

**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 436

INTRODUCER: Senator Montford

SUBJECT: Youth in Confinement

DATE: November 8, 2019

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

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

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**I. Summary:**

SB 436 creates s. 945.425, F.S., which prohibits a youth in the custody of the Department of Corrections (DOC) from being placed in disciplinary confinement and limits the circumstances for placing a youth into emergency or medical confinement. Additionally, the bill amends s. 951.23, F.S., requiring a new model rule to be included in the Model Jail Standards that ensures compliance with the standards for placing a youth in confinement established in the newly created s. 945.425, F.S., and requiring each sheriff and chief correctional officer to adopt such model rule. The Model Jail Standards apply to county detention facilities.

The bill limits the placement of a youth into emergency or medical confinement to specific periods of time. For emergency confinement, a youth may not be placed in confinement for longer than 24 hours, or 48 hours if a one-time extension is granted and only if specific conditions are met. For medical confinement, a youth may not be placed in confinement for a period of time exceeding the time that is necessary for recovering from his or her illness or to prevent the spread of a communicable disease to the facility.

The bill requires that all less restrictive means for resolving the issues requiring the youth to be placed in confinement must be exhausted prior to placing the youth into emergency or medical confinement. Additionally, the bill requires that any placement of a youth in confinement in accordance with the bill must be documented and specific guidelines for monitoring a youth that is placed in either type of confinement are established. The bill specifically prohibits the use of emergency or medical confinement for the purposes of punishment or discipline.

Additionally, the bill amends s. 944.09, F.S., authorizing the DOC to create rules to address youth in confinement in compliance with the bill.

The bill will likely have an indeterminate positive fiscal impact (i.e. an unquantifiable increase in costs to the entity) to the DOC and local counties due to the increased workload and need to hire

staff to fulfill the requirement to conduct periodic evaluations of youth placed in confinement. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2020.

## II. Present Situation:

Solitary confinement is the most extreme form of isolation in a detention setting and can include physical and social isolation in a cell for 22 to 24 hours per day. The American Academy of Child and Adolescent Psychiatry says that juveniles placed in solitary confinement can experience a number of negative impacts, including, but not limited to, depression, anxiety, sleeplessness, psychosis, and long lasting trauma. This type of isolation can be particularly harmful for adolescents who need social interaction for ongoing developmental progress.<sup>1</sup> The National Conference of State Legislatures (NCSL) reports that 16 states and the District of Columbia currently prohibit or limit the use of solitary confinement with youth.<sup>2</sup>

### Federal First Step Act

In December, 2018, the United States Congress passed, and President Trump signed into law, the “Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act” or the “FIRST STEP Act” (First Step Act).<sup>3</sup> The law makes a number of changes to the federal criminal justice system and procedures applicable to inmates in the Federal Bureau of Prisons (BOP), including, in part, imposing a prohibition on placing youth in solitary confinement. A “juvenile” is defined in federal law to mean a person who is less than 18 years of age.<sup>4</sup>

The First Step Act specifically provides that a covered juvenile<sup>5</sup> may not be placed on room confinement<sup>6</sup> at a juvenile facility<sup>7</sup> for discipline, punishment, retaliation, or any reason other than as a temporary response to a covered juvenile’s behavior that poses a serious and immediate risk of physical harm to any individual, including the covered juvenile.<sup>8</sup>

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<sup>1</sup> The National Conference of State Legislatures, Anne Tiegen, *States that Limit or Prohibit Juvenile Shackling and Solitary Confinement*, August 16, 2018, available at <http://www.ncsl.org/research/civil-and-criminal-justice/states-that-limit-or-prohibit-juvenile-shackling-and-solitary-confinement635572628.aspx> (hereinafter cited as “The NCSL State Data”); *See also* USA Today, Jessica Feerman and Jenny Lutz, *Placing juvenile in solitary confinement doesn’t fix them. In fact, it makes them worse*, January 11, 2019, available at <https://www.usatoday.com/story/opinion/policing/2019/01/11/policing-usa-juvenile-detention-solitary-confinement-mental-illness/2505702002/> (all cites last visited November 4, 2019).

<sup>2</sup> The NCSL State Data includes a map detailing the 16 states, which include Alaska, Arizona, California, Colorado, Connecticut, Maine, Massachusetts, Nevada, New Jersey, New York, Oklahoma, Tennessee, Texas, Vermont, Virginia, and West Virginia.

<sup>3</sup> The First Step Act of 2018, Pub. L. No. 115-391 (2018).

<sup>4</sup> The United States Department of Justice, “*Juvenile*” defined, available at <https://www.justice.gov/jm/criminal-resource-manual-38-juvenile-defined> (last visited November 4, 2019).

<sup>5</sup> The First Step Act defines a “covered juvenile” to mean a juvenile who is being prosecuted for an alleged act of juvenile delinquency under ch. 403, U.S.C., or has been adjudicated delinquent under ch. 403, U.S.C., or who is being proceeded against as an adult in a district court of the United States for an alleged criminal offense. Pub. L. No. 115-391, s. 613 (2018).

<sup>6</sup> The First Step Act defines “room confinement” to mean the involuntary placement of a covered juvenile alone in a cell, room, or other area for any reason.

<sup>7</sup> The First Step Act defines “juvenile facility” to mean any facility where covered juveniles are committed pursuant to an adjudication of delinquency under ch. 403, U.S.C., or detained prior to disposition or conviction.

<sup>8</sup> *Supra*, n. 3.

Additionally, the First Step Act requires a staff member to attempt to use less restrictive techniques<sup>9</sup> prior to placing a covered juvenile in room confinement. If, after attempting to use less restrictive techniques, a staff member of a juvenile facility decides to place a covered juvenile in room confinement, the staff member is required to explain to the covered juvenile the reasons for the room confinement and inform the covered juvenile of the conditions that will lead to the release from room confinement.<sup>10</sup>

The First Step Act imposes restrictions on the maximum amount of time a covered juvenile may be placed in confinement. If a covered juvenile is placed in room confinement, the First Step Act requires the covered juvenile to be released:

- Immediately when the covered juvenile has sufficiently gained control so as to no longer engage in behavior that threatens serious and immediate risk of physical harm to himself or herself, or to others; or
- If a covered juvenile does not sufficiently gain control, release from confinement must occur not later than:
  - Three hours after being placed in room confinement, in the case of a covered juvenile who poses a serious and immediate risk of physical harm to others; or
  - Thirty minutes after being placed in room confinement, in the case of a covered juvenile who poses a serious and immediate risk of physical harm only to himself or herself.<sup>11</sup>

Additionally, the First Step Act provides that if, after the above-mentioned maximum period of time has expired, the covered juvenile continues to pose a serious and immediate risk of physical harm then he or she must:

- Be transferred to another juvenile facility or internal location where services can be provided to the covered juvenile without relying on room confinement; or
- If a qualified mental health professional believes the level of crisis service needed is not currently available, a staff member of the juvenile facility is required to initiate a referral to a location that can meet the needs of the covered juvenile.<sup>12</sup>

The First Step Act also specifically prohibits the use of consecutive periods of room confinement for the purpose of avoiding the time limitations discussed above.<sup>13</sup>

The BOP reports that there are nine inmates under the age of 18 years and 1,992 inmates between the ages of 18 years and 21 years imprisoned in its facilities.<sup>14</sup>

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<sup>9</sup> *Id.* For example, the First Step Act lists talking with the covered juvenile in an attempt to de-escalate the situation and permitting a qualified mental health professional to talk to the covered juvenile as less restrictive techniques.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

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

<sup>13</sup> The First Step Act also requires the Director of the Bureau of Justice Statistics, with information that is to be provided by the Director of the BOP, to include in the National Prisoner Statistics Program the number of prisoners who have been placed in solitary confinement at any time during the previous year. Pub. L. No. 115-391, s. 610 (2018).

<sup>14</sup> The BOP, *Statistics, Inmate Age*, available at [https://www.bop.gov/about/statistics/statistics\\_inmate\\_age.jsp](https://www.bop.gov/about/statistics/statistics_inmate_age.jsp) (last visited November 4, 2019).

## Youth in Confinement in Florida's Correctional Facilities

### *Department of Corrections*

#### Confinement - General

Inmates in the custody of the DOC may be placed in confinement status based on specified conditions, which are detailed in the DOC's rules. Confinement status types used by the DOC include administrative or disciplinary confinement and protective management. "Administrative confinement" means the temporary removal of an inmate from the general inmate population in order to provide for security and safety until such time as more permanent inmate management processes can be concluded.<sup>15</sup> "Disciplinary confinement" means a form of punishment in which inmates found guilty of committing violations of the DOC rules are confined for specified periods of time to individual cells based upon authorized penalties for prohibited conduct.<sup>16</sup> "Protective management" means a special management status for the protection of inmates from other inmates in an environment as representative of that of the general population as is safely possible.<sup>17</sup>

All inmates, regardless of age, are subject to the same consideration for placement in administrative or disciplinary confinement.<sup>18</sup> These types of confinement may limit conditions and privileges to assist with promoting the security, order, and effective management of the institution, but otherwise the treatment of inmates in confinement is as near to that of the general population as assignment to confinement permits.<sup>19</sup> For protective management, the Rule provides that other privileges may be restricted on a daily case-by-case basis when such restrictions are necessary for the security, order, or effective management of the institution.<sup>20</sup> However, if a youth is housed in a protective management unit they may be subject to more restrictions than a non-youth inmate for their safety and security.<sup>21</sup>

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<sup>15</sup> Fla. Admin. Code R. 33-602.220(1)(a).

<sup>16</sup> Fla. Admin. Code R. 33-602.222(1)(f).

<sup>17</sup> Fla. Admin. Code R. 33-602.221(1)(j). Protective management is not disciplinary in nature and, to the extent possible, all less restrictive avenues to address protection needs must be employed.

<sup>18</sup> The DOC, *2019 Agency Analysis for SB 624*, p. 3 and 4, February 28, 2019 (hereinafter cited as "The DOC SB 624 Agency Analysis (2019)") (on file with the Senate Committee on Criminal Justice). All inmates, regardless of age, are subject to the same penalties stated in Rule 33-601.314 of the Florida Administrative Code related to prohibited conduct and penalties for infractions of such conduct.

<sup>19</sup> The DOC, *SB 624 Agency Analysis (2019)*, p. 3 and 5. *See also* Fla. Admin. Code R. 33-602.220(5); Fla. Admin. Code R. 33-602.221(2)(a) and (4); and Fla. Admin. Code R. 33-602.222(4).

<sup>20</sup> Fla. Admin. Code R. 33-602.221(4)(t). All such restrictions must be documented on a specified form and reported to the ICT. The ICT is authorized to restrict privileges on a continuing basis after a determination that such restrictions are necessary for the security, order or effective management of the institution. The ICT's decision for continuing restriction must also be documented on a specified form.

<sup>21</sup> The DOC SB 624 Agency Analysis (2019), p. 5.

Certain procedures appear to apply consistently across all types of confinement, such as:

- Prior to placing the inmate in confinement, the inmate is given a pre-confinement health assessment or medical evaluation.<sup>22</sup>
- The ability to house inmates in confinement with other inmates, subject to the inmates being interviewed by the housing supervisor to ensure that none of the inmates constitute a threat to each other prior to placing inmates in the same cell.<sup>23</sup>
- The number of inmates housed in an administrative confinement cell must not exceed the number of bunks in the cell.<sup>24</sup>

Inmates in confinement retain certain modified privileges, as mentioned above. For example, such inmates are provided:

- Exercise, which occurs either in the inmate's cell if confined on a 24-hour basis or, if confinement extends beyond a 30-day period, three hours per week of exercise at a minimum out of doors.
- Showers at least three times per week and on days that the inmate works.
- Normal institution meals.<sup>25</sup>
- The same clothing and clothing exchange as is provided to the general inmate population.<sup>26</sup>
- Out of cell time is permitted for regularly scheduled mental health services, unless, within the past four hours, the inmate has displayed hostile, threatening, or other behavior that could present a danger to others.
- Correspondence opportunities which are the same as the general inmate population.
- Telephone privileges for emergency situations, when necessary to ensure the inmate's access to courts, or in any other circumstance when a call is authorized by the warden or duty warden.
- Visits, when authorized by the warden or his or her designated representative.
- Legal visits, unless there is evidence that the visit is a threat to security and order.<sup>27</sup>
- Legal materials in the same manner as in general population as long as security concerns permit.<sup>28, 29</sup>

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<sup>22</sup> See Fla. Admin. Code R. 33-602.220(2)(b) and (c) and Fla. Admin. Code R. 33-602.222(2)(a). An inmate does not have to be given the pre-confinement evaluation if he or she is currently in another confinement status that required a pre-confinement medical assessment. Rule 33-602.221, related to protective management is silent on whether a pre-confinement evaluation is necessary.

<sup>23</sup> Fla. Admin. Code R. 33-602.220(4)(a); Fla. Admin. Code R. 33-602.221(3)(a); and Fla. Admin. Code R. 33-602.222(3).

<sup>24</sup> Fla. Admin. Code R. 33-602.220(4)(a) and (d); Fla. Admin. Code R. 33-602.221(3). Fla. Admin. Code R. 33-602.222(3)(a).

<sup>25</sup> The exception to this is when an item on the normal menu creates a security problem in the confinement unit, in which case, another item of comparable quality is substituted. Utilization of the special management meal is authorized for any inmate in administrative confinement who uses food or food service equipment in a manner that is hazardous to him or herself, staff, or other inmates.

<sup>26</sup> The exception to this is when there is an individual factual basis that exceptions are necessary for the welfare of the inmate or the security of the institution.

<sup>27</sup> The warden or his or her designee must approve all legal visits in advance.

<sup>28</sup> An inmate in confinement may be required to conduct legal business by correspondence rather than a personal visit to the law library if security requirements prevent a personal visit. However, all steps are taken to ensure the inmate is not denied needed access while in administrative confinement.

<sup>29</sup> The DOC SB 624 Agency Analysis (2019), p. 3-5; Fla. Admin. Code R. 33-602.220(5); 33-602.221(4); and 33-602.222(4).

### Administrative Confinement

The Rule provides that an inmate may be placed into administrative confinement for the following reasons:

- Disciplinary charges are pending and the inmate needs to be temporarily removed from the general inmate population in order to provide for security or safety until such time as the disciplinary hearing is held.
- Outside charges are pending against the inmate and the presence of the inmate in the general population would present a danger to the security or order of the institution.
- Pending review of an inmate's request for protection from other inmates.
- An inmate has presented a signed written statement alleging that they are in fear of staff and has provided specific information to support this claim.
- An investigation, evaluation for change of status, or transfer is pending and the presence of the inmate in the general population might interfere with that investigation or present a danger to the inmate, other inmates, or to the security and order of the institution.
- An inmate is received from another institution when classification staff is not available to review the inmate file and classify the inmate into general population.<sup>30</sup>

Staff are required to conduct regular visits to administrative confinement. These visits are to be conducted a minimum of:

- At least every 30 minutes by a correctional officer, but on an irregular schedule.
- Daily by the housing supervisor.
- Daily by the shift supervisor on duty for all shifts except in the case of riot or other institutional emergency.
- Weekly by the Chief of Security, when on duty at the facility, except in the case of riot or other institutional emergency.
- Daily by a clinical health care person.
- Weekly by the chaplain, warden, assistant wardens, a classification officer, and a member of the Institutional Classification Team (ICT).<sup>31</sup>

An inmate is assessed weekly to determine the appropriateness of placement with the goal of returning the inmate to general population as soon as the facts of the case indicate that such return can be done safely.<sup>32</sup> Other assessment requirements that are applicable to inmates who have been confined for more than 30 days include:

- A psychological screening assessment by a mental health professional to determine his or her mental condition.<sup>33</sup>

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<sup>30</sup> The DOC SB 624 Agency Analysis (2019), p. 3; Fla. Admin. Code R. 33-602.220(3).

<sup>31</sup> Fla. Admin. Code R. 33-602.220(4).

<sup>32</sup> Fla. Admin. Code R. 63-602.220(8)(a).

<sup>33</sup> Fla. Admin. Code R. 33.602.220(8)(b). The assessment includes a personal interview if determined necessary by mental health staff. All such assessments are documented in the inmate's mental health record. The psychologist or psychological specialist prepares a report and presents it to the ICT regarding the results of the assessment with recommendations. The ICT then makes the decision to continue administrative confinement. If the decision is to continue confinement, a psychological screening assessment is completed at least every 90-day period.

- An interview by the ICT, who must prepare a formal assessment and evaluation report after each 30 day period in administrative confinement.<sup>34</sup>

### Disciplinary Confinement

Staff are required to conduct regular visits to disciplinary confinement in the same frequency as mentioned above related to administrative confinement with the addition of specific visits as follows:

- As frequently as necessary, but not less than once every 30 days, by a member of the ICT to ensure that the inmate's welfare is properly provided for and to determine the time and method of release.
- As frequently as necessary by the State Classification Officer (SCO) to ensure that the inmate's welfare is provided for and to determine if the inmate should be released if said inmate is housed in disciplinary confinement for longer than 60 consecutive days.<sup>35</sup>

### *County Detention Facilities*

The Florida Model Jail Standards (FMJS) are minimum standards which jails across Florida must meet to ensure the constitutional rights of those incarcerated are upheld. The FMJS Committee is required to develop and continually enforce model standards adopted by the group.<sup>36</sup>

The FMJS defines terms such as administrative confinement and disciplinary confinement, but does not include policies specific to youth regarding such types of confinement. "Administrative confinement" is defined to mean the segregation of an inmate for investigation, protection, or some cause other than disciplinary action.<sup>37</sup> "Disciplinary confinement" is defined to mean the segregation of an inmate for disciplinary reasons.<sup>38</sup>

The FMJS provides that inmates may be placed in administrative confinement for the purpose of ensuring immediate control and supervision when it is determined they constitute a threat to themselves, to others, or to the safety and security of the detention facility. The Rule requires an incident report or disciplinary report to follow the action that prompted placement in administrative confinement. Additionally, the time of release for inmates in disciplinary or administrative confinement must be recorded and filed in the inmate's file.<sup>39</sup>

Each inmate in administrative confinement must receive housing, food, clothing, medical care, exercise, visitation, showers, and other services and privileges comparable to those available to

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<sup>34</sup> Fla. Admin. Code R. 33-602.220(8)(c) and (d). Additionally, the State Classification Office (SCO) reviews the reports provided by mental health and the ICT, and may interview the inmate, to determine the final disposition of the inmate's administrative confinement status.

<sup>35</sup> Fla. Admin. Code R. 33-602.222(7). Fla. Admin. Code R. 33-602.222(1)(l) provides that the SCO refers to the office or office staff at the central office level that is responsible for the review of inmate classification decisions. Duties include approving, disapproving, or modifying ICT recommendations.

<sup>36</sup> The Florida Sheriff's Association (FSA), *Florida Model Jail Standards as of 1/1/2019, What is FMJS?*, available at <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited November 4, 2019) (hereinafter cited as "FMJS Rule").

<sup>37</sup> The FMJS Rule 1.2.

<sup>38</sup> The FMJS Rule 1.17.

<sup>39</sup> The FMJS Rule 13.13.

the general population except as justified by his or her classification status or special needs inmate status.<sup>40, 41</sup> Further, special needs inmates should be checked by medical staff at intervals not exceeding 72 hours and inmates in administrative or disciplinary confinement must bathe twice weekly.<sup>42</sup> The FMJS provides that the Officer-in-Charge or designee must see and talk to each inmate in disciplinary or administrative confinement at least once each morning and once each afternoon and document the inmate's general condition and attitude at each visit.<sup>43</sup>

Additionally, the FMJS requires that an inmate confined in an isolation cell used for medical purposes be examined by a physician or designee within 48 hours following his or her confinement in such area or cell. A physician or designee must determine when the inmate will be returned to the general population. The inmate must remain in isolation if the physician or designee:

- Finds that the inmate presents a serious risk to himself or others; or
- Continues to provide the inmate with follow-up medical care and treatment during the entire time that the inmate remains confined in such area or cell as deemed necessary.<sup>44</sup>

While the FMJS has some policies related to confinement as described above, the only portion that is specific to youth provides that a youth may not be confined in isolation for medical purposes unless the order is made by a medical professional and approved by a medical doctor. In addition, the model rule provides that such youth should be examined by a physician or designee within 8-12 hours of his or her confinement.<sup>45</sup>

It is unclear whether there are consistent rules throughout the Sheriff's entities regarding the use of solitary confinement for administrative or disciplinary purposes with youth. Additionally, it is unclear related to the manner, type, or frequency of placing youth in confinement, if such a practice is used.

### III. Effect of Proposed Changes:

The bill creates s. 945.425, F.S., prohibiting youth in the custody of DOC from being placed in isolation except in certain circumstances. Additionally, the bill amends s. 951.23, F.S., creating an additional rule for the Model Jail Standards that addresses confinement of prisoners by classification on the basis of age and which includes a strict prohibition on the use of solitary confinement for prisoners under the age of 19 years. The bill requires each sheriff and chief correctional officer to adopt the model rule to be in compliance with s. 945.425, F.S., which is created in this bill. The Model Jail Standards apply to county detention facilities.

The bill provides a general prohibition against a youth placed in disciplinary confinement. The bill establishes criteria for placing a youth in emergency or medical confinement and guidelines for monitoring a youth that is placed in either type of confinement. The bill prohibits the use of emergency or medical confinement for the purposes of punishment or discipline. The bill

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<sup>40</sup> *Id.*

<sup>41</sup> The FMJS Rule 5.4 defines "special needs inmates" as "inmates who have been determined by the health authority to be mentally ill, suicidal, alcoholic or drug addicted going through withdrawal and in need of close monitoring."

<sup>42</sup> *Supra*, n. 39.

<sup>43</sup> The FMJS Rule 13.14.

<sup>44</sup> The FMJS Rule 7.23.

<sup>45</sup> The FMJS Rule 21.11(e).



specifies that a youth may be placed in emergency confinement pending a disciplinary hearing so long as such confinement complies with all other provisions of this bill.

The restrictions for placing a youth in isolation created in the bill are the same for youth in the custody of the DOC or county detention facilities.

### **Definitions**

The bill provides definitions relevant to the provisions of the bill, including:

- “Youth,” which means a person in the custody of the DOC who is under the age of 19 years.
- “Disciplinary confinement,” which means the involuntary placement of a youth in an isolated room to separate them from the general inmate population as a disciplinary action for violating DOC rules.
- “Emergency confinement,” which means the involuntary placement of a youth in an isolated room to separate him or her from the general inmate population and to remove him or her from a situation in which he or she presents an immediate and serious danger to the security or safety of himself or herself or others.
- “Medical confinement,” which means the involuntary placement of a youth in an isolated room to separate that youth from the general inmate population to allow him or her to recover from an illness or to prevent the spread of a communicable disease.
- “Mental health clinician,” which means a licensed psychiatrist, psychologist, social worker, mental health counselor, nurse practitioner, or physician assistant.

### **Emergency Confinement**

The bill provides that a youth may be placed in emergency confinement if all of the following conditions are met:

- A nonphysical intervention with the youth would not be effective in preventing harm or danger to the youth or others.
- There is an imminent risk of the youth physically harming himself or herself, staff, or others or the youth is engaged in major property destruction that is likely to compromise the security of the program or jeopardize the safety of the youth or others.
- All less-restrictive means have been exhausted.

The bill also requires facility staff to document the placement of a youth in emergency confinement, including the justification for the placement and a description of the less-restrictive options that the facility staff exercised before the youth was placed in emergency confinement.

The bill requires a mental health clinician to evaluate a youth who is placed in emergency confinement within one hour of such placement to ensure that the confinement is not detrimental to his or her mental or physical health. Subsequent to the initial evaluation, a mental health clinician must conduct a face-to-face evaluation of the youth every two hours thereafter to determine whether the youth should remain in emergency confinement. The mental health clinician must document each evaluation and provide justification for continued placement in emergency confinement.

The bill prohibits a youth from being placed in emergency confinement for more than 24 hours unless an extension is sought and obtained by a mental health clinician. A one-time extension of 24 hours for continued placement may be granted if a mental health clinician determines that release of the youth would imminently threaten the safety of the youth, or others. However, if, at the conclusion of the 48-hour window, a mental health clinician determines that it is not safe for the youth to be released from emergency confinement, the facility staff must prepare to transfer the youth to a facility that is able to provide specialized treatment to address his or her needs. The bill requires a youth placed in emergency confinement to have access to the same meals and drinking water, clothing, medical treatment, contact with parents and legal guardians, and legal assistance as provided to him or her in other custody status placements.

### **Medical Confinement**

The bill provides that a youth may be placed in medical confinement if all of the following conditions are met:

- Isolation from the general inmate population and staff is required to allow the youth to rest and recover from illness or to prevent the spread of a communicable disease.
- A medical professional deems such placement necessary.
- The use of other less-restrictive means would not be sufficient to allow the youth to recover from illness or to prevent the spread of a communicable disease.

The bill prohibits a youth from being placed in medical confinement for a period of time exceeding the time that is necessary for recovering from his or her illness or to prevent the spread of a communicable disease to others in the facility. Additionally, facility staff is required to document the placement of a youth in medical confinement and include a medical professional's justification for the placement.

Subsequent to a youth being placed in medical confinement, a medical professional must evaluate the youth face-to-face at least once every 12 hours to determine whether he or she should remain in medical confinement. The medical professional must document each evaluation and provide justification for continued placement in medical confinement.

### **Implementation**

The bill requires the DOC to review its policies and procedures relating to youth in confinement to determine whether such policies and procedures comply with the bill. Further, the DOC is required to certify compliance with the provisions of this bill in a report that must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2021.

The bill also amends s. 944.09, F.S., authorizing the DOC to create rules to address youth in confinement in compliance with the bill. Lastly, the bill reenacts s. 944.279(1), F.S., for purposes of incorporating changes made in the act.

The bill is effective October 1, 2020.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The bill requires all county detention facilities to comply with newly created standards for placing a youth in confinement. It is possible that the requirements of the bill related to the compliance of monitoring youth placed in confinement and performing periodic evaluations of such youth by specified staff could result in local fund expenditures. However, because any such local funding resulting from the requirements of the bill will directly relate to the detention and imprisonment of youth who have been arrested or convicted of criminal offenses, under article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill requires the DOC and county detention facilities to comply with new standards for the placement of youth in confinement, including the requirement of specific staff to conduct assessments of a youth on regular intervals for the entirety of the time that such youth is in emergency or medical confinement. To the extent that such entities do not have the proper types, or number, of staff to satisfy the requirements of conducting such evaluations, the bill will have an indeterminate positive fiscal impact (i.e. an unquantifiable increase in costs to the entity) due to the increased workload and the need to hire staff to fulfill the requirements of the bill.

The DOC reported for a substantially similar bill during the 2019 Legislative Session that the overall impact is indeterminate, but would likely result in a positive significant fiscal impact (i.e. a significant increase in costs). The DOC further stated that it is unable to

determine how many additional mental health and correctional staff will be necessary to perform the increased volume of checks that would be required by this bill, but that it is anticipated to be significant.<sup>46</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 945.425 of the Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 951.23 and 944.09.

This bill reenacts section 944.279 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>46</sup> The DOC SB 624 Agency Analysis (2019), p. 9.