

**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 7066

INTRODUCER: Criminal Justice Committee

SUBJECT: Criminal Justice

DATE: February 9, 2016

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

---

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon		<b>CJ Submitted as Committee Bill</b>

---

**I. Summary:**

SPB 7066 makes several significant changes to Florida’s sentencing and gain-time laws. Specifically, the bill:

- Requires that certain offenders convicted of simple possession of a controlled substance receive a nonstate prison sanction unless such sentence could present a danger to the public;
- Authorizes a court to depart from a mandatory minimum term of imprisonment for a nonviolent felony or misdemeanor if the court finds that specified criteria are met; and
- Increases the amount of incentive gain-time the Department of Corrections may grant and provides that an offender who commits a nonviolent felony is not eligible to earn any type of gain-time in an amount that would cause the offender to serve less than 65 percent of his or her sentence (currently 85 percent of the offender’s sentence).

All three provisions in the bill will result in substantially fewer nonviolent inmates coming to state prison and substantially more inmates serving shorter sentences. The most significant cost reduction will be achieved by modifying the gain-time law. By decreasing the 85 percent “time-served” mandate to 65 percent “time-served” for nonviolent inmates, the bill is estimated to result in a reduction of 7,772 inmates over the next five fiscal years, with a cost avoidance of nearly \$1 billion.

## II. Present Situation:

### Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code<sup>1</sup> (“Code”) as Florida’s “primary sentencing policy.”<sup>2</sup> The Code has been described as “unique in that it has features of both structured and unstructured sentencing policies.”<sup>3</sup>

From a structured sentencing perspective, the Code provides for a uniform evaluation of relevant factors present at sentencing, such as the offense before the court for sentencing, prior criminal record, victim injury, and others. It also provides for a lowest permissible sentence that the court must impose in any given sentencing event, absent a valid reason for departure.

The Code also contains some characteristics of unstructured sentencing, such as broad judicial discretion and the allowance for the imposition of lengthy terms of incarceration.

The Code is effective for offenses committed on or after October 1, 1998 and is unlike the state’s preceding sentencing guidelines, which provided for narrow ranges of permissible sentences in all non-capital sentencing events.<sup>4</sup>

Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>5</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.<sup>6</sup> Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury.<sup>7</sup> Total sentence points are entered into a mathematical calculation (specified in statute) to determine the lowest permissible prison sentence in months.<sup>8</sup> Absent mitigation,<sup>9</sup> the permissible sentencing range is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.<sup>10</sup>

---

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

<sup>2</sup> *Florida’s Criminal Punishment Code: A Comparative Assessment* (Executive Summary), Florida Department of Corrections (Sept. 2013), available at [http://www.dc.state.fl.us/pub/sg\\_annual/1213/executives.html](http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html) (last visited on February 2, 2016).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by “default” based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

<sup>6</sup> Section 921.0024, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> The court may “depart downward” from the lowest permissible sentence scored if the court finds there is a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

<sup>10</sup> *Id.* If the lowest permissible sentence scored exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. *Id.* If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. *Id.*

## Length of Stay

According to a recent study of the operations of the Florida Department of Corrections (DOC), length of stay (LOS) in Florida correctional facilities exceeds the national LOS average. LOS has consistently increased in Florida:

... [T]he length of stay (LOS) in correctional facilities has risen from just under 30 months on average in 2008 to almost 40 months by 2015. This LOS is well above the national average of 30 months reported by the Bureau of Justice Statistics. If Florida had an LOS that approximated the national average of 30 months, its inmate population would be approximately 80,000. The longer LOS also explains to a large degree Florida's significantly higher incarceration rate of 522 per 100,000 population versus the U.S. state incarceration rate of 416 per 100,000.<sup>11</sup>

The study notes a 10-year increase in LOS in Florida [2004-05 to 2014-2015], which the authors attribute to "longer sentences being imposed by the courts that began in 2006 and continued through 2013."<sup>12</sup> In 2004-05, the average calculated LOS was 29.9 months; in 2014-15, the average calculated LOS was 38.0 months. This was a 2.5 percent increase over the 10-year period.

## Statutory Diversion from Prison Sanctions

An exception to typical Code sentencing is found in s. 775.082(10), F.S. Under this subsection, if a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third degree felony but not a forcible felony<sup>13</sup> and if the total sentence points pursuant to s. 921.0024, F.S., are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility.

## Mandatory Minimum Terms of Imprisonment

Mandatory minimum terms of imprisonment<sup>14</sup> limit judicial discretion in sentencing under the Code. "If the lowest permissible sentence is less than the mandatory minimum sentence, the

---

<sup>11</sup> *Study of Operations of the Florida Department of Corrections* (prepared by Carter Goble Associates, LLC), Report No. 15-FDC, November 2015, Office of Program Policy Analysis and Government Accountability, Florida Legislature, p. 80 (footnote omitted). This study is available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=15-FDC> (last visited on February 2, 2016). This study is further referenced as "*Study of Operations of the Florida Department of Corrections.*"

<sup>12</sup> *Id.*

<sup>13</sup> Section 776.08, F.S., defines a "forcible felony" as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. However, s. 775.082(10), F.S., provides that any third degree felony violation under chapter 810, F.S., may be considered.

<sup>14</sup> According to one study of sentencing, the first mandatory minimum term of imprisonment (3 years) was enacted by the Legislature in 1975 and applied to using a firearm in the commission of a felony. Crow, Matthew S. *Florida's Evolving Sentencing Policy: An Analysis of the Impact of Sentencing Guidelines Transformations* (April 1, 2005), Doctoral dissertation for the School of Criminology and Criminal Justice, Florida State University (Spring Semester 2005) (on file with Senate Committee on Criminal Justice).

mandatory minimum sentence takes precedence.”<sup>15</sup> If the mandatory minimum sentence is longer than the scored lowest permissible sentence, the sentencing range is narrowed.

With few exceptions, the sentencing court must impose the mandatory minimum term. Staff is aware of three circumstances in which a sentencing court is authorized to impose a sentence below the mandatory minimum term. The first circumstance is when the court sentences a defendant as a youthful offender.<sup>16</sup> The second circumstance is when the court grants a motion from the state attorney to reduce or suspend a sentence based upon substantial assistance rendered by the defendant.<sup>17</sup>

The third circumstance, which is perhaps most relevant to the bill, applies to an offense in which a driver who is involved in a fatal crash fails to stop and remain at the scene of a crash as required.<sup>18</sup> This offense is a first degree felony with a 4-year mandatory minimum term of imprisonment.<sup>19</sup> However, the defendant may move to depart from the mandatory minimum term if he or she was not driving under the influence.<sup>20</sup> The state may object to the departure. The court may grant the motion if it finds that a factor, consideration, or circumstance clearly demonstrates that imposing a mandatory minimum term would constitute or result in an injustice.

Senate staff was able to identify 108 mandatory minimum terms in Florida law. This inventory excludes repeat offender sanctions. Mandatory minimum terms for felony offenses range from 18 months to life imprisonment. Mandatory minimum terms for misdemeanors range from 5 days to one year. Section 893.135, F.S., which punishes drug trafficking, contains the most mandatory minimum terms (47) for felonies. Section 379.407, F.S., which punishes saltwater product violations, contains the most mandatory minimum terms (12) for misdemeanor violations.

<b>INVENTORY OF FLORIDA’S MANDATORY MINIMUM TERMS</b>	
<b>Offense/Penalty Provision &amp; Number of Mandatory Minimum Terms</b>	<b>Description of Mandatory Minimum Term(s)</b>
Driving under the influence; various offenses (ss. 316.027 and 316.193). <b>Four mandatory minimum terms.</b>	4 years, 2 years, not less than 30 days, not less than 10 days
Fleeing or eluding; various offenses (s. 316.1935). <b>Two mandatory minimum terms.</b>	3 years
Boating under the influence; various offenses (s. 327.35). <b>Two mandatory minimum terms.</b>	Not less than 30 days, not less than 10 days
Saltwater product violations; various offenses (s. 379.407). <b>Twelve mandatory minimum terms.</b>	1 year, 6 months

<sup>15</sup> Fla.R.Crim.P. Rule 3.704(26). A mandatory minimum term is also not subject to mitigation. *See State v. Vanderhoff*, 14 So. 3d 1185 (Fla. 5th DCA 2009).

<sup>16</sup> Section 958.04, F.S. *See Christian v. State*, 84 So. 3d 437 (Fla. 5th DCA 2012).

<sup>17</sup> Sections 790.163(2), 790.164(2), and 893.135(4), F.S.

<sup>18</sup> Section 316.027(2)(c), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Section 316.027(2)(g), F.S.

<b>INVENTORY OF FLORIDA’S MANDATORY MINIMUM TERMS</b>	
<b>Offense/Penalty Provision &amp; Number of Mandatory Minimum Terms</b>	<b>Description of Mandatory Minimum Term(s)</b>
Phosphogypsum management violation (s. 403.4154). <b>One mandatory minimum term.</b>	5 years
Unlawfully practicing health care profession; various offenses (s. 456.065). <b>Three mandatory minimum terms.</b>	1 year, 30 days
Unlawfully selling, etc., horse meat (s. 500.451). <b>One mandatory minimum term.</b>	1 year
Unlawfully acting as insurer; various offenses (s. 624.401). <b>Three mandatory minimum terms.</b>	2 years, 18 months, 1 year
Domestic violence offender intentionally causes bodily harm (s. 741.283). <b>One mandatory minimum term.</b>	5 days (unless court imposes prison sentence)
“10-20-Life” (s. 775.087). <b>Eight mandatory minimum terms.</b>	Not less than 25 years and not more than life, 20 years, 15 years, 10 years, 3 years
Murder or attempted murder of law enforcement officer (s. 782.065). <b>One mandatory minimum term.</b>	Life
Assault or battery on law enforcement officer or other specified persons (s. 784.07). <b>Four mandatory minimum terms.</b>	8 years, 5 years, 3 years
Aggravated assault or aggravated battery upon person 65 years of age or older (s. 784.08). <b>One mandatory minimum term.</b>	3 years
Possession of a firearm, etc., by a violent career criminal (s. 790.235). <b>One mandatory minimum term.</b>	15 years
Deriving support from proceeds of prostitution; third or subsequent violation (s. 796.05). <b>One mandatory minimum term.</b>	10 years
Prostitution-related offenses; second or subsequent violation (s. 796.07). <b>One mandatory minimum term.</b>	10 days
Fraud; motor vehicle crash offenses (s. 817.234). <b>Two mandatory minimum terms.</b>	2 years
Criminal use of personal ID information; various offenses (s. 817.568). <b>Six mandatory minimum terms.</b>	10 years, 5 years, 3 years
Animal cruelty (death, etc.); second or subsequent violation (s. 828.12). <b>One mandatory minimum term.</b>	6 months
Unlawful killing, etc., of horse or cattle (s. 828.125).	1 year

<b>INVENTORY OF FLORIDA’S MANDATORY MINIMUM TERMS</b>	
<b>Offense/Penalty Provision &amp; Number of Mandatory Minimum Terms</b>	<b>Description of Mandatory Minimum Term(s)</b>
<b>Two mandatory minimum terms.</b>	
Intentionally defective workmanship; defense or war materials (s. 876.39). <b>One mandatory minimum term.</b>	Not less than 1 year in state prison (effectively, more than one year)
Sale, etc., of specified controlled substances within 1,000 feet of real property of K-12 school and other places (s. 893.13). <b>One mandatory minimum term.</b>	3 years
Manufacturing methamphetamine/phencyclidine; various offenses (child present) (s. 893.13). <b>Two mandatory minimum terms.</b>	10 calendar years, 5 calendar years
Drug trafficking; various offenses (s. 893.135). <b>Forty-seven mandatory minimum terms.</b>	Life, 25 years, 15 years, 7 years, 3 years
<b>TOTAL MANDATORY MINIMUM TERMS: 108</b>	

**Service of 85 Percent of Sentence and Incentive Gain-Time**

According to a 2012 study of time served in prison by the PEW Center on the States (“PEW”),<sup>21</sup> in 1990, the average length of stay (LOS) in Florida prisons was 1.1 years, the shortest LOS for that year among states reviewed by the PEW Center for which data was available. According to PEW “[t]hroughout the prior decade, a capacity crunch combined with court limits on prison overcrowding drove Florida to copy generous policies on ‘gaintime’ that reduced offenders time in prison.”<sup>22</sup> Some of these credits were “automatic, rather than awarded based on program participation or good behavior.”<sup>23</sup> “As a result, inmates in that era served only about 30 percent of their court-ordered terms.”<sup>24</sup>

PEW further observed:

By the mid-1990s, the national truth-in-sentencing movement was at full throttle, and Florida—where outrage lingered over the murders of two Miami police officers by an ex-offender released after serving only half his term—was ready for a pendulum swing. Prison capacity had increased, the 1993 killing of a British vacationer had stained the state’s image as a tourist playground, and a group called Stop Turning Out Prisoners (STOP) was attracting a large following. STOP’s push for a state constitutional amendment requiring offenders to serve 85 percent of their sentence was blocked by the

<sup>21</sup> *Time Served: The High Cost, Low Return of Longer Prison Terms* (2012), The PEW Center on the States, available at [http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing\\_and\\_corrections/prisontimeservedpdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/prisontimeservedpdf.pdf) (last visited on February 2, 2016).

<sup>22</sup> *Id.* at p. 26.

<sup>23</sup> *Id.*

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

Florida Supreme Court. But in early 1995, the state legislature voted unanimously to enact the 85 percent rule for all offenders, regardless of the crime.<sup>25</sup>

PEW found that Florida had the greatest increase in average time served among the states it studied over the time period of 1999 to 2008 (a 166 percent increase). Florida also led other states for this time period in increasing average time served for offenses in three crime categories studied by PEW: violent (a 137 percent increase); property (a 181 percent increase); and drugs (a 194 percent increase). As a specific comparison, the states with the next greatest increase in average time served for drug offenses were Arkansas and Oklahoma (both states increasing average time served for drug crimes by 122 percent).

In the previously referenced study of the operations of the Florida Department of Corrections, “[o]ne factor that was tested by the FDC [Florida Department of Corrections] and was not found to have an impact on lowering or increasing recidivism rates was the length of imprisonment. In other words, whether an inmate served one, two, three, or more years, there was no associated reduction or increase in the recidivism rates. This finding is consistent with other research studies that found amount of time served is not a predictor of recidivism.”<sup>26</sup>

As noted by PEW, when the Legislature created a requirement that inmates serve at least 85 percent of their sentence, the Legislature made the requirement applicable to both nonviolent felony offenders and violent felony offenders. Section 921.002(1)(e), F.S., of the Code provides that for noncapital felonies offenses committed on or after October 1, 1998, the sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law, and may not be shortened if the defendant would consequently serve less than 85 percent of his or her term of imprisonment as provided in s. 944.275(4)(b)3., F.S.<sup>27</sup>

Incentive gain-time is gain-time that the Department of Corrections may award monthly to an inmate for working diligently, participating in training, using time constructively, or otherwise engaging in positive activities. Incentive gain-time is also gain-time the department may award one-time to an inmate who is otherwise eligible and who successfully completes requirements for and is awarded a high school equivalency diploma or vocational certificate.<sup>28</sup>

For sentences imposed for offenses committed on or after October 1, 1995:

- Applicable to monthly incentive gain-time, the department may grant up to 10 days per month of incentive gain-time; and

---

<sup>25</sup> *Id.*

<sup>26</sup> *Study of Operations of the Florida Department of Corrections*, at p. 83 (footnotes omitted).

<sup>27</sup> Persons sentenced for offenses committed prior to October 1, 1998 are not subject to the 85 percent law. However, the Department of Corrections notes that the “vast majority of the inmates being released from prison today have been sentenced under the 85 percent law[.]” See <http://www.dc.state.fl.us/pub/timeserv/doing/> (last visited on February 2, 2016).

<sup>28</sup> Section 944.275(4)(b) and (d), F.S. Section 944.275(4)(e), F.S., provides that for sentences imposed for offenses committed on or after October 1, 2014, the department may not grant incentive gain-time if the offense is a violation of: s. 782.04(1)(a)2.c., F.S. (murder while engaged in sexual battery); s. 787.01(3)(a)2. or 3., F.S. (sexual battery or lewd act during commission of kidnapping of child under 13); s. 787.02(3)(a)2. or 3., F.S. (sexual battery or lewd act during commission of false imprisonment of child under 13); s. 794.011, F.S. (sexual battery), excluding s. 794.011(10), F.S.; s. 800.04, F.S. (lewd acts on child); s. 825.1025, F.S. (lewd acts on elderly or disabled adult); or s. 847.0135(5), F.S. (computer transmission to child of lewd exhibition).

- Applicable to one-time award of incentive gain-time (high school equivalency diploma or vocational certificate, 60 days of incentive gain-time.<sup>29</sup>

However, for sentences imposed for offenses committed on or after October 1, 1995, no prisoner is eligible to earn *any type of gain-time* in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85 percent of the sentence imposed. Credits awarded by the court for time physically incarcerated shall be credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by s. 944.275, F.S., a prisoner shall not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted pardon or clemency.<sup>30</sup>

### III. Effect of Proposed Changes:

The bill, which is effective on October 1, 2016, makes several significant changes to Florida's sentencing and gain-time laws. The changes are described as follows:

*The bill requires that certain offenders convicted of simple possession of a controlled substance receive a nonstate prison sanction unless such sentence could present a danger to the public.*

The bill amends s. 775.082, F.S., to provide that if a defendant is sentenced for a primary offense of possession of a controlled substance committed on or after October 1, 2016, and if the total sentence points pursuant to s. 921.0024, F.S., are 60 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility.

The bill defines "possession of a controlled substance" as possession of a controlled substance in violation of s. 893.13, F.S., but does not include possession with intent to sell, manufacture, or deliver a controlled substance or possession of a controlled substance in violation of s. 893.135, F.S., which punishes drug trafficking.

*The bill authorizes a court to depart from a mandatory minimum term of imprisonment for a nonviolent felony or misdemeanor if the court finds that specified criteria are met.*

The bill amends s. 775.082, F.S., to provide that a person who is convicted of an offense committed on or after October 1, 2016, which requires that a mandatory minimum term of imprisonment be imposed, may move the sentencing court to depart from the mandatory minimum term and, if applicable, the mandatory fine. The state attorney may file an objection to the motion.

The court may grant the motion if the court finds that the defendant has demonstrated by a preponderance of the evidence that all of the following criteria are met:

---

<sup>29</sup> Section 944.275(4)(b)3., F.S. When a prisoner is found guilty of an infraction of the laws of this state or the rules of the department, gain-time may be forfeited according to law. Section 944.275(5), F.S.

<sup>30</sup> Unless otherwise indicated, information in this paragraph is from s. 944.275(4)(b)3., F.S.

- The defendant has not previously received a departure under this section and has not been previously convicted for the same offense for which the defendant requests a departure under this section.
- The offense is not a forcible felony<sup>31</sup> or a misdemeanor which involves the use or threat of physical force or violence against another person.
- The offense does not involve physical injury to another person or coercion of another person; and
- The offense does not involve a victim who is a minor or the use of a minor in the commission of the offense.

The bill defines “coercion” as: using or threatening to use physical force against another person; or restraining, isolating, or confining or threatening to restrain, isolate, or confine another person without lawful authority and against her or his will (essentially physical restraint or false imprisonment).

The bill specifies that the departure provision does not apply to repeat offender sentencing pursuant to s. 775.082(9), F.S. (prison release reoffender), s. 775.0837, F.S. (habitual misdemeanor offender), s. 775.084, F.S. (habitual felony offender, habitual violent felony offender, three-time violent felony offender, and violent career criminal), or s. 794.0115, F.S. (dangerous sexual felony offender).

*The bill increases the amount of incentive gain-time the Department of Corrections may grant and provides that an offender who commits a nonviolent felony is not eligible to earn any type of gain-time in an amount that would cause the offender to serve less than 65 percent of his or her sentence (currently 85 percent of the offender’s sentence).*

The bill amends s. 944.275, F.S., to increase monthly incentive gain-time awards that the Department of Corrections may grant from up to 10 days to up to 20 days<sup>32</sup> for offenders sentenced for offenses committed on or after October 1, 2016. The bill provides that gain-time of whatever form cannot reduce sentences of these offenders below 65 percent of time served if the offense is a nonviolent felony<sup>33</sup> or 85 percent of time served if the offense is not a nonviolent felony.

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

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

None.

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

None.

<sup>31</sup> Burglary of an unoccupied structure or conveyance is not considered a forcible felony for purposes of this provision.

<sup>32</sup> Prior to 1994, Florida authorized a monthly incentive gain-time award of up to 20 days. Section 947.275(4)(b)1., F.S.

<sup>33</sup> “Nonviolent felony” has the same meaning as provided in s. 948.08(6), F.S. Section 948.08(6), F.S., defines a “nonviolent felony” as a third degree felony violation of chapter 810, F.S., or any other felony offense that is not a forcible felony.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of prison bed impact, if any, of legislation has provided estimates regarding provisions of the bill.<sup>34</sup> The CJIC notes that its impact statements regarding prison diversion of certain drug possession offenders and gain-time application to nonviolent offenders are “not intended to represent the direct appropriations impact of this bill. Rather, it provides a standalone estimate of the prison bed need of this particular bill. Cost data are included to allow a comparison of the impact of this bill with other proposed legislation. The actual appropriation associated with passage of this bill will differ depending on a number of factors including the existing inventory of prison beds.”

**Departure from a Mandatory Minimum Term**

The CJIC is unable to quantify the bed impact of the provision of the bill authorizing a court to depart from a mandatory term of imprisonment if certain criteria are met. “Per DOC, in FY 14-15, 1,534 inmates were admitted to prison who received mandatory minimum sentences that could be impacted by this bill language. However, there is no data available to determine what type of sentences offenders with mandatory minimums might receive once they are no longer subject to a required sentencing option.”

**Divert from Prison Drug Possession Offenders**

The CJIC estimates that the provision of the bill diverting certain drug possession offenders from prison will result in a cumulative decrease of 989 prison beds over the next 5 years (FY 2016-17 to FY 2020-21) with a cumulative cost avoidance of \$125,921,573 (\$61,286,845 in operating costs<sup>35</sup> and \$64,634,728 in fixed capital outlay

---

<sup>34</sup> See <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/SBDraft591-01710C-16.pdf> (last visited on February 2, 2016). All information in this section of the analysis is from this source.

<sup>35</sup> FY 2014-15 operating costs per inmate were obtained from the Department of Corrections. “The \$51.65 per diem (\$18,852 annual cost) is for all department facilities (excluding private institutions and approximately 150 beds in PRCs) and includes operations, health services, and education services. It does not include debt service costs. It also does not include indirect and administrative costs of \$3.34 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference.”

costs).<sup>36</sup> A complete breakdown of projected annual prison bed reductions and cost savings is provided in the table below:

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2016-2017	-146	-146	(\$1,417,660)	(34,826,617)	<b>(\$36,244,277)</b>	<b>(\$36,244,277)</b>
2017-2018	-563	-417	(\$7,063,413)	(\$15,926,538)	<b>(\$22,989,951)</b>	<b>(\$59,234,228)</b>
2018-2019	-812	-249	(\$14,013,313)	(\$8,053,098)	<b>(\$22,066,411)</b>	<b>(\$81,300,638)</b>
2019-2020	-934	-122	(\$18,222,129)	(\$3,735,765)	<b>(\$21,957,894)</b>	<b>(\$103,258,532)</b>
2020-2021	-989	-55	(\$20,570,331)	(\$2,092,710)	<b>(\$22,663,041)</b>	<b>(\$125,921,573)</b>
<b>Total</b>	<b>-989</b>	<b>-989</b>	<b>(\$61,286,845)</b>	<b>(\$64,634,728)</b>	<b>(\$125,921,573)</b>	<b>(\$125,921,573)</b>

Prepared by Florida Legislature, Office of Economic and Demographic Research, December 22, 2015.

**Change Percent of Sentence that must be Served by Nonviolent Offenders**

The CJIC estimates that the provisions of the bill requiring nonviolent offenders to serve at least 65 percent of their sentence will result in a cumulative decrease of 7,772 prison beds over the next 5 years (FY 2016-17 to FY 2020-21) with a cumulative cost avoidance of \$939,505,915 (\$418,587,778 in operating costs and \$520,918,137 in fixed capital outlay costs). A complete breakdown of projected annual prison bed reductions and cost savings is provided in the table below:

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2016-2017	-701	-701	(\$6,806,710)	(\$194,422,837)	<b>(\$201,229,547)</b>	<b>(\$201,229,547)</b>
2017-2018	-3,143	-2,442	(\$38,295,850)	(\$146,409,018)	<b>(\$184,704,868)</b>	<b>(385,934,415)</b>
2018-2019	-5,432	-2,289	(\$87,392,113)	(\$98,287,401)	<b>(\$185,679,514)</b>	<b>(\$571,613,929)</b>
2019-2020	-6,921	-1,489	(\$128,922,085)	(\$57,802,473)	<b>(\$186,724,558)</b>	<b>(\$758,338,486)</b>
2020-2021	-7,772	-851	(\$157,171,021)	(\$23,996,408)	<b>(\$181,167,429)</b>	<b>(\$939,505,915)</b>
<b>Total</b>	<b>-7,772</b>	<b>-7,772</b>	<b>(\$418,587,778)</b>	<b>(\$520,918,137)</b>	<b>(\$939,505,915)</b>	<b>(\$939,505,915)</b>

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 6, 2016.

A cautionary note on determining the fiscal impact for the entire bill: because section 1 of the bill diverts nonviolent offenders from state prison and section 2 shortens the length of stay in state prison for nonviolent offenders, the entire bill’s cumulative bed space impact will be less than the combination of the two estimates.

**VI. Technical Deficiencies:**

None.

<sup>36</sup> “FY 2006-07 capital costs per bed were based on Department of Corrections cost to build Suwanee CI (\$94,000,000 for 2,003 lawful capacity beds) as reported at the Criminal Justice Impact Conference held February 23, 2010. Capital costs in later years were increased by the change in the chained price index for state and local construction spending obtained from Global Insight, Inc.”

**VII. Related Issues:****Oklahoma's "Justice Safety Valve Act" (Departure from Mandatory Minimum Terms)**

The mandatory minimum departure provision of the bill bears some similarity to recent legislation that passed the Oklahoma Legislature.<sup>37</sup> The Oklahoma legislation allows a court to depart from mandatory minimum terms applicable to many nonviolent offenses if the court finds that certain criteria are met. However, unlike the bill, the Oklahoma legislation does not preclude a departure if the offender has previously received on or previously has been convicted of the same offense for which the offender is seeking departure.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 775.082, 921.002, and 944.275.

**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.

---

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

---

<sup>37</sup> HB 1528 ("Justice Safety Valve Act"), 55th Leg., 1st Reg. Sess., Okla. Stat., tit. 22, §§ 22-985, 22-985.1, and 22-985.2 (effective November 1, 2015), available at [http://webserver1.lsb.state.ok.us/cf\\_pdf/2015-16%20ENR/hB/HB1518%20ENR.PDF](http://webserver1.lsb.state.ok.us/cf_pdf/2015-16%20ENR/hB/HB1518%20ENR.PDF) (last visited on February 2, 2016).