

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 484

INTRODUCER: Criminal Justice Committee and Senator Bradley

SUBJECT: Sentencing

DATE: November 15, 2017 REVISED: _____

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

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 484 amends s. 921.188, F.S., authorizing 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.

The court may only sentence an offender to a county jail under the bill if there is a contractual agreement between the chief correctional officer of the county and the Florida Department of Corrections (FDC). The bill requires the FDC to enter into a contract to house state inmates if the county requests such a contract and the contract must establish the maximum number of beds and the validated per diem rate. The per diem rate must be based on the contracting county's most recent annual adult male custody or adult female custody per diem rate, but cannot exceed \$60 per inmate. All contractual per diem rates must be validated by the Auditor General before payments are made.

The court must order that the offender is under the jurisdiction of the FDC as a condition of the sentence. The bill also provides that an offender sentenced to a county jail under this provision must be transferred to a FDC facility if the contract between the FDC and the county terminates,

expires, or is not renewed for any reason when the offender still has a portion of his or her sentence to serve.

A contract is contingent upon a specific appropriation as provided by law and must be awarded on a first-come, first-served basis up to the maximum appropriation allowable. The maximum appropriation allowable consists of funds appropriated in or transferred to a newly created appropriation category named “Inmates Sentenced to County Jail.” The bill requires funds to be transferred from other appropriation categories to the Inmates Sentenced to County Jail appropriation category to cover the requirements of each executed contract.

The bill will likely have a negative indeterminate fiscal impact on the FDC, and a positive indeterminate fiscal impact on local governments. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2018.

II. Present Situation:

Criminal Punishment Code

The Criminal Punishment Code¹ 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.² If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.³

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.⁴ 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.”⁵

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. 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.⁶ The lowest permissible sentence in which total sentence points equal to or are less than 44 points is any nonstate prison sanction.⁷ If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated

¹ 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.

² Section 921.0022, F.S.

³ Section 921.0023, F.S.

⁴ Section 921.0024, F.S.

⁵ Section 921.0026, F.S.

⁶ Section 775.082, F.S.

⁷ Section 921.0042(2), F.S.

by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.⁸

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,⁹ and there is a contract between the FDC and the chief correctional officer for the applicable county.¹⁰

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 FDC; and
- Per diem must not exceed the per diem published in the FDC'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 FDC;¹¹ 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.¹²
- Local detention facility, provided the FDC has negotiated a contract with the county to house inmates that have been committed to the FDC.¹³ The FDC does not currently have any contracts to house inmates with counties.¹⁴
- Imprisonment in county jail if the total of the prisoner's cumulative sentences is not more than one year.¹⁵

⁸ 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 (last visited on November 6, 2017).

⁹ 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.

¹⁰ Section 921.188, F.S.

¹¹ Section 921.0024(2), F.S.

¹² 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 FDC.

¹³ Section 944.171, F.S., further provides that the contracts must be competitively procured in accordance with s. 287.057, F.S., and are entered into after the parties agree to mutually agreed upon terms. Inmates placed in a county facility remain under the jurisdiction of the FDC. Section 287.057, F.S., provides for the competitive solicitation processes to be used by the state of Florida in conducting state business.

¹⁴ Department of Corrections, *Senate Bill 484 Analysis*, at p. 3 (November 8, 2017) (on file with the Senate Committee on Criminal Justice)[hereinafter cited as "The FDC SB 484 Analysis"].

¹⁵ Section 922.051, F.S.

- County work camp operated under a contractual agreement between the county and the state.¹⁶

III. Effect of Proposed Changes:

The bill amends s. 921.188, F.S., authorizing 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.

A sentence imposed in accordance with this provision must still comply with the requirement that the offender serve a minimum of 85 percent of the sentence imposed.

The court may only sentence an offender to a county jail if there is a contractual agreement between the chief correctional officer of the county and the FDC. The bill requires the FDC to enter into a contract to house state inmates if the county requests such a contract. The contract must establish the maximum number of beds and the validated per diem rate. The per diem rate must be based on the contracting county's most recent annual adult male custody or adult female custody per diem rate, but cannot exceed \$60 per inmate. All contractual per diem rates must be validated by the Auditor General before payments are made.

The court must order that the offender is under the jurisdiction of the FDC as a condition of the sentence. The bill also provides that an offender sentenced to a county jail under this provision must be transferred to a FDC facility if the contract between the FDC and the county terminates, expires, or is not renewed for any reason when the offender still has a portion of his or her sentence to serve.

The bill specifies that a contract is contingent upon a specific appropriation as provided by law and must be awarded on a first-come, first-served basis up to the maximum appropriation allowable. The maximum appropriation allowable consists of funds appropriated in or transferred to a newly created appropriation category named "Inmates Sentenced to County Jail."

The bill requires funds to be transferred from other appropriation categories to the Inmates Sentenced to County Jail appropriation category in an amount needed to cover the requirements of each executed contract. However, the amount transferred cannot exceed the FDC's average total per diem published in the preceding fiscal year. To ensure that the maximum appropriation allowable is not exceeded, the bill requires the FDC to calculate each contract entered into at the maximum number of beds being filled for the entire contract period.

The bill is effective July 1, 2018.

¹⁶ Section 950.002, F.S.

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:

The FDC stated that the bill may result in the elimination of privately operated community release center contracts if the FDC is required to contract with the counties for the inmates currently served by these contracts.¹⁷

C. Government Sector Impact:

It is unknown how many offenders will be sentenced to county jails or how many counties will seek contracts with the FDC. However, the bill will likely have a negative indeterminate fiscal impact on the FDC, and a positive indeterminate fiscal impact on local governments. The Criminal Justice Impact Conference (CJIC) met on March 2, 2017 and reviewed SB 1068 (2017), which is similar to this bill, and found that the bill would have a negative indeterminate bed impact on the FDC.¹⁸ The CJIC further commented that given the specific provisions of the bill, the budgetary impact will potentially exceed the capital and operating impact costs for the FDC adopted by the CJIC.¹⁹

The bill requires the contract between a county and the FDC to establish a per diem rate not to exceed \$60 per inmate. The FDC's average adult male custody per diem is \$48.17 and the average female custody per diem is \$58.37.²⁰ This "full" per diem includes expenditures for security and other support staff, utilities, maintenance, insurance,

¹⁷ The FDC SB 484 Analysis at p. 6.

¹⁸ See Office of Economic and Demographic Research, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm> (last visited November 8, 2017). The Criminal Justice Impact Conference defines a "negative indeterminate bed impact" to mean an unquantifiable decrease in prison beds.

¹⁹ *Id.*

²⁰ The FDC SB 484 Analysis at p. 6 and 8.

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.²¹ The variable per diem rate includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, and personal care items.²²

The bill does not provide for the use of these different per diem rates and only allows for a contracted per diem rate that does not exceed \$60. Therefore, if the number of offenders sentenced to a county jail has a minimal impact on state inmate populations, the FDC 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.

The FDC 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 FDC operated community release centers for FY 2015-16 was \$34.35.²³

The contracted community release center agreements guarantee payment of 80 percent of contracted available beds, regardless of whether the occupancy falls below the 80 percent capacity threshold.²⁴ The bill could result in the inability to ensure contracted Community Release Centers remain at or above 80 percent occupancy resulting in either payment for unoccupied beds or canceling existing community release center contracts.²⁵ If these inmates are no longer available for work release, the bill could also negatively impact subsistence revenues collected through work release programs, which are deposited into the general revenue fund.²⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 921.188 of the Florida Statutes.

²¹ *Id.* at p. 8.

²² *Id.* at p. 6.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

IX. Additional Information:

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

CS by Criminal Justice on 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 FDC and the county have a contractual agreement;
- Requiring an offender to be under the jurisdiction of the FDC as a condition of the sentence;
- Requiring an offender to be transferred to a FDC facility if the contract between the FDC and the county is terminated for any reason prior to the completion of the sentence;
- Requiring the FDC 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 are validated by the Auditor General prior to payments being made.

- B. **Amendments:**

None.