

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 812

INTRODUCER: Senators Gibson and Bullard

SUBJECT: Youth in Solitary Confinement

DATE: March 13, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------|----------------|-----------|--------------------|
| 1. | Clodfelter | Cannon | CJ | Pre-meeting |
| 2. | _____ | _____ | CA | _____ |
| 3. | _____ | _____ | JU | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

SB 812 creates new requirements for the Department of Corrections and local correctional facilities when dealing with prisoners who are either under 18 years of age or who have been sentenced as a youthful offender pursuant to ch. 958, F.S. It requires the department and local jails to establish three types of confinement for these “youth prisoners”: disciplinary cell confinement; emergency cell confinement; and protective custody, with minimum requirements for access to.

This bill creates section 958.155 of the Florida Statutes. The bill substantially amends sections 944.09 and 951.23 of the Florida Statutes.

II. Present Situation:

Department of Corrections – Youthful Offenders

Chapter 958, F.S., establishes requirements for the treatment of youthful offenders. As of February 8, 2013, the department had custody of 152 youthful offenders under 18 years of age, 2,363 youthful offenders 18 years of age or older, and 19 inmates classified as young adult offenders and housed with youthful offenders.¹

Section 958.11, F.S., requires the department to designate separate institutions and programs for youthful offenders and requires personnel to be specially qualified by training and experience to

¹ Department of Corrections 2013 Analysis of Senate Bill 812, p. 2.

operate the institutions and programs. The department has designated four institutions to house youthful offenders:

- Lancaster Correctional Institution in Trenton, housing males aged 19-24;
- Sumter Correctional Institution in Bushnell, housing males aged 14-18;
- Lake City Correctional Facility in Lake City, housing males aged 19-24; and
- Lowell Correctional Facility in Lowell, housing all female youthful offenders²

Youthful offenders in these institutions are involved in the department's Extended Day Program (EDP). The EDP is a 16-hour per day program that includes vocational and academic education programs, counseling, work assignments, behavior modification, military-style drills, systematic discipline, and other programs. It is structured into three phases to recognize progress, and also includes a remedial phase. Inmates housed in facilities designated for youthful offenders are subject to the same disciplinary standards as non-youthful offenders. However, when appropriate, the remedial phase is imposed instead of disciplinary confinement.³

A court may sentence a felony defendant as a youthful offender if the defendant is between 18 and 21 years old at the time of sentencing, or is under 18 years of age but was prosecuted as an adult. However, a young defendant is not eligible for youthful offender sentencing if he or she was found guilty of a capital or life felony or had previously been classified as a youthful offender.⁴

Among the options that the court has for sentencing a qualified defendant as a youthful offender is a split sentence of incarceration for a maximum of four years followed by community supervision, with the combined sentence not exceeding six years.⁵ In theory, this means that an inmate who is a youthful offender could be no more than 24 years old. However, a youthful offender can be resentenced to more than six years in prison if he or she commits a substantive violation of community supervision. In such a case, the inmate will retain the designation as a youthful offender throughout the extended prison sentence even though he or she may be much older than the intended age range.⁶

An inmate who is less than 25 years old and who was not sentenced as a youthful offender can still be classified as a youthful offender by the department if the inmate:

- Met the eligibility criteria to be sentenced as a youthful offender by the court, but was not;⁷
or
- Was ineligible for youthful offender sentencing by the court only because he or she was more than 21 years old at the time of sentencing, and has a total sentence not exceeding ten years.⁸

² *Id.*, p. 1.

³ *Id.*, pp. 1-2.

⁴ Section 958.04(1), F.S.

⁵ Section 958.04, F.S.

⁶ *See Long v. State*, 99 So.3d 997 (Fla. 5th Dist. 2012).

⁷ Section 958.045(8)(a), F.S.

⁸ Section 958.11(4), F.S.

The department is required to assign an inmate who is less than 18 years old to a youthful offender facility even if he or she was not sentenced as a youthful offender. These “young adult offenders” may continue to be assigned to the youthful offender facility until reaching 22 years of age if it is in the inmate’s best interests and does not pose an unreasonable risk to other inmates.⁹ The department may also assign an inmate who is less than 20 years old, except a capital or life felon, to a youthful offender facility until age 20 if it determines that the inmate’s mental or physical vulnerability would substantially or materially jeopardize his or her safety in a non-youthful offender facility.¹⁰

There are limited circumstances in which the department can assign a youthful offender to an adult facility. These include commission of a new felony, serious violations of rules that create a serious management problem affecting the other program participants, and transfers required for medical treatment or other needed services.¹¹

Department of Corrections - Confinement and Protective Management

Administrative confinement provides for “the temporary removal of an inmate from the general inmate population in order to provide for security and safety until such time as more permanent inmate management processes can be concluded.”¹² All inmates, regardless of age, are subject to the same considerations for placement in administrative confinement. Administrative confinement is typically used while an investigation or administrative process is pending, such as processing a request for protective management or investigation of a disciplinary report that requires removing the inmate from the general population. Department rule requires that inmates in administrative confinement be treated as much like the general population as possible.

Inmates are required to be given a pre-confinement health assessment prior to placing the inmate in administrative confinement. This assessment includes a physical and mental health evaluation that is documented in the inmate’s health care record. The Institutional Classification Team (ICT) is required by rule to review placement of inmates in administrative confinement within 72 hours.

Corrections staff is required by rule to conduct regular visits to administrative confinement on no less than the following schedule:

- Every 30 minutes by a correctional officer, but on an irregular schedule.
- Daily by the housing supervisor.
- Daily by the shift supervisor on duty for all shifts except in case of riot or other institutional emergency.
- Weekly by the Chief of Security, when on duty at the facility, except in case of riot or other institutional emergency.
- Daily by a clinical health care person.
- Weekly by the chaplain.

⁹ Section 944.1905(5)(a), F.S.

¹⁰ Section 958.11(6), F.S.

¹¹ Section 958.11(3), F.S.

¹² This definition and other rules concerning administrative confinement are found in Rule 33-602.220, F.A.C.

- Weekly by the warden.
- Weekly by the assistant wardens.
- Once a week by a classification officer.
- Weekly by a member of the ICT.

A mental health professional is required to conduct a psychological screening assessment to determine the mental condition of any inmate who is in administrative confinement for more than 30 days. Follow-up screenings are required to be conducted at least every 90 days.

Disciplinary confinement is “a form of punishment in which inmates found guilty of committing violations of the department rules are confined for specified periods of time to individual cells based upon authorized penalties for prohibited conduct.”¹³ All inmates, regardless of age, are subject to the same penalties stated in Rule 33-601.314, F.A.C., Rules of Prohibited Conduct and Penalties for Infractions.

Department rule requires that an inmate who is to be confined must be given a pre-confinement medical evaluation by medical staff before being placed in disciplinary confinement.

The requirements for staff visits to inmates in disciplinary confinement are the same as those for inmates in administrative confinement, except that a member of the ICT must visit as frequently as necessary, but not less than once every 30 days, to ensure that the inmate’s welfare is properly provided for and to determine the time and method of release. In addition, if the inmate is in disciplinary confinement for more than 60 consecutive days, the State Classification Officer must visit as frequently as necessary to ensure the inmate’s welfare and to determine if he or she should be released.

Protective Management is “a special management status for the protection of inmates from other inmates in an environment as representative of that of the general population as is safely possible.”¹⁴ Protective management is not disciplinary in nature, and inmates in protective management are not in confinement. Department rule requires that the treatment of inmates in protective management be as near to that of the general population as security concerns and the individual inmate’s safety permit. However, a younger prisoner who is housed in a protective management unit may be subject to more restrictions than older protective management inmates because of safety and security concerns.

Basic requirements for confinement or protective management

Inmates in confinement or in protective management are allowed by rule to retain many normal privileges. However, there may be some restriction of the privileges that are available to the general population based upon security concerns, management objectives, and logistical issues. The following basic provisions for treatment are among the requirements set forth in rule:

Exercise – Those inmates in administrative confinement or disciplinary confinement who are confined on a 24-hour basis, excluding showers and clinic trips, may exercise in their cells. If confinement extends beyond 30 days, they are allowed a minimum of three hours per week of

¹³ This definition and other rules concerning disciplinary confinement are found in Rule 33-602.222, F.A.C.

¹⁴ This definition and other rules concerning protective management are found in Rule 33-602.221, F.A.C.

exercise out-of-doors. Inmates in protective management for any length of time are allowed a minimum of three hours per week of outside exercise.

Showers – Inmates in administrative confinement or protective management shower a minimum of three times per week and on days that they work. Inmates in disciplinary confinement shower a minimum of three times per week.

Clothing – Inmates in either type of confinement or protective management are provided the same clothing as the general inmate population unless exceptions are necessary on an individual basis for the welfare of the inmate or the security of the institution.

Correspondence – Inmates in either type of confinement or protective management have the same opportunities for correspondence that are available to the general inmate population, except that an inmate in disciplinary confinement may be restricted from a particular correspondence if the disciplinary infraction involved that correspondence.

Meals – Inmates in administrative confinement receive normal institutional meals. However, if any item on the normal menu creates a security problem in the confinement unit, another item of comparable quality is substituted. A special management meal is authorized for any inmate who uses food or food service equipment in a manner that is hazardous to him or herself, staff, or other inmates.

- Inmates in disciplinary confinement receive meals representative of the food served to the general population, but are not necessarily given a choice of every item. The special management meal can be served to an inmate when warranted by the inmate's conduct.
- Inmates in protective management are fed in the dining room unless separate dining is required by safety considerations for an individual inmate.

Mental health treatment– Inmates in either type of confinement are allowed out of their cells to receive regularly scheduled mental health services, unless within the past four hours, the inmate has displayed hostile, threatening, or other behavior that could present a danger to others. If so, they can receive treatment in their cell. Inmates in protective management receive counseling either in cell or out of cell when deemed necessary by mental health staff.

Telephone privileges – Inmates in either type of confinement or protective management are allowed to use the telephone for emergency situations, when necessary to ensure access to attorneys or the courts, or in specially authorized circumstances. In addition, inmates in protective management are allowed to make one 15 minute call per week. If telephones are available in the housing unit's dayroom, protective management inmates are allowed to make calls in the same manner as general population inmates.

Visits – Inmates in either type of confinement are permitted personal visits only when specifically authorized by the warden or his or her representative. Inmates in protective management are given a minimum of two hours a week to receive visits. Visiting takes place in a separate facility from the general population if a separate facility is available. Visiting can be limited if security concerns due to the inmate's special management status cannot be reduced to an acceptable level.

Legal visits – are not restricted except when there is evidence that the visit is a threat to security and order.

Legal Access – Inmates in administrative confinement generally have access to legal materials to the same extent as inmates in the general population. However, security concerns may require that legal business be conducted by correspondence rather than a personal visit to the law library.

- Inmates in disciplinary confinement are permitted to have access to their personal legal papers and law books, to correspond with the law library, to have the law library deliver research materials to their cells, and to have face-to-face interaction with certified inmate law clerks. However, they are not allowed to personally visit the law library.
- Inmates in protective management have access to the law library during evening or other hours when general population inmates are not present. If security reasons prevent a personal visit, access is provided through correspondence or visits from an inmate research aide.

Counties – Detention or Jailing of Young Offenders

Juveniles may be confined as a function of the juvenile justice system or while awaiting trial and serving sentences when charged as an adult. Juveniles who are awaiting the resolution of charges in the juvenile justice system may be confined under the care of the Department of Juvenile Justice, or they may be confined in a secure juvenile detention facility in counties where one has been established. Juveniles who are waiting trial as an adult or who are serving an adult sentence may be confined in the county jail or detention facility.

The housing of juveniles in adult jails or in a county's youth detention facility must be in accordance with the Florida Model Jail Standards.¹⁵ Under the Model Standards, juveniles who are awaiting trial as an adult must be housed separately from adult inmates to prohibit regular sight and sound contact with incarcerated adults. This sight and sound separation must permit no more than haphazard or accidental contact between juveniles awaiting trial and incarcerated adults. Juvenile pre-trial detainees must be housed in a separate section of the jail and must be physically observed and checked on by a facility correctional officer at least every 15 minutes. Except for these restrictions, the requirements for treatment of juveniles housed in county jails while awaiting trial or serving an adult sentence are the same as those of adult prisoners.

A juvenile who has been sentenced as an adult may be housed with adults in the same classification level both during service of the sentence and during any subsequent jail admissions.¹⁶

Inmates who are found to have committed violations of the facility's rules may be placed in administrative confinement after a due process hearing. They may also be placed in administrative confinement for the purpose of ensuring immediate control and supervision if they pose a threat to themselves, to others, or to the safety and security of the detention facility. Inmates in administrative confinement receive housing, food, clothing, medical care, exercise,

¹⁵ The Florida Model Jail Standards are available at https://www.flsheriffs.org/uploads/FMJS%2008-30-11rev_logo2.pdf (last viewed on March 14, 2013).

¹⁶ Sections 985.56, 985.556, and 985.557, F.S.

visitation, showers, and other services and privileges comparable to those available to the general population. There may be exceptions based upon the inmate's classification status or if the inmate has special needs. The Model Rules provide that inmates in administrative confinement should be checked by medical staff at least every 72 hours and are required to bathe twice weekly.

The Model Standards provide additional requirements for the care and custody of juveniles who are detained in a Youth Detention Facility operated by the county.¹⁷

III. Effect of Proposed Changes:

This bill creates the "Youth in Solitary Confinement Reduction Act." It establishes new statutory requirements for the treatment of young prisoners¹⁸ in the custody of the department or a local correctional facility. The requirements apply to the treatment of all prisoners who are either under 18 years of age or who have been sentenced as a youthful offender pursuant to ch. 958, F.S. These persons are referred to in the bill as "youth prisoners." The requirements of the bill are substantially different than the current policies of the department and also differ from the Florida Model Jail Standards that are used by county sheriffs in administering their jails and detention facilities.

Solitary confinement is defined in the bill as "involuntary confinement in a cell for more than 20 hours a day, in isolation from persons other than a cellmate, guards, facility staff, and attorneys." The bill provides that a youth prisoner cannot be housed in solitary confinement unless the confinement is under conditions established in the bill for one of three types of cell confinement: emergency cell confinement; disciplinary cell confinement; and protective custody. All three types of cell confinement require that youth prisoners receive access to the same type of medical treatment, contact with parents and legal guardians, and legal assistance as provided to prisoners in the general population. Other requirements of each type of cell confinement are described below.

Emergency cell confinement means the confinement to a cell of a youth who needs to be temporarily removed from the general population of prisoners because he or she presents an immediate, serious danger to the security or safety of himself or herself or others. It cannot be utilized unless all other less restrictive options have been exhausted. Emergency cell confinement must be for no longer than is required to address the safety risk and is limited to a period of 24 hours.

A youth prisoner who is placed in emergency cell confinement must receive a face-to-face evaluation by a mental health clinician¹⁹ within the first hour and no less than every four hours thereafter to determine if he or she should remain in such confinement. The youth prisoner cannot be held in emergency cell confinement if the mental health clinician determines that it is detrimental to the youth's mental or physical health.

¹⁷ Chapter 20, Florida Model Jail Standards.

¹⁸ "Prisoner" is defined in the bill as "a person incarcerated in a county or regional jail or in a department facility who is accused of, convicted of, or sentenced for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or a diversionary program."

¹⁹ The bill defines a "mental health clinician" as a psychiatrist, psychologist, social worker, or nurse practitioner.

The bill requires facility staff to visually check on a youth prisoner who is in emergency cell confinement at least every 15 minutes, including speaking to the youth if he or she is awake. The youth prisoner's status must be documented after each visual check.

Additional requirements apply to youth prisoners who are placed in emergency cell confinement if they have exhibited suicidal behavior or committed acts of self-harm. For those youth prisoners, an individualized suicide crisis intervention plan must be implemented within four hours, and a mental health clinician shall closely monitor the youth's condition in order to reduce or eliminate the risk of self-harm. The youth prisoner must be moved to a mental health receiving facility if the suicide risk is not resolved within 24 hours.

In addition to the common requirements for cell confinement, youth prisoners in emergency cell confinement must have access to a minimum of one hour of out-of-cell large muscle exercise, including opportunity for outdoor recreation when the weather permits. They must also have access to the same meals and drinking water as prisoners in the general population.

Disciplinary cell confinement is a disciplinary sanction for a major rule violation. There is no limit to the length of time that a youth prisoner can be in disciplinary cell confinement, except that the youth prisoner cannot be held by himself or herself for longer than 72 hours. The bill defines "major rule violation" to mean an act that:

- Is an act of violence which results in or is likely to result in serious injury or death to another;
- Occurs in connection with an act of nonconsensual sex;
- Consists of two or more discrete acts that cause serious disruption to the security or order of the detention center or facility operations; or
- Is an escape, attempted escape, or conspiracy to escape from within a security perimeter or custody or both.

This definition of major rule violation is less inclusive than that currently used by the department or by county detention facilities. The department asserts that restricting disciplinary cell confinement for use in addressing what it considers to be a limited range of offenses would undermine its efforts to maintain order and discipline.²⁰

As with emergency cell confinement, the bill requires facility staff to visually check on a youth prisoner who is in disciplinary cell confinement at least every 15 minutes, including speaking to the youth if he or she is awake. The youth prisoner's status must be documented after each visual check.

In addition to the common requirements for cell confinement, youth prisoners in disciplinary cell confinement must be provided:

- At least two hours of daily out-of-cell large muscle exercise that includes access to outdoor recreation when the weather permits;
- Daily showers; and

²⁰ Department of Corrections 2013 Analysis of Senate Bill 812, p. 9.

- Access to the same standards of meals and drinking water (but not the same meals and drinking water), clothing, educational services, correspondence privileges as provided to prisoners in the general population.

The bill defines “prisoner” as “a person incarcerated in a county or regional jail or in a department facility who is accused of, convicted of, or sentenced for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or a diversionary program.”

Protective custody is a status for a youth prisoner who requires protection because he or she is in danger of being victimized by other prisoners in the facility, including time spent pending review of a request for protection. The restrictions placed on youth prisoners in protective custody must be the least restrictive needed to maintain the safety of the youth prisoner and the institution. In addition to the previously stated requirements, protective custody must afford access to:

- Educational and programming opportunities consistent with the youth prisoner’s safety and security and any federal and state law requirements;
- A minimum of five hours a day outside of the cell, including at least two hours of out-of-cell large muscle exercise with opportunity for outdoor recreation when the weather permits;
- The same meals and drinking water, clothing, correspondence privileges, and number of visits and phone calls as provided to prisoners in the general population;
- Personal property, including televisions and radios, and access to books, magazines, and other printed materials;
- Daily showers; and
- The law library.

The bill requires the department and the county commissions to review the necessity of their policies concerning solitary confinement or protective custody of youth prisoners. These entities are required to certify compliance with the provisions of the bill in a report to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2014. The bill also requires the department and county commissions to adopt any policies and procedures that are necessary to administer its provisions.

Section 2 of the bill amends s. 944.09, F.S., to require the department to adopt rules in compliance with the bill’s provisions. Section 3 of the bill amends s. 951.23, F.S., to require the established working group of the Florida Sheriffs Association and the Florida Association of Counties to adopt model rules consistent with the requirements of the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Corrections indicates that it does not have the resources to comply with the provisions of the bill.²¹ It assesses that the bill's overall fiscal impact on its operations is indeterminate, but that it is likely to be significant. One fiscal impact factor noted by the department was a possible requirement for additional mental health personnel.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

²¹ *Id.*, p.8.

²² *Id.*, at p. 14.