

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 484

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senator Bradley

SUBJECT: Criminal Justice

DATE: February 5, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cox</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Forbes</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>Forbes</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 484 amends a variety of provisions related to the criminal justice system. Specifically, the bill:

- Authorizes counties to establish a supervised bond program (Bond Program) that will allow eligible defendants to be released on active electronic monitoring, continuous alcohol monitoring or both;
- Specifies components of the Bond Program, which includes :
  - Requiring the county’s chief correctional officer (sheriff) to administer a risk assessment instrument (RAI) to eligible defendants and use the RAI to determine an appropriate level of supervision; and
  - Providing that the court may review the bond of a defendant that has been admitted to the Bond Program to determine if it is appropriate to reduce such bond;
- Authorizes a court to sentence a specified offender who scores more than 44, but less than 60 points, to a term of imprisonment in the county jail, in the county where the offense was committed, for up to 24 months;
- Authorizes the Department of Corrections (DOC) to transfer an inmate to a county jail if the inmate has less than 24 months remaining on his or her sentence or he or she is a terminally ill inmate with less than 12 months to live;
- Specifies contractual terms that must be included in a contract to house state inmates in a county jail;

- Provides that a contract to house state inmates is contingent upon an appropriation by the legislature for the specific purpose of funding inmates housed in a county jail and are awarded on a first-come, first-served basis up to the maximum appropriation allowable;
- Authorizes an inmate to participate in a supervised community release program (Release Program) that includes electronic monitoring and community control for up to 90 days before the inmate's tentative release date as an extension of the inmate's confinement;
- Authorizes a law enforcement officer or probation officer to arrest the inmate for an alleged violation of the conditions of the Release Program;
- Specifies that an inmate who participated in the Release Program is still considered to be in confinement for purposes of earning and losing gain-time, including the prohibition on serving less than 85 percent of his or her sentence;
- Authorizes a state inmate who has an unserved violation of probation or violation of community control arrest warrant to file a state prisoner's notice of unserved warrant; and
- Provides a process for confirming the existence of such unserved warrant, and if confirmed, transporting the inmate to the county at issue for prosecution and resolution of the outstanding warrant.

The bill will likely have a negative indeterminate fiscal impact and a negative indeterminate prison bed impact (i.e. unquantifiable reduction in prison beds) on the DOC and a positive indeterminate fiscal impact and an indeterminate jail bed impact (i.e. unquantifiable impact on jail beds) on local governments. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2018.

## II. Present Situation:

### Pretrial Release Subsequent to an Arrest

The Florida Constitution provides that every person charged with a crime is entitled to pretrial release with reasonable conditions.<sup>1</sup> There are three types of pretrial release for a person who is awaiting trial: the posting of a bail or surety bond, pretrial release conditions, or the release on his or her own recognizance.<sup>2</sup>

#### *Bail and Surety Bond*

The purpose of a bail determination in criminal proceedings is to ensure the appearance of a defendant at subsequent proceedings and to protect the community against unreasonable danger from the defendant.<sup>3</sup> Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S.<sup>4</sup> For the defendant to be released from jail, a court may require bail by a defendant

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<sup>1</sup> Article I, s. 14, FLA CONST. This right does not apply to persons charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. *Id.*

<sup>2</sup> See art. I, s. 14. Fla. Const.; See also ss. 903.046 and 907.041. F.S.

<sup>3</sup> Section 903.046(1), F.S.

<sup>4</sup> "Bail," Black's Law Dictionary (3rd Pocket Edition). The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges.

to provide security, such as cash or a bond to ensure that he or she will return for trial and any other required court appearances.<sup>5</sup>

As an alternative to posting the entire bail amount, a defendant may provide a criminal surety bail bond<sup>6</sup> executed by a bail bond agent. Generally, the defendant or another person on the defendant's behalf pays the bail bond agent a nonrefundable fee equal to 10 percent of the bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond.<sup>7</sup>

### ***Pretrial Release Conditions***

A judge can release a defendant with any combination of the following pretrial release conditions:

- Release on the defendant's own recognizance;
- Execute an unsecured appearance bond in an amount specified by the judge;
- Comply with any court-imposed restrictions on travel, association, or place of abode during the period of release;
- Be placed in the custody of a designated person or organization agreeing to supervise the defendant;
- Have a designate execute a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or
- Comply with any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.<sup>8</sup>

A judge also can release a defendant to a pretrial release program. Generally, judges allow a defendant to be released to a pretrial release program without posting a bond; however, a judge can require a defendant to post a bond and participate in the program.<sup>9</sup> Specifically, s. 907.041, F.S., provides a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime.<sup>10</sup> These

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<sup>5</sup> *Universal Bail Bonds v. State*, 929 So.2d 697, 699 (Fla. 3d DCA 2006).

<sup>6</sup> Sections 903.011 and 903.105, F.S.

<sup>7</sup> Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2016*, Report No. 17-12, at 2. (Dec. 2017) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1712rpt.pdf> (last visited January 24, 2018).

<sup>8</sup> Rule 3.131(b)(1), Fla. R. Crim. Pro.

<sup>9</sup> *Id.* If a monetary bail is required, the judge must determine a separate amount for each charge or offense. Rule 3.131(b)(2), Fla. R. Crim. Pro.

<sup>10</sup> Section 907.041, F.S., defines a dangerous crime to mean any of the following: Arson; Aggravated assault; Aggravated battery; Illegal use of explosives; Child abuse or aggravated child abuse; Abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; Aircraft piracy; Kidnapping; Homicide; Manslaughter; Sexual battery; Robbery; Carjacking; Lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; Sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; Burglary of a dwelling; Stalking and aggravated stalking; Act of domestic violence as defined in s. 741.28, F.S.; Home invasion robbery; Act of terrorism as defined in s. 775.30, F.S.; Manufacturing any substances in violation of ch. 893, F.S.; Attempting or conspiring to commit any such crime; and Human trafficking.

programs supervise defendants with various methods, including electronic monitoring<sup>11</sup> or phone contact.<sup>12</sup>

### ***Release on Recognizance***

A defendant released on his or her own recognizance (ROR) is released without a monetary requirement and without any conditions of release or supervision of any type.<sup>13</sup>

### ***A Court's Determination of Pretrial Release***

The judge must consider all available relevant factors during the first appearance hearing to determine what form of release is necessary to assure the defendant's appearance and the community's safety, including factors such as:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.
- The nature and probability of danger which the defendant's release poses to the community.<sup>14</sup>

Section 903.047, F.S., provides additional conditions that a defendant must comply with upon release from custody pending trial, including:

- Refrain from criminal activity of any kind;
- Refrain from contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure, if applicable;<sup>15</sup> and
- Comply with all conditions of pretrial release.

### ***Standard Bond Schedule***

Florida does not have a statewide bond schedule, but each circuit has developed a standard bond schedule. Courts create uniform bail bond schedules to ensure that alleged offenders are provided equal treatment when charged with similar crimes and generally apply to all felonies, misdemeanors and county or municipal ordinance violations as the presumptive bond to be set

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<sup>11</sup> An electronic monitoring device (EM) is a tamper-resistant device worn on the body that monitors the location of a person at all times of the day. The monitoring agency is notified for various violations of the terms of supervision, such as if the person travels to a location he or she is not authorized to be or if the device is removed by the person. EM systems can be either "passive" or "active" and are typically operated through radio frequency or global positioning system (GPS) monitoring. Office of Juvenile Justice and Delinquency Prevention, *Home Confinement and Electronic Monitoring*, October, 2014, available at [https://www.ojjdp.gov/mpg/litreviews/Home\\_Confinement\\_EM.pdf](https://www.ojjdp.gov/mpg/litreviews/Home_Confinement_EM.pdf) (last visited January 10, 2018).

<sup>12</sup> *Supra* n. 9.

<sup>13</sup> Release on recognizance is defined to mean the pretrial release of an arrested person who promises, usually in writing, but without supplying a surety of posting bond, to appear for trial at a later date. BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006).

<sup>14</sup> Section 903.046(2), F.S. *See also* Rule 3.131(b)(3), Fla. R. Crim. Pro.

<sup>15</sup> Section 903.047(1)(b), F.S., provides that in a case where the court imposes a no contact order, the defendant must be informed in writing of the order of no contact, including the specified prohibited acts, before the defendant is released from custody on pretrial release. Section 903.047(2), F.S., also provides that a no contact order may be modified by the court upon motion of the defendant.

unless ordered differently by a judge.<sup>16</sup> Even though a county may have an established standard bond schedule, a judge has the discretion to impose a bond that is above or below such schedule if he or she deems it is necessary based upon the circumstances of the case.<sup>17</sup>

### ***Violation of Pretrial Release Conditions***

A defendant that does not comply with the terms of the pretrial release can have his or her bond forfeited if certain factors are proven.<sup>18</sup> Section 903.0471, F.S., authorizes the court to, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.<sup>19</sup>

### ***Supervised Bond Programs in Florida***

There is a movement towards bail reform in the United States, with some circuits, including Pinellas County in Florida, implementing a new model for releasing defendants while awaiting trial. The new programs typically require the administration of a RAI, which is then utilized to determine the release conditions for the defendant.

Pinellas County created a supervised bond program which has been operating in since 2014.<sup>20</sup> Sheriff Gualtieri, the chief correctional officer for Pinellas County, testified in the Senate Criminal Justice Committee on January 8, 2018, that this program was created in an effort to reduce the jail population in Pinellas County and avoid the need to build a larger facility.<sup>21</sup> Sheriff Gualtieri reported that while the bond amounts imposed by the court were proper to ensure public safety and compliance the judges could not lower the bail while still ensuring public safety and compliance without more oversight. As a result, a number of defendants remained in custody for months unable to meet the bail amount imposed.<sup>22</sup>

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<sup>16</sup> Some common ways to address the bond schedules are to either have a standard based on the degree of the offense (for example a \$5,000 bond for all second degree felonies, as seen in the Tenth Judicial Circuit) or a specific amount agreed upon for a specific offense, as seen in the Sixth Judicial Circuit. *See* Tenth Judicial Circuit, In and For Hardee, Highlands, and Polk Counties, *Administrative Order IN RE: Uniform Bond Schedule*, available at <http://jud10.flcourts.org/sites/all/files/docs/2-49.8.pdf>; Sixth Judicial Circuit, In and For Pasco and Pinellas Counties, *Administrative Order NO. 2009-021 PA-CIR, RE: Uniform Bond Schedule – Pasco County*, available at <http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2009/2009-021.htm> (last visited all sites January 22, 2018).

<sup>17</sup> *Mehaffie v. Rutherford*, 143 So.3d 432 at 434 (Fla. 1st DCA 2014). Section 903.286, F.S., authorizes the clerk of the court is to withhold from the return of a cash bond posted on behalf of a criminal defendant sufficient funds to pay any unpaid costs of prosecution, costs of representation, court fees, court costs, and criminal penalties. If sufficient funds are not available to pay all unpaid costs associated with the criminal case, the clerk of the court must immediately obtain payment from the defendant or enroll the defendant in a payment plan. This section does not apply to the portion that is paid by a licensed bail bond agent.

<sup>18</sup> *See* s. 903.26, F.S.

<sup>19</sup> This discretion is provided regardless of the conditions for granting pretrial release provided for in s. 907.041, F.S.

<sup>20</sup> Presentation by Sheriff Bob Gualtieri, Pinellas County Sheriff's Office, in the Senate Criminal Justice Committee, January 8, 2018 (hereinafter cited as "Committee Presentation"); *See also* Sheriff Bob Gualtieri, PowerPoint Presentation, *ROR and Supervised Bond Presentation* (on file with the Criminal Justice Committee) (hereinafter cited as "Supervised Bond PowerPoint").

<sup>21</sup> Sheriff Gualtieri testified that the Pinellas County jail was crowded in 2014 with approximately 70 percent of the inmates being pretrial detainees. Supervised Bond PowerPoint, p. 3.

<sup>22</sup> Supervised Bond PowerPoint, p. 2-4.

Upon agreement from the judiciary and in partnership with the bail bond industry, the Pinellas County Sheriff's Office established the supervised bond program that requires active electronic monitoring, continuous alcohol monitoring<sup>23</sup> or both.<sup>24</sup>

The Pinellas County Sheriff's Office averages approximately 200 people per day on active supervision through the supervised bond program.<sup>25</sup> Sheriff Gualtieri reported that of all the defendants that have been released on the supervised bond program, 99.5 percent have appeared for court hearings as required and 94.9 percent did not commit a new crime while in the program.<sup>26</sup> Of the total cases supervised on the Supervised Bond Program, 45 percent were felonies, 30 percent were misdemeanors, and 25 percent were for the offense of driving under the influence (both felonies and misdemeanors).<sup>27</sup> Sheriff Gualtieri reported that these programs have resulted in a savings of \$38.9 million annually.<sup>28</sup>

### **Criminal Punishment Code**

The Criminal Punishment Code<sup>29</sup> applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature.<sup>30</sup>

A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record; and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense.<sup>31</sup>

The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense.<sup>32</sup> The

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<sup>23</sup> Continuous Alcohol Monitoring systems are tamper-resistant automated alcohol-monitoring devices that use transdermal testing to measure the amount of alcohol in person's body, known as transdermal alcohol content (TAC). When alcohol is consumed, ethanol migrates through the skin and is excreted through perspiration. See National Institute of Justice, *Secure Continuous Remote Alcohol Monitoring (SCRAM) Technology Evaluability Assessment*, available at <https://www.ncjrs.gov/pdffiles1/nij/secure-continuous-remote-alcohol.pdf> (last visited January 31, 2018).

<sup>24</sup> *Id.* at p. 4-5.

<sup>25</sup> Supervised Bond PowerPoint, p. 7.

<sup>26</sup> *Id.* at p. 9.

<sup>27</sup> *Id.* at p. 10.

<sup>28</sup> *Id.* at p. 16. This savings takes into account the cost it would require to house an additional 900 inmates per day with the current per diem rate and the cost to run the program.

<sup>29</sup> Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

<sup>30</sup> Section 921.0022, F.S. Additionally, s. 921.0023, F.S., provides that if an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.

<sup>31</sup> Section 921.0024, F.S. Further, s. 921.0026, F.S., provides that a judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are mitigating "circumstances or factors that reasonably justify the downward departure."

<sup>32</sup> Section 775.082, F.S., provides that the statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.

lowest permissible sentence in which total sentence points equal to or are less than 44 points is any nonstate prison sanction.<sup>33</sup> If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.<sup>34</sup> The lowest permissible sentence for a person who scores between 45 and 60 points ranges from 12.75 months to 24 months, respectively.

### **Placement of State Inmates in Local Detention Facilities**

Section 921.188, F.S., permits the court to sentence an offender to a local detention facility as a condition of probation or community control for a felony offense if the offender scores between 40 and 52 points, or if the presumptive sentence is between 366 days and 22 months,<sup>35</sup> and there is a contract between the DOC and the chief correctional officer for the applicable county.<sup>36</sup>

Section 921.188, F.S., provides that the contract:

- May include all operational functions or only housing (such as staffing and medical) costs;
- Must include the per diem or partial per diem reimbursement payable by the DOC; and
- Per diem must not exceed the per diem published in the DOC's most recent annual report.

### **Alternative Sentencing**

An offender with a state prison sentence in excess of one year typically serves his or her sentence in a state correctional facility operated by the DOC,<sup>37</sup> however, other options are statutorily authorized and sometimes available. These include placement in a:

- Prison diversion program for offenders who meet certain criteria, including a requirement to have no more than 54 total sentence points;<sup>38</sup>
- Imprisonment in county jail if the total of the prisoner's cumulative sentences is not more than one year;<sup>39</sup> or
- County work camp operated under a contractual agreement between the county and the state.<sup>40</sup>

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<sup>33</sup> Section 921.0042(2), F.S.

<sup>34</sup> Florida Department of Corrections and the Office of State Courts Administrator, *Florida Criminal Punishment Code Scoresheet Preparation Manual*, July 1, 2016, at p. 20, available at [http://www.dc.state.fl.us/pub/sen\\_cpcm/cpc\\_manual.pdf](http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf) (last visited on November 6, 2017).

<sup>35</sup> Section 921.188, F.S., went into effect on June 17, 1993, when the revised sentencing guidelines were established, but prior to the enactment of the Criminal Punishment Code in 1998. The 1994 revised sentencing guidelines assigned a point score to felony offenses and the presumptive sentence was determined by the total number of points. Section 921.188, F.S., authorizes a judge to sentence a person convicted of a felony offense, as defined in the former sentencing guidelines categories five through nine, to a local detention facility for the period of time equal to the offender's presumptive sentence.

<sup>36</sup> Section 921.188, F.S.

<sup>37</sup> Section 921.0024(2), F.S.

<sup>38</sup> Section 921.00241, F.S. The court may sentence the offender to a term of probation, community control, or community supervision with mandatory participation in a prison diversion program of the DOC.

<sup>39</sup> Section 922.051, F.S.

<sup>40</sup> Section 950.002, F.S.

## **Inmates Sentenced to the Department of Corrections**

### ***Contracting with Counties to House Inmates***

Section 944.171, F.S., authorizes the DOC to contract with counties or other states to house inmates that have been committed to the DOC.<sup>41</sup> Contracts must be competitively procured in accordance with s. 287.057, F.S.,<sup>42</sup> and are entered into after the parties mutually agree upon the terms of the contract. The following contract terms must be considered by the county and the DOC include, but are not limited to, a contract termination date, provisions concerning the cost of inmate maintenance and extraordinary medical or dental expenses, provisions related to inmate employment, and waiver of extradition for inmates transferred out of Florida.<sup>43</sup> Inmates placed in a county facility remain under the jurisdiction of the DOC.

The DOC does not currently have any contracts to house inmates with counties.<sup>44</sup>

### ***Services and Programming Provided to Inmates***

Chapter 944, F.S., requires the DOC to provide a variety of services and programming to inmates committed to the custody of the DOC, including:

- Substance abuse treatment programs;<sup>45</sup>
- Transitional services;<sup>46</sup>
- Educational and vocational programs;<sup>47</sup> and
- Faith- and character-based programs.<sup>48</sup>

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<sup>41</sup> Section 944.171(1) and (2), F.S.

<sup>42</sup> Section 287.057, F.S., provides for the competitive solicitation processes to be used by the state of Florida in conducting state business. Specifically, s. 287.057(1), F.S., provides for invitations to bid, requests for proposals, and invitations to negotiate.

<sup>43</sup> Section 944.171(2)(a), F.S.

<sup>44</sup> Florida Department of Corrections, *Senate Bill 484 Analysis*, at p. 3 (November 8, 2017) (on file with the Senate Committee on Criminal Justice).

<sup>45</sup> Section 944.473(2), F.S., requires each inmate to be assessed to determine if he or she qualifies to receive mandated substance-abuse treatment while incarcerated. The DOC provides four levels of inmate substance abuse programming, including intensive outpatient, residential therapeutic community, program centers, and work release centers. In FY 2015-16, a total of 12,234 inmates participated in some form of substance abuse treatment. See Department of Corrections, *Annual Report, Fiscal Year 2015-2016*, p. 21, available at [http://www.dc.state.fl.us/pub/annual/1516/FDC\\_AR2015-16.pdf](http://www.dc.state.fl.us/pub/annual/1516/FDC_AR2015-16.pdf) (last visited December 7, 2017)(hereinafter cited as “Annual Report”).

<sup>46</sup> Sections 944.701-944.708, F.S., provide for a variety of transitional services that are used to increase the likelihood that an inmate will not recidivate upon release from prison. Some of the transitional services include: release orientation programming, including, but not limited to, employment skills, and money management skills; basic support services upon release; a 100-hour transition course that covers job readiness and life management skills; and post release services such as substance abuse counseling, family counseling, and employment support programs.

<sup>47</sup> Section 944.801, F.S., requires the DOC to operate the Correctional Education Program, which oversees the educational and vocational training for the DOC. In FY 2015-16, the DOC had 24,053 inmates participating in educational programs (18,734 in academic programs and 5,319 in vocational programs); 5,563 inmates were enrolled in General Education Development (GED) classes and 1,312 GED diplomas were awarded. Annual Report, at p. 9.

<sup>48</sup> Section 944.803, F.S., encourages the DOC to operate faith- and character-based facilities, which emphasize the importance of personal responsibility, meaningful work, education, substance abuse treatment, and peer support.

These services and programs provide inmates with skills and tools to assist with an inmate's successful transition into the community upon release.<sup>49</sup>

### ***Determining an Inmate's Classification Level***

Section 944.1905, F.S., requires each inmate placed in the custody of the DOC to be classified or reclassified based upon the inmate's risk level. An inmate's initial classification is determined by a number of factors including, but not limited to, length of sentence, criminal history, any history of violence, and escape history.<sup>50</sup>

Classification levels impact the facility placement and programming that an inmate is eligible to participate in while incarcerated.<sup>51</sup>

### ***Conditional Medical Release***

Conditional Medical Release (CMR) is a discretionary release of inmates who are "terminally ill" or "permanently incapacitated" and who are not a danger to others.<sup>52</sup> The Commission on Offender Review (commission) reviews eligible inmates for release under the CMR program. Eligible inmates include inmates that are 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.<sup>53</sup>

The release of an inmate on CMR is for the remainder of the inmate's sentence and requires that periodic medical evaluations at intervals determined by the commission at the time of release.<sup>54</sup> If an inmate's medical condition changes improves to the extent that he or she no longer qualifies for CMR, the commission can order that the inmate be transferred back to a DOC facility to serve the remainder of the sentence.<sup>55</sup>

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

There are a limited number of instances where an inmate who is in the custody of the DOC may continue serving his or her sentence outside the physical walls of a prison. When a reasonable

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<sup>49</sup> Annual Report at p. 21.

<sup>50</sup> Florida Department of Corrections, *Inmate Orientation Handbook, Reception Center Processing*, revised December 2, 2016, p. 8, available at <http://www.dc.state.fl.us/pub/files/Inmate%20Orientation%20Handbook.pdf> (last visited December 5, 2017)(hereinafter referenced as "Inmate Handbook") See also Section 944.1905(1)-(3), F.S.

<sup>51</sup> Inmate Handbook at p. 7.

<sup>52</sup> Florida Commission on Offender Review, *Release Types, Post Release*, available at <https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease> (last visited December 7, 2017).

<sup>53</sup> Section 947.149(1), F.S.

<sup>54</sup> Section 947.149(4), F.S.

<sup>55</sup> Section 947.149(5), F.S.

belief exists that an inmate will adhere to conditions placed upon him or her, s. 945.091, F.S., authorizes the DOC to allow an inmate to leave the confines of a physical facility unaccompanied for a specified period of time to:

- Visit a:
  - Dying relative or attend a funeral of a relative;
  - Specified location to arrange for employment or for a suitable residence for use upon release;
  - Specified place to aide in the successful transition back into the community;
  - Specifically designated location for any other compelling reason;<sup>56</sup>
- Work at paid employment;<sup>57</sup>
- Participate in an educational or training program;<sup>58</sup>
- Voluntarily serve a public or nonprofit agency or faith-based service group in the community;<sup>59</sup> or
- Participate in a residential or nonresidential rehabilitative program.<sup>60</sup>

The DOC must perform an investigation to determine whether the inmate is suitable for consideration of extension of his or her confinement prior to being approved for one of the provisions described above.<sup>61</sup>

Prior to July 1, 1996, a fourth provision, known as the Supervised Community Release Program, existed that allowed inmates to be released on an extension of confinement to participate in a rehabilitative community reentry program on conditional release.<sup>62</sup> This release was for a period of no more than 90 days prior to the termination of his or her confinement. The inmate was released and placed on community supervision, but was not considered to be in the custody or care of the DOC or in confinement. If the inmate did not demonstrate sufficient progress with the reentry program, the DOC was able to terminate the inmate's participation and return the inmate to the prior institution or a new facility as designated by the DOC.<sup>63</sup>

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<sup>56</sup> Section 945.091(1)(a), F.S. An inmate released from the custody of a facility under this subsection must return to the same or another facility as designated by the DOC. *See also* Department of Corrections, *Senate Bill 1206 Analysis*, at p. 3 (January 8, 2018) (on file with the Senate Committee on Criminal Justice) [hereinafter cited as "The DOC SB 1206 Analysis"].

<sup>57</sup> This provision is commonly referred to as "Work Release." Section 945.091(1)(b), F.S., further provides that this form of release occurs while the inmate continues as an inmate of the institution or facility in which the inmate is confined. The only time in which the inmate is released unaccompanied is during the hours of his or her employment, education, training, or service and traveling to and from such approved activity. An inmate is permitted to travel to and from the place of employment, education, or training by walking, bicycling, or using public transportation or transportation that is provided by a family member or employer.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Section 945.091(1)(c), F.S. The treatment program must be operated by a public or private nonprofit agency, including faith-based service groups, with which the DOC has contracted for the treatment of such inmate. The provisions of ss. 216.311 and 287.057, F.S., must apply to all contracts considered under this provision. The DOC must ensure each agency provides appropriate supervision of inmates participating in such program.

<sup>61</sup> Section 945.091(1), F.S.

<sup>62</sup> Section 945.091(1)(d), F.S. (1995). This paragraph was repealed in ch. 96-312, L.O.F.

<sup>63</sup> *Id.*

## Gain-time

Gain-time awards, which result in deductions to the court-ordered sentences of specified eligible inmates, are used to encourage satisfactory prisoner behavior or to provide incentives for prisoners to participate in productive activities while incarcerated.<sup>64</sup> An inmate is not eligible to earn or receive gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.<sup>65</sup>

Basic gain-time, which automatically reduced an inmate's sentence by a designated amount each month, was eliminated for offenses committed on or after January 1, 1994.<sup>66</sup> The only forms of gain-time that can currently be earned are:

- Incentive gain-time;<sup>67</sup>
- Meritorious gain-time;<sup>68</sup> and
- Educational achievement gain-time.<sup>69</sup>

The procedure for applying gain-time awards to an inmate's sentence is dependent upon the calculation of a "maximum sentence expiration date" and a "tentative release date." The tentative release date may not be later than the maximum sentence expiration date.<sup>70</sup> The maximum sentence expiration date represents the date when the sentence or combined sentences imposed on a prisoner will expire.<sup>71</sup> To calculate the maximum sentence expiration date, the DOC reduces the total time to be served by any time lawfully credited.<sup>72</sup>

The tentative release is the date projected for the prisoner's release from custody after gain-time is granted or forfeited in accordance with s. 944.275, F.S.<sup>73</sup> Gain-time is applied when granted or restored to make the tentative release date proportionately earlier; and forfeitures of gain-time, when ordered, are applied to make the tentative release date proportionately later.<sup>74</sup>

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<sup>64</sup> Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further provides that an inmate serving a life sentence is not able to earn gain-time. Additionally, an inmate serving the portion of his or her sentence that is included in an imposed mandatory minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

<sup>65</sup> Section 944.275(4)(f), F.S.

<sup>66</sup> Chapter 93-406, L.O.F.

<sup>67</sup> Section 944.275(4)(b), F.S., provides incentive gain-time is a total of up to ten days per month that may be awarded to inmates for institutional adjustment, performing work in a diligent manner, and actively participating in training and programs. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.

<sup>68</sup> Section 944.275(4)(c), F.S., provides that meritorious gain-time is awarded to an inmate who commits an outstanding deed or whose performance warrants additional credit, such as saving a life or assisting in recapturing an escaped inmate. The award may range from one day to 60 days and the statute does not prohibit an inmate from earning meritorious gain-time on multiple occasions if warranted.

<sup>69</sup> Section 944.275(4)(d), F.S., provides that educational gain-time is a one-time award of 60 days that is granted to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program.

<sup>70</sup> Section 944.275(3)(c), F.S.

<sup>71</sup> Section 944.275(2)(a), F.S.

<sup>72</sup> *Id.*

<sup>73</sup> Section 944.275(3)(a), F.S.

<sup>74</sup> *Id.* See also s. 944.275(4)(b), F.S.

## Community Control

Section 948.001(3), F.S., defines “community control” to mean a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.<sup>75</sup> The community control program is rigidly structured and designed to accommodate offenders who, in the absence of such a program, will be committed to the custody of the DOC or a county jail.<sup>76</sup>

A person on community control (controlee) has an individualized program and is restricted to his or her home or noninstitutional residential placement, unless working, attending school, performing public service hours, participating in treatment or another special activity that has been approved in advance by his or her parole and probation officer.<sup>77</sup>

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

- Specified contact with the parole and probation officer;
- Confinement to an agreed-upon residence during hours away from employment and public service activities;
- Mandatory public service;
- Supervision by the DOC through an electronic monitoring device or system; and
- The standard conditions of probation<sup>78</sup> set forth in s. 948.03, F.S.<sup>79</sup>

A person may be placed on additional terms of supervision as part of his or her community control sentence.<sup>80</sup>

## Violations of Probation or Community Control

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.<sup>81</sup> A violation of probation (VOP) or violation

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<sup>75</sup> Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

<sup>76</sup> Section 948.10(1), F.S.

<sup>77</sup> *Id.* See also Florida Department of Corrections, *Succeeding on Community Control*, available at <http://www.dc.state.fl.us/oth/cc/Succeeding-on-Community-Control.pdf> (last visited on January 10, 2018). A Community Control Offender Schedule and Daily Activity Log must be submitted weekly with a proposed schedule for the week and the parolee’s officer reviews such schedule and either approves or denies the schedule. Additionally, a person is required to provide an hourly accounting of his or her whereabouts for the previous week to verify any deviations from the pre-approved schedule.

<sup>78</sup> Section 948.001(9), F.S., defines “probation” to mean a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S. Some of the standard conditions of probation provided for in s. 948.03, F.S., include, but are not limited to, for the offender to report to the probation officer as directed, permit the probation officer to visit him or her at his or her home or elsewhere, work at suitable employment, live without violating any law, and make restitution to the aggrieved party for the damage or loss caused by his or her offense as determined by the court.

<sup>79</sup> Section 948.101(1), F.S.

<sup>80</sup> Section 948.101(2), F.S.

<sup>81</sup> Section 948.10(3), F.S.

of community control (VOCC) can be the result of a new violation of law or a technical violation of the conditions imposed. If reasonable grounds exist to believe that an offender on probation or community control has violated his or her terms of supervision in a material respect, an offender may be arrested without a warrant by a:

- Law enforcement officer who is aware of the inmate's supervised community release status;
- Probation officer; or
- County or municipal law enforcement officer upon request by a probation officer.<sup>82</sup>

The offender must be returned to the court granting such probation or community control.<sup>83</sup> Additionally, the committing court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the offender.<sup>84</sup>

### **Unserved Arrest Warrants for Violations of Probation or Community Control**

Upon the filing of an affidavit alleging a VOP or a VOCC and following the issuance of a warrant for such violation, a warrantless arrest, or a notice to appear, the period of supervision is tolled until the court enters a ruling on the VOP or the VOCC.<sup>85</sup> The probation officer is permitted to continue to supervise any offender who remains available to the officer for supervision until the supervision expires pursuant to the order of supervision or until the court revokes or terminates the supervision, whichever comes first.<sup>86</sup>

The court must advise the offender of the allegations included in the VOP or the VOCC and may revoke, modify, or continue the supervision if the offender admits the charge or, if, through a hearing, the court finds the violation to be true.<sup>87</sup> If supervision is revoked, the court must adjudge the offender guilty of the offense charged (if not previously adjudicated guilty) and impose any sentence which it might have originally imposed before placing the offender into supervision.<sup>88</sup>

When an offender's VOP or the VOCC stems from the commission of a new violation of law, two criminal proceedings commence. The first is the proceeding involving the new offense that was committed, which is initiated in the county where the new law violation occurred. The second is the VOP or the VOCC proceeding, which is initiated in the county where a VOP or VOCC arrest warrant is issued for the violation.<sup>89</sup>

While rare, there have been instances in which a probationer has committed and been convicted of a new offense and sentenced to state prison, during which time, the VOP or VOCC proceeding

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<sup>82</sup> Section 948.06(1)(a), F.S.

<sup>83</sup> *Id.*

<sup>84</sup> Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the controlee has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as enumerated in s. 948.06(8)(c), F.S.

<sup>85</sup> Section 948.06(1)(f), F.S.

<sup>86</sup> *Id.*

<sup>87</sup> Section 948.06(2)(a), (d), and (e), F.S.

<sup>88</sup> Section 948.06(2)(b), F.S.

<sup>89</sup> A VOP or VOCC arrest warrant will always be issued in the same county as the offender was originally placed on supervision.

is still pending (e.g., this may occur if the new offense occurred in a county other than the one in which the offender was being supervised). In 2017, the DOC reviewed a similar bill, HB 1091 (2017), and estimated that approximately 20 inmates were incarcerated with unserved probation warrants.<sup>90</sup>

In such instances, a detainer may be filed against the inmate for the VOP or the VOCC, which postpones the VOP or VOCC proceedings until the inmate is released from prison. An inmate's custody level is affected if they have a pending VOP or VOCC warrant, which can bar them from being housed in certain facilities and participating in programs.<sup>91</sup>

Currently, inmates do not have a right to compel the commencement of proceedings for a VOP or a VOCC. This was confirmed in *Chapman v. State*, where the court held that the entity seeking prosecution is the entity that has a right to serve an arrest warrant, and that a prisoner has no right to compel the sheriff to arrest someone in prison being held on a detainer for a VOP or a VOCC.<sup>92</sup> Furthermore, *Chapman* held that a court has no ministerial duty to conduct a hearing on an affidavit alleging a violation of probation.<sup>93</sup> A probationer is only entitled to be heard on a VOP or a VOCC after his arrest and return to the court that granted the probation.<sup>94</sup>

### III. Effect of Proposed Changes:

#### Supervised Bond Program

The bill creates s. 907.042, F.S., to authorize each county to create a supervised bond program (Bond Program). The terms of each county's Bond Program must be developed with the concurrence of the chief judge of the circuit, the county's chief correctional officer (sheriff), the state attorney, and the public defender. However, a county that has already established and implemented a Bond Program may continue to operate without such concurrence if the program complies with the specified program and RAI requirements discussed below.

A Bond Program established pursuant to this bill must, at a minimum:

- Require the sheriff to administer the Bond Program.
- Require the sheriff, or his or her designee, to administer the RAI to a potential defendant.
- Utilize a RAI to determine eligible defendants and determine an appropriate level of supervision for each defendant upon release.
- Review the bond of a defendant who is being accepted into the Bond Program to determine if a reduction of the court-ordered bond, up to its entirety, is appropriate.
- Provide that the findings of the RAI will be used to create an individualized supervision plan for each eligible defendant that is tailored to the defendant's risk level and supervision needs.
- Require, as part of the individualized supervision plan, that any defendant released in the Bond Program must be placed on active electronic monitoring or active continuous alcohol monitoring, or both, dependent upon the level of risk indicated by the RAI.

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<sup>90</sup> Department of Corrections, *Agency Analysis for HB 1091* (2017), March 9, 2017 (hereinafter cited as "The DOC HB 1091 (2017) Analysis" (on file with the Senate Criminal Justice Committee).

<sup>91</sup> *Id.*

<sup>92</sup> *Chapman v. State*, 910 So.2d 940, 941–42 (Fla. 5th DCA 2005).

<sup>93</sup> *Id.* at p. 942.

<sup>94</sup> *Id.* at p. 941-942. See also *Norman v. State*, 900 So.2d 702 (Fla. 2d DCA 2005).

- Require weekly communication between the sheriff's office and the defendant as part of the individualized supervision plan, which can be satisfied via telephone or in person contact, dependent upon the level of risk indicated by the RAI.
- Establish procedures for reassessing or terminating defendants from the Bond Program who do not comply with the terms of the individualized supervision plan imposed through the program.

Each county must utilize a RAI that conducts a criminogenic assessment for use in evaluating the proper level of supervision appropriate to ensure compliance with pretrial conditions and safety to the community. The RAI must consider, but need not be limited to, the following criteria:

- The nature and circumstances of the offense the defendant is alleged to have committed.
  - The nature and extent of the defendant's prior criminal history, if any.
  - Any prior history of the defendant failing to appear in court.
  - The defendant's employment history, employability skills, and employment interests.
  - The defendant's educational, vocational, and technical training.
  - The defendant's background, including his or her family, home, and community environment.
  - The defendant's physical and mental health history, including any substance use.
  - An evaluation of the defendant's criminal thinking, criminal associates, and social awareness.
- Further, the bill authorizes a county to utilize a RAI that the county creates on its own for the purpose of operating a Bond Program and determining appropriateness of pretrial release, the defendant's risk of noncompliance on pretrial release, and risk to the community;
  - The county has previously developed for a similar purpose;
  - The DOC develops or modifies from a RAI that it has already developed;
  - Another county has developed for a similar purpose; or
  - An independent entity has previously developed for a similar purpose.

If a county opts to utilize a RAI that is developed by any entity listed above other than the DOC, such RAI must be independently validated by the DOC and contain the criteria listed above.

A county may begin to implement its Bond Program immediately upon securing a contract for the utilization of, or the completion of development or modification of a RAI and, if applicable, validation of the RAI. Additionally, a county that has not established a Bond Program, but has created a RAI for a similar purpose as is intended in the act, may implement its Bond Program immediately upon the RAI being validated by the DOC. A county that has already implemented a Bond Program may continue to operate its program while the RAI it utilizes is being validated. Implementation must include training of all county staff that will administer the RAI.

The bill requires each county that establishes a Bond Program, or that has an existing Bond Program that operates in compliance with the act, to provide an annual report to the Office of Program Policy Analysis and Government Accountability (OPPAGA) that details the:

- Results of the administration of the risk assessment instrument;
- Programming used for defendants who received the assessment and were accepted into the Bond Program;
- Success rate of the Bond Program; and

- Savings realized by the county as a result of defendants being released from custody pending trial through the Bond Program.

The annual report from the county must be submitted to the OPPAGA by October 1 each year. The OPPAGA must compile the results of the counties reports for inclusion in an independent section of its annual report developed and submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives in accordance with s. 907.044, F.S.<sup>95</sup>

Lastly, the bill also provides several legislative findings supporting the changes made in the act.

### **Alternative Housing Options for State Inmates**

The bill creates two new provisions that allow state inmates that otherwise qualify for placement in a DOC facility to be housed in a county jail.

#### ***Sentencing of Specified Felony Offenders to a County Jail under s. 921.188, F.S.***

The bill amends s. 921.188, F.S., to authorize a court to sentence an offender to a term of imprisonment in the county jail, in the county where the offense was committed, for up to twenty-four months. A court can order such a sentence for offenses committed on or after July 1, 2018, if the offender's:

- Total sentence points score is more than 44 points, but less than or equal to 60 points;
- Primary offense is not a forcible felony, unless the primary offense is a third degree felony under ch. 810, F.S. (burglary and trespass); and
- Primary offense is not subject to a minimum mandatory sentence of more than 24 months.

As a condition of the offender's sentence to a county jail, the court must order that the offender:

- Is placed under the jurisdiction of the DOC while in the county jail;
- Must serve the remainder of his or her sentence in a DOC facility if the contract expires, terminates, or is not renewed; and
- May request to be transferred to a DOC facility if he or she is not receiving services and programming that are substantially similar to those provided in a DOC facility.

The bill also provides that a felony offense for which an inmate is sentenced to a county jail be considered to be a prior felony commitment at a state or federal correctional institution for the purposes of ss. 944.291, 947.1405, and 948.12, F.S.

#### ***Transferring of Specified Inmates from the DOC to a County Jails under s. 944.172, F.S.***

The bill creates s. 944.172, F.S., to authorize the DOC to transfer an inmate to a county jail if the inmate:

- Has less than 24 months remaining on his or her sentence; or
- Is a terminally ill inmate with less than 12 months to live.

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<sup>95</sup> Section 907.044, F.S., requires the OPPAGA to conduct an annual study to evaluate the effectiveness and cost efficiency of pretrial release programs in Florida. The OPPAGA is required to submit its report to the President of the Senate and the Speaker of the House of Representatives by January 1 of each year.

An inmate who has less than 24 months remaining on his or her sentence is eligible to be transferred to a county jail in the county where he or she will reside upon release. A terminally ill inmate can be transferred to a county jail in the county where his or her family resides for the remainder of his or her imprisonment or life, whichever occurs first.

The bill defines “terminally ill inmate” as 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. A terminally ill inmate transferred to a DOC facility does not have to be reviewed and approved by the commission as required by CMR and regardless of the amount of time remaining on the sentence. A terminally ill inmate that is transferred to a county jail is eligible to be subsequently released on CMR in accordance with s. 947.149, F.S.

The DOC must transfer an inmate if the inmate is eligible under one of the above-listed criteria and qualifies under the contractual agreement between the DOC and the designated county of release. Additionally, an inmate transferred from the DOC to a county jail:

- Remains under the jurisdiction of the DOC;
- Must serve the remainder of his or sentence in a DOC facility if the contract expires, terminates, or is not renewed; and
- May request to be transferred back to a DOC facility if he or she is not receiving services and programming that are substantially similar to those provided in a DOC facility.

The bill provides the DOC with rulemaking authority to implement s. 944.172, F.S.

***Contracts to House Inmates in a County Jail under ss. 921.188 and 944.172, F.S.***

The court may only sentence an offender and the DOC may only transfer an inmate to a county jail if there is a contractual agreement between the chief correctional officer of the county and the DOC. The bill requires the DOC to enter into a contract to house inmates in the county jail if the county requests such a contract. A contract entered into between the county and the DOC must include specified contract terms:

- Establishing the maximum number of beds and validated per diem rate;
- Providing a per diem reimbursement rate for the days an inmate is in the custody of the county jail based on specified county annual per diem rates;
- Specify whether the county will accept the transfer of terminally ill inmates;
- Designate the classification levels that the county will accept for transfer;
- Provide for the delivery and retaking of inmates;
- Requiring substantially similar services and programming for an inmate sentenced to the county jail as received by an inmate in a state facility;
- Specifying the services and programming the county will provide to an inmate;
- Authorizing the county jail to contract with private providers to provide required services and programming;
- Establishing regular intervals for the county jail and the DOC to communicate information related to an inmate, including confinement status and relevant information related to calculating a tentative release date; and

- Requiring the county jail to provide documentation to verify the expenses related to an inmate housed in a county jail.

The bill provides that inmates housed in a county jail are able to earn gain-time and other sentence credit in a substantially similar manner as he or she would in a DOC facility. However, these inmates cannot earn gain-time or other sentence in a manner that would result in his or her release, before serving a minimum of 85 percent of the sentence imposed.

A contract to house an inmate in a county jail is contingent upon an appropriation by the legislature for the specific purpose of funding inmates housed in a county jail. Contracts must be awarded by the DOC on a first-come, first-served basis up to the maximum appropriation allowable. The "maximum appropriation allowable" means the sum of the appropriations made by the legislature to fund inmates housed in a county jail and the net amount of appropriations transferred to or from the State Inmates Housed in County Jail appropriation category for these contracts.

The bill requires the DOC to transfer funds from other appropriation categories within the Adult Male Custody Operations or the Adult and Youthful Offender Female Custody Operations budget entities to the State Inmates Housed in County Jail appropriation category each time the DOC executes a contract to house inmates in a county jail. These transfers must be consistent with the requirements of ch. 216, F.S., and in an amount necessary to satisfy the requirements of each executed contract, but not to exceed the DOC's average total per diem published for the preceding fiscal year for adult male custody or adult and youthful offender female custody inmates.

Prior to the transfer of any funds, the DOC is required to estimate the appropriation amount that is obligated for the county jail beds contracted under each provision to estimate the amount in which these obligations exceed the DOC's per diem for adult male and female inmates.

When an executed contract ends, the DOC is required to transfer funds from the State Inmates Housed in County Jail appropriation category to the other appropriation categories within the Adult Male Custody Operations or the Adult and Youthful Offender Female Custody Operations budget entities. These transfers are also prohibited from exceeding the DOC's average total per diem published for the preceding fiscal year for adult male custody or adult and youthful offender female custody inmates for each county jail bed contracted.

The bill requires the DOC to assume maximum annual value of each executed contract to house inmates in a county jail when determining the full use of funds appropriated to ensure that the maximum appropriation allowable is not exceeded. All contractual per diem rates to house an inmate in a county jail and all per diem rates used by the DOC must be validated by the Auditor General before payments are made.

### **Extension on Confinement – Supervised Community Release**

The bill amends s. 945.091, F.S., to allow an inmate to participate in a supervised community release program (Release Program) as an extension of the inmate's confinement, similar to the former Supervised Community Release Program discussed above. The Release Program release

term may begin 90 days before the inmate's provisional or tentative release date and must include electronic monitoring and community control as defined in s. 948.001, F.S. The bill requires the DOC to administer a RAI to determine an inmate's eligibility for this program. The bill authorizes the DOC to create rules to implement the supervised community release program created in the act.

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

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

The bill provides that an inmate released on the Release Program in accordance with this provision is eligible to earn and lose gain-time as proscribed in law and rule, which includes the prohibition on an inmate earning or receiving gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.<sup>96</sup> However, the bill provides the inmate is not counted as part of the inmate population and the approved community-based housing in which the inmate lives is not counted in capacity figures for the prison system.

The DOC reports that there are approximately 770 inmates assigned to a community facility who have between 10-90 days remaining on their sentence and an additional 580 community custody inmates who have not been to work release who are within this time frame to release.<sup>97</sup>

### **Unserved Arrest Warrants for State Inmates**

The bill creates s. 948.33, F.S., to authorize a state inmate who has an unserved Violation Of Probation (VOP) or Violation Of Community Control (VOCC) arrest warrant to file a state prisoner's notice of unserved warrant. A notice must be filed in the circuit court of the judicial circuit in which the unserved warrant was issued and served on the state attorney.

Upon receipt, the state attorney must schedule the notice for a status hearing with the judge within 90 days. The state prisoner may not be transported for this hearing. In the case that an unserved warrant exists, the court must enter an order for the inmate to be transported to the issuing county's jail within 30 days of the status hearing for prosecution. The court must then send the order to the county sheriff for execution.

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<sup>96</sup> See s. 944.275(4)(f), F.S.

<sup>97</sup> The DOC SB 1206 Analysis, p. 4.

This portion of the bill will result in fewer inmates being prevented from participating in transitional and reintegration programs or from having detainers for active warrants upon completion of their prison sentence.

The bill takes effect October 1, 2018.

#### **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:**

###### **Extension on Confinement**

The bill authorizes the DOC to release a specified inmate into the community on supervised release up to 90 days before the end of his or her sentence. This will provide private companies the opportunity to hire an inmate earlier than without the act.

##### **C. Government Sector Impact:**

###### **Local Governments**

###### ***Supervised Bond Program***

Local governments may experience reduced costs as a result of the implementation of the supervised bond program. A county may implement a supervised bond program, which allows an eligible defendant to be released on active supervision and some form of bond or ROR while awaiting trial. As a result, the county's costs to supervise the participants may be decreased from the full daily county jail per diem to the much lower per diem rates for active electronic monitoring or continuous alcohol monitoring technologies, or both.

***Alternative Housing Options for State Inmates***

A county can choose to contract with DOC to house state inmates in its local jail. As shown above, the statewide average occupancy rate in the counties responding to the survey was 81.5 percent in 2014, and the average inmate per diem was \$64.38. It is unknown to what extent county jails currently have available capacity to house additional inmates. It is also unknown how many counties will elect to contract with the state to house inmates that have sentences greater than 366 days. To the extent county jails have available capacity and counties elect to contract with the state, the counties will receive funds to house the inmates, potentially resulting in some savings for the counties.

Counties that contract with the state to provide housing for state inmates and should the costs paid under such contracts exceed the DOC per diem rate, the costs incurred by the DOC to incarcerate new inmates will increase due to the higher per diem for community placements. In addition, upon execution of a contract, it is anticipated the funds will be transferred from other appropriation categories within the Adult Male and Adult and Youthful Female budget entities to cover the departmental per diem for these inmates and the difference would be provided through a new appropriation in the, “State Inmates Housed in County Jail” category. The fiscal impact on local governments is indeterminate for this portion of the bill.

<b>County</b>	<b>County Population</b>	<b>Facility Population</b>	<b>Facility Capacity</b>	<b>Occupancy Rate</b>	<b>Avg. Inmate Per Diem</b>
<b>Alachua</b>	248,002	861	976	88.2%	\$ 85.75
<b>Baker</b>	26,881	507	512	99.0%	\$ 84.75
<b>Bay</b>	169,866	938	1,098	85.4%	\$ 46.00
<b>Bradford</b>	27,217	197	240	82.1%	
<b>Brevard</b>	548,424	1,521	1,701	89.4%	\$ 74.95
<b>Broward</b>	1,784,715	4,528	5,144	88.0%	\$ 122.03
<b>Calhoun</b>	14,621	46	60	76.7%	\$ 26.25
<b>Charlotte</b>	163,679	735	880	83.5%	\$ 84.61
<b>*Citrus</b>	140,519				
<b>Clay</b>	192,843	408	478	85.4%	\$ 67.84
<b>Collier</b>	333,663	862	1,306	66.0%	\$ 98.22
<b>Columbia</b>	67,489	270	250	108.0%	\$ 49.32
<b>*Desoto</b>	34,367				
<b>*Dixie</b>	16,263				
<b>Duval</b>	876,075	6,574	5,626	116.9%	\$ 60.13
<b>*Escambia</b>	301,120				
<b>Flagler</b>	97,843	170	132	128.8%	\$ 97.32
<b>Franklin</b>	11,562	65	100	65.0%	\$ 50.00
<b>Gadsden</b>	47,588	208	157	132.5%	\$ 52.50
<b>Gilchrist</b>	16,880	32	48	66.7%	\$ 37.50
<b>Glades</b>	12,658	310	546	56.8%	\$ 88.00
<b>*Gulf</b>	16,106				

<b>*Hamilton</b>	14,507				
<b>*Hardee</b>	27,682				
<b>Hendry</b>	37,808	141	266	53.0%	\$ 44.57
<b>Hernando</b>	173,808	472	746	63.3%	\$ 58.90
<b>Highlands</b>	99,092	401	512	78.3%	\$ 63.51
<b>Hillsborough</b>	1,276,410	2,600	5,343	48.7%	
<b>Holmes</b>	20,022	124	126	98.4%	\$ 20.76
<b>Indian River</b>	139,586	456	714	63.9%	\$ 75.00
<b>*Jackson</b>	50,166				
<b>*Jefferson</b>	14,554				
<b>Lafayette</b>	8,618	13	37	35.1%	
<b>Lake</b>	303,317	773	960	80.5%	\$ 55.00
<b>Lee</b>	643,367	1,742	2,009	86.7%	\$ 76.78
<b>Leon</b>	278,377	1,068	1,207	88.5%	\$ 69.00
<b>*Levy</b>	40,304				
<b>Liberty</b>	8,483	47	90	52.2%	\$ 39.00
<b>Madison</b>	19,395	46	120	38.3%	\$ 46.00
<b>Manatee</b>	333,880	1,016	1,468	69.2%	\$ 74.04
<b>*Marion</b>	335,008				
<b>Martin</b>	148,077	648	696	93.1%	\$ 72.56
<b>Miami-Dade</b>	2,582,375	4,745	5,842	81.2%	\$ 155.00
<b>Monroe</b>	73,560	571	700	81.6%	\$ 97.16
<b>Nassau</b>	74,661	202	315	64.1%	\$ 42.10
<b>Okaloosa</b>	188,349	597	594	100.5%	\$ 49.94
<b>*Okeechobee</b>	39,762				
<b>Orange</b>	1,202,978	3,084	4,107	75.1%	\$ 103.00
<b>Osceola</b>	288,361	899	873	103.0%	\$ 103.00
<b>Palm Beach</b>	1,345,652	2,204	3,164	69.7%	
<b>Pasco</b>	473,566	1,375	1,432	96.0%	\$ 58.00
<b>Pinellas</b>	926,610	2,987	4,017	74.4%	\$ 106.09
<b>Polk</b>	613,950	2,495	2,576	96.9%	\$ 54.24
<b>*Putnam</b>	72,605				
<b>St. Johns</b>	201,541	405	761	53.2%	\$ 103.00
<b>St. Lucie</b>	281,151	1,243	1,370	90.7%	\$ 85.00
<b>Santa Rosa</b>	157,317	695	723	96.1%	\$ 57.00
<b>Sarasota</b>	385,292	1,009	1,026	98.3%	\$ 93.00
<b>Seminole</b>	431,074	868	1,396	62.2%	\$ 78.52
<b>Sumter</b>	105,104	245	521	47.0%	\$ 67.87
<b>Suwannee</b>	43,873	158	235	67.2%	\$ 47.00
<b>*Taylor</b>	23,018				
<b>*Union</b>	15,483				
<b>Volusia</b>	498,978	1,483	1,494	99.3%	\$ 64.47

<b>Wakulla</b>	30,869	200	350	57.1%	\$ 50.00
<b>Walton</b>	57,779	300	584	51.4%	\$ 48.50
<b>*Washington</b>	24,793				
<b>STATE TOTAL</b>	<b>19,259,543</b>	<b>53,542</b>	<b>65,634</b>	-	-
<b>STATE AVG.</b>	<b>287,445</b>	<b>1,049</b>	<b>1,286</b>	<b>81.5%</b>	<b>\$ 64.38</b>

Source: 2014 Annual Jail Capacity Survey, Department of Corrections and the Florida Legislature's Office of Economic and Demographic Research.

Note: County population figures are estimates of the April 1, 2013 population.

\*The following counties did not respond to the survey, therefore they are not represented in the statistics: Citrus, Desoto, Dixie, Escambia, Gulf, Hamilton, Hardee, Jackson, Jefferson, Levy, Marion, Okeechobee, Putnam, Taylor, Union and Washington.

***Arrest Warrants for State Prisoners***

This provision of the bill requires the county, upon confirmation of an outstanding arrest warrant, to transport an inmate for hearings to resolve such warrants. To the extent that this increases the frequency of transports, county and state transportation costs may rise.

The Criminal Justice Impact Conference reviewed a similar bill, HB 1091 (2017), and determined the bill would have a negative indeterminate impact on the prison population.<sup>98</sup> Disposing of an unserved violation while an offender is already in custody will reduce the likelihood that the offender will be resentenced to a term of supervision upon disposition of the supervision violation warrant. The DOC anticipated that resolving prisoners’ warrants will result in them being released from the criminal justice system more quickly, as more prisoners will begin serving concurrent sentences for probation violations.<sup>99</sup> Additionally, to the extent that the bill results in additional hearings, the workload of the court, public defenders, and state attorneys may be marginally increased.

***Extension of Confinement – Supervised Release Program***

The DOC reports that the bill will likely reduce the need for prison beds.<sup>100</sup> The current per diem rate for electronic monitoring is \$4.90 for inmates placed on electronic monitoring who are assigned to community release centers.<sup>101</sup> The current variable per diem rate is \$15.81, which is associated with the individual inmate care costs such as medical, food, inmate clothing, and personal care items.<sup>102</sup> The variable per diem rate applies across all institutions for inmate specific care.<sup>103</sup> For inmates released to this program on electronic monitoring, the DOC will likely pay the electronic monitoring per diem rate, rather than the variable per diem rate, for the 90 days during which the inmate is out in the community instead of housed in an institution.

<sup>98</sup> “Negative Indeterminate” means a reduction in the average daily prison population by an unquantifiable amount.

<sup>99</sup> The DOC HB 1091 (2017) Analysis.

<sup>100</sup> The DOC SB 1206 Analysis, p. 4.

<sup>101</sup> *Id.* at p. 4-6.

<sup>102</sup> Department of Corrections, *Annual Report Fiscal Year 2015-2016*, p. 8, available at [http://www.dc.state.fl.us/pub/annual/1516/FDC\\_AR2015-16.pdf](http://www.dc.state.fl.us/pub/annual/1516/FDC_AR2015-16.pdf) (last visited January 16, 2018).

<sup>103</sup> Electronic mail from Kim Banks, Chief Financial Officer, Department of Corrections, RE: Work release per diem (January 16, 2018) (on file with the Senate Criminal Justice Committee).

## State Government Revenues

### *Community Control as an Alternative to County Jail*

The bill authorizes a county jail to contract with a privately operated community release and transition center to provide the required services to transferred inmates. Currently, the DOC contracts with community release and transition centers for their inmates and this bill will not affect the local jails ability to contract separately for these types of facilities and services.

#### VI. Technical Deficiencies:

None.

#### VII. Related Issues:

##### Alternative Housing Options for State Inmates

The bill requires the contract between a county and the DOC to establish a per diem rate. The DOC's average adult male custody per diem is \$48.17 and the average female custody per diem is \$58.37.<sup>104</sup> This "full" per diem includes expenditures for security and other support staff, utilities, maintenance, insurance, medical, and education. However, when changes that impact the inmate population do not require the opening or closure of an additional housing unit, the "variable" per diem rate of \$15.91 more accurately reflects the cost associated with housing an inmate.<sup>105</sup> The variable per diem rate includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, and personal care items.<sup>106</sup>

The bill does not provide for the use of these different per diem rates and only allows for a contracted per diem rate. Therefore, if the number of inmates housed in a county jail has a minimal impact on state inmate populations, the DOC will be responsible for paying the county jails the contracted per diem rate rather than the "variable" per diem rate of \$15.91 it would pay for the inmate to be housed in a state facility. Additionally, the bill requires the DOC to transfer funds to the State Inmates Housed in County Jail appropriation category from other appropriation categories in an amount up to the full per diem rate. If the bill's prison bed impact does not cause the closure of a dorm or facility, the DOC could be required to transfer the full per diem rate even though the DOC would only be expending the variable or dorm per diem rate with the inmate remaining in a DOC facility.

The DOC found, based on FY 2016-17 inmate admissions, that approximately 4,200 inmates would be eligible to be sentenced to a county jail. Of that 4,200 inmates, seven percent are work release inmates. The per diem rate for the DOC-operated community release centers for FY 2015-16 was \$34.35.<sup>107</sup>

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<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at p. 6.

<sup>106</sup> *Id.* at p. 7.

<sup>107</sup> *Id.*

## State Government Expenditures

SB 2500 provides funding for the provisions of this bill. Included is \$5 million to cover the cost of additional electronic monitoring devices for inmates released on active electronic monitoring under the newly created bond program. SB 2500 also includes \$10 million to implement the provisions on the bill related to the transfer of inmates with 24 months to the county jails.

### VIII. Statutes Affected:

This bill substantially amends sections 921.188, 945.091, and 947.149 of the Florida Statutes.

This bill creates sections 907.042, 944.172, and 948.33 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/CS by Appropriations on January 31, 2018:**

The committee substitute:

- Authorizes each county to establish a supervised bond program, which will allow eligible defendants to be released on active supervision, including electronic monitoring, continuous alcohol monitoring, or both, while awaiting trial;
- Allows a supervised bond program already in existence to continue to operate;
- Specifies requirements for any supervised bond program created under the act and specifies criteria that the risk assessment instrument must consider;
- Authorizes counties to contract with various entities for use of a RAI and requires these RAIs to be validated by the DOC;
- Requires the counties to report on the use and success of the supervised bond program;
- Authorizes an inmate with less than 24 months left on his or her sentence or an terminally ill inmate to be transferred a county jail;
- Requires an inmate eligible for the transfer to a county jail be transferred if he or she is also eligible under the terms of the contract;
- Specifies that an inmate may only be housed in a county jail if there is a contractual agreement between the DOC and the county;
- Defines the terms “terminally ill inmate” and “maximum appropriation allowable;”
- Excludes terminally ill inmates transferred to a county jail from the requirements of s. 947.149, F.S.;
- Specifies that an inmate transferred to a county jail remains under the jurisdiction of the DOC;
- Provides an inmate housed in a county jail is eligible to substantially similar opportunities to earn gain time or other sentence credit as an inmate in a state facility;
- Permits an inmate housed in a county jail to request to be transferred to a DOC facility if he or she is not receiving substantially similar services as an inmate in a state facility;

- Requires an inmate housed in a county jail be transferred to a DOC facility if the contract between the DOC and the county is terminated for any reason;
- Specifies that a felony offense for which an offender is sentenced to county jail is considered a prior felony commitment at a state or federal correctional institution for the purposes of ss. 944.291, 947.1405, and 948.12, F.S.;
- Requires specific terms in a contract to house inmates in a county jail;
- Provides contracts to house inmates in a county jail are contingent upon an appropriation by the legislature;
- Requires the DOC to transfer funds, consistent with the requirements of ch. 216, F.S., each time a contract to house inmates in a county jail is executed or ends;
- Specifies, prior to any transfers, the DOC must estimate the obligations of the contracted county beds to house inmates in a county jail to estimate that amount in which these obligations exceed the DOC per diems;
- Requires the DOC to assume the maximum annual value of all contracts to house inmates when determining the full use of funds;
- Establishes a Supervised Community Release Program allowing an eligible inmate to be released for the last 90 days of his or her sentence on community control and an electronic monitoring device;
- Specifies that an inmate who participates in the Supervised Community Release Program is still considered to be in confinement for purposes of earning and losing gain-time, including the prohibition on serving less than 85 percent of his or her sentence;
- Authorizes an officer to arrest an inmate who is on supervised community release if the inmate is not complying with the terms of the program;
- Authorizes an inmate who has an unserved violation of probation or community control warrant to notify the issuing county for the purpose of initiating the resolution of such warrant; and
- Requires the inmate to be transported to a county where an outstanding warrant exists for a hearing to resolve the outstanding violation warrant if it is confirmed that such a warrant exists.

**CS by Criminal Justice on November 13, 2017:**

For offenses committed on or after July 1, 2018, the committee substitute amends s. 921.188, F.S.:

- Authorizing a court to sentence an offender to a county jail for up to 24 months if the offender's:
  - Total sentence points score is more than 44 points, but less than or equal to 60 points;
  - Primary offense is not a forcible felony, unless the primary offense is a third degree felony burglary or trespass; and
  - Primary offense is not subject to a mandatory minimum sentence of more than 24 months.
- Providing that a court may only sentence an offender to a county jail if the DOC and the county have a contractual agreement;
- Requiring an offender to be under the jurisdiction of the DOC as a condition of the sentence;

- Requiring an offender to be transferred to a DOC facility if the contract between the DOC and the county is terminated for any reason prior to the completion of the sentence;
- Requiring the DOC to enter into a contract with the county if the county requests a contract;
- Specifying that the contract must establish the maximum number of beds and the validated per diem rate;
- Creating a new appropriation category and requires funds to be appropriated in or transferred to the category to cover the costs of the contract; and
- Requiring that per diem rates be validated by the Auditor General prior to payments being made.

**B. Amendments:**

None.