

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 338

INTRODUCER: Criminal Justice Committee and Senators Brandes and Perry

SUBJECT: Extension of Confinement

DATE: March 5, 2019 REVISED: _____

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

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

I. Summary:

CS/SB 338 amends s. 945.091, F.S., authorizing the Department of Corrections (DOC) to consider an inmate participating in a supervised community release program (Program) up to 180 days before the inmate’s tentative release date as an extension of the inmate’s confinement. The DOC must also administer a risk assessment tool to determine eligibility for this program. The Program must include active electronic monitoring and community control as defined in s. 948.001, F.S.

An inmate’s participation in the Program may be terminated by the DOC if the inmate fails to comply with any of the terms of the Program as proscribed by the rules promulgated under this act. If an inmate is terminated from the supervision, he or she must be recommitted to the DOC.

If there is reasonable grounds to believe that the inmate violated his or her supervised community release, the bill authorizes a law enforcement officer or probation officer to arrest the inmate in accordance with s. 948.06, F.S. An alleged violation of the conditions of the supervised community release program must be reported to the supervising probation office or the DOC’s emergency action center for disposition of disciplinary charges as proscribed in the DOC rules.

The bill also reenacts several sections of law to incorporate changes made by the act.

The bill likely has a negative indeterminate fiscal impact (i.e., a decrease in prison beds) on the DOC due to certain eligible participants being released from correctional facilities. In addition,

the DOC will likely see cost savings due to paying the per diem rate for electronic monitoring, rather than the variable per diem rate for a prison bed. The DOC also requests one full-time equivalent position, entitled “Correctional Programs Consultant,” to provide statewide implementation and oversight of the Program. The DOC requests \$69,949 recurring General Revenue funds and \$4,429 nonrecurring General Revenue funds for the position. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

II. Present Situation:

The Criminal Punishment Code¹ (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.² The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence as determined by the Code 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 five years.³

The sentence imposed by the sentencing judge reflects the length of actual time to be served, lessened only by the application of gain-time, and may not be reduced in an amount that results in the defendant serving less than 85 percent of his or her term of imprisonment.⁴

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 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;⁵
- Work at paid employment;⁶

¹ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F.

² Section 921.0022(1), F.S.

³ Section 775.082(3), F.S.

⁴ Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.

⁵ 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 (2018) Analysis*, at p. 3 (January 8, 2018) (on file with the Senate Committee on Criminal Justice) [hereinafter cited as “The DOC SB 1206 (2018) Analysis”].

⁶ 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

- Participate in an educational or training program;⁷
- Voluntarily serve a public or nonprofit agency or faith-based service group in the community;⁸ or
- Participate in a residential or nonresidential rehabilitative program.⁹

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.¹⁰

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.¹¹ 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.¹²

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.¹³ 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.¹⁴

employment, education, or training by walking, bicycling, or using public transportation or transportation that is provided by a family member or employer.

⁷ *Id.*

⁸ *Id.*

⁹ 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.

¹⁰ Section 945.091(1), F.S.

¹¹ Section 945.091(1)(d), F.S. (1995). This paragraph was repealed in ch. 96-312, L.O.F.

¹² *Id.*

¹³ 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.

¹⁴ Section 944.275(4)(f), F.S.

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, 1994.¹⁵ The only forms of gain-time that can currently be earned are:

- Incentive gain-time;¹⁶
- Meritorious gain-time;¹⁷ and
- Educational achievement gain-time.¹⁸

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.¹⁹ The maximum sentence expiration date represents the date when the sentence or combined sentences imposed on a prisoner will expire. To calculate the maximum sentence expiration date, the DOC reduces the total time to be served by any time lawfully credited.²⁰

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.²¹ 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.²²

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.²³ 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.²⁴

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,

¹⁵ Chapter 93-406, L.O.F.

¹⁶ 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.

¹⁷ 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.

¹⁸ 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.

¹⁹ Section 944.275(3)(c), F.S.

²⁰ Section 944.275(2)(a), F.S.

²¹ Section 944.275(3)(a), F.S.

²² *Id.* See also s. 944.275(4)(b), F.S.

²³ Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

²⁴ Section 948.10(1), F.S.

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.²⁵

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 controllees 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 probation²⁶ set forth in s. 948.03, F.S.²⁷

A person may be placed on additional terms of supervision as part of his or her community control sentence.²⁸

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.²⁹ A violation of probation (VOP) or violation 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.³⁰

²⁵ *Id.* See also Florida Department of Corrections, *Succeeding on Community Control*, available at <http://www.dc.state.fl.us/cc/ccforms/Succeeding-on-Community-Control.pdf> (last visited on January 30, 2019). 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.

²⁶ 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.

²⁷ Section 948.101(1), F.S.

²⁸ Section 948.101(2), F.S.

²⁹ Section 948.10(3), F.S.

³⁰ Section 948.06(1)(a), F.S.

The offender must be returned to the court granting such probation or community control.³¹ 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.³²

Arrest Authority

Section 901.15, F.S., provides that a law enforcement officer may arrest a person without a warrant under specified circumstances, including, but not limited to, when:

- The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer.
- A felony has been committed and the officer reasonably believes that the person committed it.
- The officer reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.
- A warrant for the arrest has been issued and is held by another peace officer for execution.
- A violation of ch. 316, F.S. (state uniform traffic control), has been committed in the presence of the officer.
- There is probable cause to believe that the person has violated s. 790.233, F.S. (possession of firearms by a convicted felon), s. 741.31, F.S. (possession of prohibited ammunition), a protective injunction order, or a specified foreign protection order.
- There is probable cause to believe that the person has committed an act of domestic violence or dating violence.

Additionally, a probation officer is authorized to issue an arrest warrant or arrest an offender in limited circumstances. Section 944.405(1), F.S., authorizes the DOC to issue an arrest warrant for a person who has “absconded from a rehabilitative community reentry program before the offender has satisfied his or her sentence or combined sentences.”

Section 948.06(1), F.S., also authorizes probation officers or law enforcement officers to arrest probationers and community controlees without a written warrant based on a reasonable belief the offender has violated terms of supervision in a material respect.

Evidence-Based Risk Assessment Tools

Risk and needs assessment instruments (RAIs) measure a defendant’s criminal risk factors and specific needs that, if addressed, will reduce the likelihood of future criminal activity.³³ RAIs consist of a set of questions that guide interviews with a defendant, intended to evaluate behaviors and attitudes that research shows are related to criminal reoffending. The questioner typically supplements the interview with an official records check, including prior arrests and incarcerations. Responses are statistically weighted, based on research that shows how strongly

³¹ *Id.*

³² Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the offender 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.

³³ Congressional Research Service, *Risk and Needs Assessment in the Federal Prison System*, Nathan James, p. 3 (July 10, 2018), available at <https://fas.org/sgp/crs/misc/R44087.pdf> (last visited January 28, 2019) (hereinafter cited as CRS Report).

each item correlates with recidivism. The RAI then calculates an overall score that classifies a defendant as being at high, moderate, or low risk for reoffending.³⁴

Research has identified both static and dynamic risk factors that are related to criminal behavior. Static risk factors do not change, while dynamic risk factors can either change on their own or be changed through an intervention. Some examples of static factors considered include age at first arrest, gender, past problems with substance or alcohol abuse, prior mental health problems, or a past history of violating terms of supervision.³⁵ Dynamic risk factors, also called “criminogenic³⁶ needs,” can be affected through interventions and include factors such as current age, education level, or marital status; being currently employed or in substance or alcohol abuse treatment; and having a stable residence.³⁷

The Risk-Needs-Responsivity (RNR) model has become the dominant paradigm in risk and needs assessment. The risk principle states that high-risk offenders need to be placed in programs that provide more intensive treatment and services while low-risk offenders should receive minimal or even no intervention. The need principle states that effective treatment should focus on addressing needs that contribute to criminal behavior. The responsivity principle states that rehabilitative programming should be delivered in a style and mode that is consistent with the ability and learning style of the offender.³⁸

In general, research suggests that the most commonly used assessment instruments can, with a moderate level of accuracy, predict who is at risk for violent recidivism. It also suggests that no single instrument is superior to any other when it comes to predictive validity.³⁹

Use of Risk Assessment Instruments by the Department of Corrections

The DOC has created a RAI, known as Spectrum, which is administered to an inmate at reception through motivational interviewing techniques.⁴⁰ Spectrum, as well as its predecessor, the Corrections Integrated Needs Assessment System, is based on the RNR model and contains responsivity elements.⁴¹ Spectrum has been independently verified through the School of Criminology at the Florida State University.⁴²

³⁴ *Id.*

³⁵ *Id.*

³⁶ “Criminogenic” is commonly understood to mean factors that can contribute to criminal behavior. CRS Report, p. 3, n. 16.

³⁷ CRS Report, p. 3.

³⁸ CRS Report, Summary Page.

³⁹ CRS Report, p. 4.

⁴⁰ DOC, Spectrum Video, available at <https://www.youtube.com/watch?v=F1sQsOE6BgM> (last visited January 28, 2019) (hereinafter cited as “Spectrum Video”); DOC, *Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED* (on file with the Senate Criminal Justice Committee) (hereinafter cited as “DOC Program Information”).

⁴¹ Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018) (on file with Senate Criminal Justice Committee).

⁴² Letter from Dr. William D. Bales and Jennifer M. Brown to DOC Secretary, Julie Jones, (January 19, 2018) (on file with the Senate Criminal Justice Committee). Dr. Bales provides that Spectrum “produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States.”

Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education.⁴³ Spectrum calculates an individual's overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains⁴⁴ and three core program areas.⁴⁵

The DOC utilizes the results from the Spectrum assessment to create an evidence-driven performance plan that matches the inmate's needs with services and programming offered in the DOC. Data collected during the administration of Spectrum is also used to assist with transitioning an inmate back into the community upon release through relaying the information to reentry service providers in the local community and community corrections.⁴⁶ Spectrum was completed in September, 2016, and subsequently deployed throughout the state.⁴⁷

III. Effect of Proposed Changes:

The bill amends s. 945.091, F.S., to allow an inmate to participate in a supervised community release program (Program) as an extension of the inmate's confinement, similar to the former Supervised Community Release Program discussed above. The Program release term may begin 180 days before the inmate's provisional or tentative release date and must include active 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 provides that participation in and conditions of the Program will be as proscribed in department rule.

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 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 Program. A law enforcement officer that arrests an inmate for a violation of the conditions of the Program is required to report the inmate's alleged violations to the supervising probation office or the DOC's emergency action center for disposition of disciplinary charges as proscribed in the DOC rules.

The bill provides that an inmate released on the 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

⁴³ DOC Program Information.

⁴⁴ The criminogenic domains include social awareness (antisocial personality); criminal associates; substance abuse history; family and marital relationships; wellness; criminal thinking or attitude; and employment and education history. Spectrum Video.

⁴⁵ The three core program areas include GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors. Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018) (on file with the Senate Criminal Justice Committee).

⁴⁶ *Id.*

⁴⁷ See WFSU, *Florida Prison Officials Go Statewide With New Program To Better Help Rehabilitate Inmates*, Sarah Corder, September 23, 2016, available at <http://news.wfsu.org/post/florida-prison-officials-go-statewide-new-program-better-help-rehabilitate-inmates> (last visited January 30, 2019).

serving a minimum of 85 percent of the sentence imposed.⁴⁸ 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 bill reenacts ss. 944.516, 945.092, and 946.503, F.S., incorporating the changes made by the act.

The DOC reports that as of December 31, 2018, there were approximately 479 inmates that were 180 days out from their release date that had served at least 85 percent of their sentence. Additionally, the DOC reports that there will be about 2,508 additional inmates meeting this criterion within the next 6 months.⁴⁹

The bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁴⁸ See s. 944.275(4)(f), F.S.

⁴⁹ The DOC, SB 338 Agency Analysis, p. 4, January 31, 2019 (hereinafter cited as “The DOC SB 338 Analysis”)(on file with the Senate Criminal Justice Committee).

B. Private Sector Impact:

The bill authorizes the DOC to release a specified inmate into the community on supervised release up to 180 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:

The Criminal Justice Estimating Conference has not reviewed the bill at this time.

The DOC reports that the bill will likely result in a negative indeterminate prison bed impact (i.e., an indeterminate decrease in prison beds). The DOC stated that the number is indeterminate for several reasons, including not being able to quantify how many inmates would be interested in the program and, of those inmates, how many could obtain proper housing placements to warrant release.⁵⁰

The DOC further reports that the fiscal impact of the bill will vary based on the number of released inmates placed on active electronic monitoring, the rate at which electronic monitoring costs are paid, and the type of facility⁵¹ from which Program participants are released. The current per diem rate for inmates placed on electronic monitoring who are assigned to community release centers is \$3.90 per day for contracted facilities and \$5.29 for facilities operated by the DOC. The variable per diem rate is \$20.04, which is associated with the individual inmate care costs such as medical, food, inmate clothing, and personal care items. The DOC reports that the average per diem for community supervision in FY 2017-18 was \$5.47. Therefore, the DOC will likely pay the electronic monitoring per diem rate, rather than the variable per diem rate, for the inmates released to this Program on electronic monitoring.⁵² The electronic monitoring per diem rate would be paid for the designated number of days with which the inmate was out in the community instead of housed in an institution, which could result in a cost savings to the DOC.⁵³

The DOC requests the creation of one full-time equivalent position, entitled a "Correctional Programs Consultant," to oversee, provide guidance, and coordinate the statewide implementation and administration of the Program.⁵⁴ The DOC projects the funding for the position to be \$69,949 recurring General Revenue, \$4,429 nonrecurring General Revenue funds and salary rate of 45,943.⁵⁵ Finally, the DOC states that there could be a need for additional correctional probation officer positions depending upon the number of participants in the program.⁵⁶

⁵⁰ The DOC SB 338 Analysis, p. 4.

⁵¹ There are different per diems for each type of facility, including community release facilities, major institutions, and work camps, based upon the level of security and services provided at the facility. *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ The DOC SB 338 Analysis, p. 4.

⁵⁵ *Id.*, p. 6.

⁵⁶ *Id.*, p. 4.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 945.091 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 944.516, 945.092, and 946.503.

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 February 11, 2019:

The Committee Substitute provides that any violation of a participant's conditions of the supervised community release program must be reported to the supervising probation office or the DOC emergency action center, ensuring better oversight of any inmates released to the community on the program.

- B. **Amendments:**

None.