

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: SPB 7006
INTRODUCER: Criminal Justice Committee
SUBJECT: Corrections
DATE: February 9, 2016 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sumner	Cannon		CJ Submitted as Committee Bill

I. Summary:

SPB 7006:

- Requires the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders which must also include the ethnicity and health status of those elderly offenders;
- Removes the current restriction against assessing victim injury sentencing points against a correctional officer or employee who commits sexual misconduct with an inmate without committing sexual battery;
- Expands the ability of an inmate to get a one-time award of gain-time for educational attainment without violating the requirement for every inmate to serve 85 percent of their court imposed sentence;
- Creates a new felony for Department of Corrections (DOC) employees or employees of a private provider who withhold water, food, and other essential services; and
- Increases the frequency of mental and physical health care surveys conducted by the Correctional Medical Authority at prisons from every three years to every 18 months.

II. Present Situation:

Criminal Justice Estimating Conference

Consensus Estimating Conferences have statutory authority under ss. 216.133 – 216.138, F.S., to forecast economic, demographic, caseload, and revenue information for a variety of governmental planning and budgeting functions. This ensures that the “State meets the constitutional balanced budget requirement.”¹ The forecasts are “primarily used in the development of the constitutionally required Long-Range Financial Outlook, the Governor’s budget recommendations and the General Appropriations Act. Economic and demographic forecasts are also used to support estimates of revenues and demands for state services.”⁴

¹ <http://edr.state.fl.us/Content/conferences/index.cfm>

Specifically, the Criminal Justice Estimating Conference is statutorily tasked under s. 216.136(6), F.S., with developing forecasts of prison admissions and population and of supervised felony offender admissions and population; developing information relating to the number of eligible discharges and the projected number of civil commitments for determining needs for space; and developing information relating to the number of sexual offenders and sexual predators who are required by law to be placed on community control, probation, or conditional release who are subject to electronic monitoring.

Elderly Inmates in Prison

- The majority of elderly inmates in prison on June 30, 2015, were serving time for sex offenses (21.7 percent), murder/manslaughter (21.0 percent), or drug offenses (12.5 percent).
- The 21,620 elderly inmates in prison on June 30, 2014, represented 21.6 percent of the total inmate population.
- 94.4 percent of the elderly inmates in prison were male; 5.6 percent were female.
- 46.1 percent of the elderly inmates in prison had no prior prison commitments.
- On June 30, 2015, the department housed three inmates whose age was 93.²

Though the department does not house or treat inmates based solely on age, the elderly inmates are housed in the following institutions consistent with their custody level and medical status:

- RMC and the South Unit at CFRC house inmates that have intensive long term medical issues. They may not necessarily be elderly;
- Zephyrhills CI houses both inmates who are elderly (age 50 and older) and they also have an intensive medical unit;
- Union CI houses elderly inmates (age 50 and older);
- South Florida South Unit houses elderly inmates (age 59 and older); and
- Lowell CI-Annex has a dormitory designated for female inmates (age 59 and older).³

Increased Costs for Elderly Inmates

Florida Tax Watch in September 2014 reported that the department budget had grown by \$560 million (35 percent) from 2000-2012. The health care cost had grown by \$176 million or 76 percent. The report states that the elderly patients accounted for 49 percent of all hospital in days in 2012. By assuming that hospitalization is a representation of overall prison health care costs, the report states the elderly prison population is responsible for approximately half of the \$408 million in prisoner healthcare costs in 2012.

The DOC reports that the Pew Center on Research estimated that the overall cost of managing an elderly prisoner is \$70,000 annually. This yields a per diem cost of \$192 per inmate compared to the average DOC per diem of \$50 per inmate.⁴

² <http://www.dc.state.fl.us/pub/annual/1314/AnnualReport-1314.pdf>

³ Id.

⁴ Id.

Sentencing for Sexual Misconduct with an Inmate or Supervised Offender

Section 944.35(3)(b)2., F.S., prohibits an employee of the department or a private correctional facility from engaging in sexual misconduct with an inmate or an offender on community supervision. "Sexual misconduct" is defined as the "oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object, but does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee's duty."⁵ Sexual misconduct is prohibited regardless of whether the activity is non-consensual or consensual. However, if the activity is non-consensual, the more serious offense of sexual battery could be charged. The offense is a third degree felony, punishable by imprisonment for a maximum five years and a potential fine not exceeding \$5,000.

Sexual Misconduct with an Inmate or Supervised Offender is ranked by default as a Level 1 offense, which means that four sentencing points are scored. No victim injury points can be assessed for sexual contact or sexual penetration for a violation of s. 944.35(3)(b)2., F.S., and correctional employees can be expected to have no significant prior offenses for which sentencing points would be added. Therefore, it is unlikely that there would be more than 22 total sentencing points. Because s. 944.35(3)(b)2., F.S., is not a forcible felony and the sentencing points total would likely be 22 or lower, s. 775.082(10), F.S., would limit the sentence to a nonprison sanction.

Gain-Time

Gain-time is authorized in s. 944.275, F.S., and is a means by which eligible inmates can earn a reduction in the sentence that was imposed by the court. Current forms of gain-time are based upon the department's assessment that the inmate has behaved satisfactorily and engaged in constructive activities. As such, gain-time is a tool by which the department can encourage good behavior and motivate inmates to participate in programs and work assignments. Inmates who are serving life sentences or certain minimum mandatory sentences are not eligible for gain-time during the portion of time that the mandatory sentences are in effect. Incentive gain-time is awarded to inmates for institutional adjustment, work, and participation in programs.

Meritorious gain-time may be considered for an inmate who commits an outstanding deed. The maximum award is 60 days. Examples of outstanding deeds are saving a life or assisting in recapturing an escaped inmate, or in some manner performing an outstanding service.

Educational Achievement gain-time in the amount of 60 days may be awarded to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program. Inmates whose offense was committed on or after October 1, 1995, are not eligible for this one-time award.

⁵ Section 944.35(3)(b)1., F.S.

Criminal Penalties and Employee Misconduct

Employees of the department who, with malicious intent, commit a battery on an inmate supervised by the department, commit a first degree misdemeanor. Employees who, with malicious intent, commit a battery or inflict cruel or inhuman treatment by neglect causing great bodily harm, permanent disability, or permanent disfigurement to an inmate commit a third degree felony.⁶

Correctional Medical Authority

The Correctional Medical Authority (CMA) was created in July 1986, while the state's prison healthcare system was under the jurisdiction of the federal court as a result of litigation that began in 1972. *Costello v. Wainwright* (430 U.S. 57 (1977)) was a class action suit brought by inmates alleging that their constitutional rights had been violated by inadequate medical care, insufficient staffing, overcrowding, and poor sanitation. The CMA was created as part of the settlement of that case and continues to serve as an independent monitoring body providing oversight of the systems in place to provide health care to inmates in the Department of Corrections. In the final order closing the case, Judge Susan Black noted that creation of the CMA made it possible for the Federal Court to relinquish the prison monitoring and oversight function it had performed for the prior twenty years. In light of "Florida's affirmation of its continued commitment to the CMA's independence" and the support from the Defendant and the State of Florida, the court found that the CMA was capable of "performing an oversight and monitoring function over the department in order to assure continued compliance with the orders entered in this case."

In December 2001, the DOC entered into a settlement agreement in a lawsuit (*Osterback v. Crosby*, 16 Fla. Weekly Fed. D 513 (N.D. Fla. 2003)) involving mentally ill inmates housed in close management. The purpose of close management is to confine inmates separate from the general inmate population for reasons of security and for the order and effective management of the prison system. The Osterback agreement included a stipulation that the CMA monitor provisions of the agreement including clinical, administrative, and security components of the program designed to ensure effective treatment of mental illness in the close management population. The CMA completed its special monitoring responsibilities pending the outcome of the federal court's hearing of the case. The department completed and complied with each component of the close management corrective action plan process. The court entered a final judgment ruling in favor of the department and the case was closed on March 28, 2008. Facilities with close management are now monitored as part of the regular CMA survey process.

The CMA has stated that "Osterback, along with the multitude of lawsuits related to the provision of correctional health care, serve as reminders of the CMA's important role in ensuring proper health and mental health care is provided to incarcerated members of society."⁷

⁶ Section 944.35(3)(a), F.S.

⁷ The first two paragraphs of this section and the designated quote are from the State of Florida, Correctional Medical Authority 2012-2013 Annual Report and Report on Aging Inmates, http://www.flgov.com/wp-content/uploads/pdfs/correctional_medical_authority_2012-2013_annual_report.pdf.

Prior to July 1, 2011, the CMA was housed within the Department of Health (DOH) for administrative purposes. During the 2011 Legislative Session two bills designed to abolish the CMA passed both chambers and were sent to the Governor for approval: Chapter 2011-69, Laws of Florida, (the 2011 General Appropriations Act), which eliminated the funding and positions related to the authority; and HB 5305, which repealed the statutes related to the CMA. The Governor vetoed HB 5305, but not the General Appropriations Act. Therefore, the CMA existed in statute but did not have the funding to operate or perform its duties for the 2011-2012 fiscal year. The CMA was funded again in 2012 and reconstituted as an independent state agency housed within the administrative structure of the Executive Office of the Governor.

The governing board of the authority is composed of nine persons appointed by the Governor subject to confirmation by the Senate. Members of the CMA are not compensated for performance of their duties but they are paid expenses incurred while engaged in the performance of such duties pursuant to s. 112.061, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 216.136, F.S., to require the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders which must also include the ethnicity and health status of those elderly offenders.

Section 2 deletes s. 921.0021(7)(c), F.S., removing the prohibition against assessing victim injury points for sexual penetration or sexual contact in calculating the sentencing score for Sexual Misconduct with an Inmate or Supervised Offender (s. 944.35(3)(b)2., F.S.). By definition, the offense cannot be committed without either sexual contact or sexual penetration. Currently, in almost all cases the sentencing range would be limited to a nonprison sanction because no more than 22 sentencing points would be scored. The amendment significantly changes the sentencing range:

- If there was sexual contact, the offender would have a minimum of 44 sentencing points (four points for the base offense plus 40 victim injury points). A total sentencing score of 44 would allow the judge to impose any sentence from a nonprison sanction to the five year maximum prison sentence. If there are additional sentencing points, a prison sentence would be required unless the judge finds statutory grounds for a departure below the minimum permissible sentence.
- If there was sexual penetration, the offender would have a minimum of 84 sentencing points (four points for the base offense plus 80 victim injury points). A total sentencing score of 84 would permit the judge to impose any sentence from 42 months in prison to the five year maximum prison sentence.

Section 3 amends s. 944.275, F.S., to allow inmates sentenced for an offense committed on or after October 1, 1995, to be eligible for education attainment gain-time in the amount of 60 days. If this bill becomes law, an inmate may receive a one-time award of 60 days of gain-time for receiving a General Education Development (GED) diploma or for earning a certificate for completion of a vocational program. Under current law, inmates whose offense was committed on or after October 1, 1995, are not eligible for this one-time award.

Section 4 creates a new third degree felony for an employee of the department, private provider, or private correctional facility who knowingly, and with the intent to cause an inmate great bodily harm, permanent disability, or permanent disfigurement, withholds food, water, clothing, shelter, supervision, medicine, or medical services from the inmate and causes an inmate to suffer great bodily harm, permanent disability, or permanent disfigurement by such action.

Section 5 amends s. 945.6031, F.S., to change the CMA's frequency of surveys of the physical and mental health care system at each institution from every three years to every 18 months.

Section 6 conforms a cross reference.

Section 7, 8, 9 reenacts ss. 944.023, 435.04, and 921.022, F.S., for the purpose of incorporating amendments made in the bill.

Section 10 provides an effective date of July 1, 2016.

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:

None.

C. Government Sector Impact:

Correctional Medical Authority

The increase in the frequency of CMA surveys from every 4 years to every 18 months has an estimated fiscal impact of approximately \$790,000 for additional personnel and expenses.

Education Gain-time

According to the 2015 projections by the department, approximately 650 inmates will immediately receive the one-time 60 day additional gain-time award for past educational attainments. It is estimated that approximately 60 of these inmates will be immediately released due to this award since this group is within 60 days of release. In terms of future impact on prison bed space, the department estimates 24,000 inmate-days will be saved per year as a result of this bill. In other words, the average daily prison population is projected to be reduced by 66 inmates over the course of the year. Reduction of the average daily population by 66 inmates would reduce costs by approximately \$1.2 million each year at the current inmate per diem cost of \$49.49.

The table below shows the prison bed impact resulting from the passage of the education gain-time provision in the bill. Over the next five years the award of additional gain-time will result in the need for 390 fewer prison beds with a cost avoidance of over \$36 million.

Corrections: Education Attainment Gain-Time					
Fiscal Year	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
		Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2016-2017	-126	(\$1,223,460)	(\$11,876,928)	(\$13,100,388)	(\$13,100,388)
2017-2018	-66	(\$1,912,800)	(\$4,221,492)	(\$6,134,292)	(\$19,234,680)
2018-2019	-66	(\$1,345,278)	(\$4,356,594)	(\$5,701,872)	(\$24,936,552)
2019-2020	-66	(1,377,618)	(\$4,482,918)	(\$5,860,536)	(\$30,797,088)
2020-2021	-66	(\$1,412,004)	(\$4,603,962)	(\$6,015,966)	(\$36,813,054)
Total	-390	(\$7,271,160)	(\$29,541,894)	(\$36,813,054)	(\$36,813,054)

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 27, 2016.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Between May and September, 2015, Governor Rick Scott signed three Executive Orders addressing reforms and initiatives for the Department of Corrections. Executive Order No. 15-102 addresses providing a safe and humane environment for offenders and staff and increased security. Executive Order 15-134 calls for an independent audit of the Department’s operations by the National Institute of Corrections and the Association of State Correctional Administrators,⁸ and creating a partnership between the Department of Corrections, the Department of Juvenile Justice, and the Department of Children and Families to establish best management practices in order to improve mental health services using facilities in Broward County. Executive Order 15-175 is an addendum to Executive Order 15-134 and adds the Department of Health and the Agency for Health Care Administration to the partnership and expands the pilot mental health programs to Alachua and Pinellas Counties.

⁸ The Order establishes two prototype institutions in Lake and Liberty Counties focused on identifying and measuring enhanced operational methods.

The study by the National Institute of Corrections (NIC) was completed pursuant to Executive Order No. 15-134. In the description of the problem the NIC stated it was to provide assistance to DOC by providing an evaluation of staffing adequacy, the application of appropriate relief factors consistent with national practices, and a review of the agency's use of special assignment allocations. The study made nine specific findings related to staffing and hiring practices including discontinuing the use of 12-hour shifts with its most "fervent" recommendation that Florida return to its leadership role in prison staffing protocols and performance.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.136, 921.0021, 944.275, 944.35, 945.6031, and 951.221.

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.