

**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 Criminal Justice

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BILL: SB 484

INTRODUCER: Senator Bradley

SUBJECT: Sentencing

DATE: November 9, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	

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**I. Summary:**

SB 484 authorizes a court to sentence a person to a term of imprisonment in the county jail, in the county where the offense was committed, for up to twenty-four 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 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.

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:

### Contracting with Counties to House Inmates

Section 944.171, F.S., authorizes the FDC to contract with counties to house inmates that have been committed to the FDC.<sup>1</sup> Contracts must be competitively procured in accordance with s. 287.057, F.S.,<sup>2</sup> 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. The FDC does not currently have any contracts to house inmates with counties.<sup>3</sup>

### Criminal Punishment Code

The Criminal Punishment Code<sup>4</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>5</sup> If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.<sup>6</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>7</sup> 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>8</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. 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.<sup>9</sup> The lowest permissible sentence in which total sentence points equal to or are less than 44 points is any nonstate prison sanction.<sup>10</sup> If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated

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<sup>1</sup> Section 944.171, F.S.

<sup>2</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, F.S., provides for invitations to bid, requests for proposals, and invitations to negotiate.

<sup>3</sup> 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”].

<sup>4</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>5</sup> Section 921.0022, F.S.

<sup>6</sup> Section 921.0023, F.S.

<sup>7</sup> Section 921.0024, F.S.

<sup>8</sup> Section 921.0026, F.S.

<sup>9</sup> Section 775.082, F.S.

<sup>10</sup> Section 921.0042(2), F.S.

by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.<sup>11</sup>

The lowest permissible sentence for a person who scores between 45 and 60 points ranges from 12.75 months to 24 months, respectively.

### **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;<sup>12</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>13</sup>
- Local detention facility as a condition of probation or community control if the offender's imprisonment is between 366 days and 22 months and there is a contract between the FDC and the chief correctional officer for the applicable county.<sup>14</sup>
- Imprisonment in county jail if the total of the prisoner's cumulative sentences is not more than one year.<sup>15</sup>
- County work camp operated under a contractual agreement between the county and the state.<sup>16</sup>

### **III. Effect of Proposed Changes:**

The bill authorizes a court to sentence a person to a term of imprisonment in a county jail, in the county where the offense was committed, for up to twenty-four 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 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

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<sup>11</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>12</sup> Section 921.0024(2), F.S.

<sup>13</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 FDC.

<sup>14</sup> Section 921.188, F.S.

<sup>15</sup> Section 922.051, F.S.

<sup>16</sup> Section 950.002, F.S.

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 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.

#### **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.<sup>17</sup>

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

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<sup>17</sup> The FDC SB 484 Analysis at p. 6.

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.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</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>21</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>22</sup>

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.<sup>23</sup>

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.<sup>24</sup> 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.<sup>25</sup> If these inmates are no longer available for work release, the bill could also negatively impact

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<sup>18</sup> 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.

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

<sup>20</sup> The FDC SB 484 Analysis at p. 6 and 8.

<sup>21</sup> *Id.* at p. 8.

<sup>22</sup> *Id.* at p. 6.

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

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

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

subsistence revenues collected through work release programs, which are deposited into the general revenue fund.<sup>26</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

It appears that any contract between the FDC and a county would be limited to one year; however, inmates under this bill can be sentenced to up to 24 months. The FDC notes that the bill does not address what will happen to the inmate's sentence or confinement if a contract is revised or cancelled and the inmate's service of sentence is still active after the contract cancellation.<sup>27</sup>

The FDC also notes that the bill language may create confusion as to whether the offender is being committed to the FDC and housed in the county jail, or whether the offender is being committed to the county. Further, it appears that the court will impose a sentence and also determine where the offender will serve the sentence.<sup>28</sup>

**VIII. Statutes Affected:**

This bill creates section 950.021 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at p. 7.