Tallahassee FL
City *State* *Zip*

Email jessica.yeary@flpd2.com

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)

CourtSmart Tag Report

Room: EL 110 **Case No.:** **Type:**
Caption: Senate Criminal Justice Committee **Judge:**

Started: 2/3/2021 9:00:46 AM
Ends: 2/3/2021 9:49:43 AM Length: 00:48:58

9:00:45 AM	Meeting called to order by Chair Pizzo
9:00:49 AM	Roll call by CAA Sue Arnold
9:00:57 AM	Quorum present
9:01:07 AM	Comments from Chair Pizzo
9:01:41 AM	Introduction of Tab 4, SPB 7012 by Chair Pizzo
9:01:59 AM	Explanation of SPB 7012, OGSR/Criminal History Information of Juveniles by Amanda Stokes
9:03:22 AM	Comments from Chair Pizzo
9:03:56 AM	Senator Brandes moves that SPB 7012 be submitted as a Committee Bill
9:04:04 AM	Roll call by CAA
9:04:19 AM	SPB 7012 is reported favorably as a Committee Bill
9:04:32 AM	Introduction of Tab 1, SB 232 by Chair Pizzo
9:04:39 AM	Explanation of SB 232, Criminal Justice by Senator Brandes
9:05:31 AM	Introduction of Amendment Barcode No. 854394 by Chair Pizzo
9:05:35 AM	Explanation of Amendment by Senator Brandes
9:06:05 AM	Comments from Chair Pizzo
9:06:39 AM	Closure waived
9:06:41 AM	Amendment adopted
9:06:46 AM	Question from Senator Powell
9:06:53 AM	Response from Senator Brandes
9:08:39 AM	Follow-up question from Senator Powell
9:08:47 AM	Response from Senator Brandes
9:09:47 AM	Question from Senator Gainer
9:09:53 AM	Response from Senator Brandes
9:11:11 AM	Comments from Chair Pizzo
9:11:18 AM	Speaker Alexandria Barry in support
9:15:27 AM	Jessica Yeary, Florida Public Defender Association waives in support
9:15:29 AM	Pamela Burch Fort waives in support
9:15:33 AM	Ingrid Delgado, Florida Conference of Catholic Bishops waives in support
9:15:40 AM	Diego Echeverri, Americans for Prosperity waives in support
9:15:44 AM	Ida Eskamani, Florida Rising waives in support
9:15:49 AM	Chelsea Murphy, Right on Crime waives in support
9:15:51 AM	Kara Gross. ACLU waives in support
9:15:53 AM	Denise Rock, Florida Cares Charity waives in support
9:15:57 AM	Greg Newburn, FAMM waives in support
9:16:10 AM	Speaker Anna Williams waives in support
9:20:58 AM	Speaker Karen Roberts in support
9:25:17 AM	Speaker Amy McCovit in support
9:28:43 AM	Speaker Rebecca McMichael in support
9:32:23 AM	Question from Chair Pizzo
9:32:29 AM	Response from Ms. McMichael
9:33:04 AM	Speaker Laurette Philipson in support
9:36:44 AM	Speaker Chrystal Camacho in support
9:41:14 AM	Comments from Chair Pizzo
9:41:35 AM	Senator Brandes in closure
9:41:39 AM	Roll call by CAA
9:41:55 AM	CS/SB 232 reported favorably
9:42:11 AM	Introduction of Tab 2, SB 246 by Chair Pizzo
9:42:22 AM	Explanation of SB 246, Public Meetings and Records/Conditional Aging Medical Release Program by Senator Brandes
9:42:44 AM	Comments from Chair Pizzo
9:42:52 AM	Diego Echeverri, Americans for Prosperity waives in support
9:42:55 AM	Jessica Yeary, Florida Public Defender Association waives in support

9:42:58 AM	Speaker Courtney Sanchez, School Counselor in support
9:48:01 AM	Comments from Chair Pizzo
9:48:05 AM	Closure waived
9:48:08 AM	Roll call by CAA
9:48:12 AM	SB 246 reported favorably
9:48:25 AM	Introduction of Tab 3 by Chair Pizzo
9:48:30 AM	Explanation of SB 248 regarding Public Meetings and Records/Conditional Medical Release Program by Senator Brandes
9:48:40 AM	Diego Echeverri, Americans for Prosperity waives in support
9:48:45 AM	Jessica Yeary, Florida Public Defender Association waives in support
9:48:51 AM	Closure waived
9:48:54 AM	Roll call by CAA
9:49:00 AM	SB 248 reported favorably
9:49:07 AM	Comments from Chair Pizzo
9:49:17 AM	Senator Perry moves to give staff license to make technical and conforming changes to the Committee Substitutes
9:49:23 AM	Senator Brandes moves to adjourn
9:49:31 AM	Meeting adjourned

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Alternating Chair*

February 3, 2021

The Honorable Chair Jason Pizzo
405 Senate Office Building
Tallahassee, FL 32399

Dear Chairman Pizzo,

I request that I be excused from attending Criminal Justice Committee meeting this morning as I was in other committees presenting bills.

Thank you for your consideration.

Onward & Upward,

Senator Dennis Baxley,
Senate District 12

DKB/dd

REPLY TO:
❒ 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
❒ 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
❒ 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

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Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore