

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7131 PCB CRJS 15-07 Corrections

SPONSOR(S): Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Trujillo; Bracy and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 7020

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Keegan	Cunningham
1) Justice Appropriations Subcommittee	10 Y, 2 N, As CS	McAuliffe	Lloyd
2) Judiciary Committee		Keegan	Havlicak

SUMMARY ANALYSIS

The bill makes a number of changes related to the Department of Corrections (Department) that affect data analysis, sentencing requirements, gain-time, and the duties of the Department. Specifically, the bill:

- Requires the Department to administer its institutional operations through five regions;
- Requires the Criminal Justice Estimating Conference (CJEC) to develop projections of prison admissions and populations for elderly felony offenders;
- Allows assessment of victim injury points against specified correctional employees who commit sexual misconduct with an inmate or offender;
- Allows the Department to award educational gain-time to an inmate who earns a GED or vocational certificate;
- Includes "safety" as part of the Department's responsibilities in operating correctional institutions and facilities, and expands the required responsibilities of the Department's security review committee;
- Expands the scope of security audits, and gives priority to institutions with a high level of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse;
- Requires audits to identify a number of specified areas of safety and security concern;
- Expands the required items in the Department's legislative budget request to include a prioritized summary of critical safety and security deficiencies;
- Requires the Department to maintain a *written* Memorandum of Understanding with the Florida Department of Law Enforcement; and
- Requires the Inspector General and the inspectors who conduct sexual abuse investigations in confinement settings to receive specialized training in conducting such investigations.

The bill also provides that, effective for offenses committed on or after July 1, 2015, a court may sentence an offender to a term in the county jail in the county where the offense was committed for no more than 24 months if the offender meets all of the following criteria:

- The sentence score is more than 44 points, but no more than 60 points, as provided in s. 921.0024, F.S.
- The primary offense is not a forcible felony as defined in s. 776.08, F.S., but excluding any third degree felony violation under chapter 810, F.S. (burglary and trespass).
- The primary offense is not punishable by a minimum mandatory sentence in excess of 24 months.

The Criminal Justice Impact Conference (CJIC) met and determined that this bill will have the net impact of decreasing state prison beds over time. The bill may increase Department expenditures because the bill expands the required duties of the security review committee and creates additional training requirements for specified inspectors, which may increase administrative costs. However, the Department states that these costs can be absorbed within current resources.

The House proposed Fiscal Year 2015-16 General Appropriations Act provides the sum of \$5,845,415 for the incarceration of felons sentenced to a county facility pursuant to the provisions of this bill. The bill also limits the award of contracts to the amount appropriated. An appropriation is also provided to staff and operate two additional regions (see Fiscal Impact).

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

DOC Regional Operations

The organization of the Department of Corrections (Department) is established in accordance with s. 20.315, F.S., which provides that the Department must administer its programs through regions. While the statute does not specify the number of regions, the Department currently administers its programs through three institutional regions.

This bill requires the Department to administer its institutional operations through five regions and authorizes the Secretary to appoint the regional directors. The bill does not affect the administration of the Community Supervision program.

Criminal Justice Estimating Conference

The “consensus estimating conference” was established as a part of the Legislative Branch to provide data, estimates, and other information for the purpose of state budgeting and planning functions.¹ The Criminal Justice Estimating Conference (CJEC) is a subpart of the estimating conference that is primarily responsible for compiling and analyzing data related to the criminal justice system.² Section 216.136(5), F.S., currently requires CJEC to develop official information³ relating to the:

- Criminal justice system, including forecasts of prison admissions and population and of supervised felony offender admissions and population;
- Number of eligible discharges and the projected number of civil commitments for determining space needs pursuant to involuntary civil commitment of sexually violent predators; and
- 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.⁴

Effect of the Bill

The bill amends s. 216.136(5), F.S., to require CJEC to develop projections of prison admissions and populations for elderly felony offenders.

Victim Injury Sentencing Points

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.⁵ A defendant’s sentence is calculated based on points assigned for a variety of factors (e.g., the offense for which the defendant is being sentenced; victim injury, additional offenses that the defendant committed at the time of the primary offense; the defendant’s prior record, etc.). The points are added in order to determine the “lowest permissible sentence” for the offense.⁶

As noted above additional points may be assessed by the court for “victim injury”⁷ directly caused by any offense that is before a court for sentencing.⁸ If there was “sexual contact,” an additional 40 victim injury points may be assessed. If there was “sexual penetration,” an additional 80 victim injury points may be assessed.⁹

¹ s. 216.133, F.S.; Office of Economic & Demographic Research, *Consensus Estimating Conferences*, <http://edr.state.fl.us/Content/conferences/index.cfm> (last visited March 19, 2015).

² s. 216.136, F.S.

³ Section 216.133(2), F.S., defines “official information” as the data, forecasts, estimates, analyses, studies, and other information which the principals of a consensus estimating conference unanimously adopt for purposes of the state planning and budgeting system.

⁴ s. 216.136(5), F.S.

⁵ s. 921.0022, F.S.

⁶ s. 921.0024, F.S.

⁷ Section 921.0021(7)(a), F.S., defines “victim injury” as the physical injury or death suffered by a person as a direct result of the primary offense, or any additional offense, for which an offender is convicted and which is pending before the court for sentencing at the time of the primary offense.

⁸ FLA. R. CRIM. P. 702(d)(5) and 703(d)(9).

⁹ s. 921.0024(1)(a), F.S.

Currently, s. 921.0021(7)(c), F.S., prohibits victim injury points from being assessed for sexual contact or sexual penetration caused by a Department employee or a private correctional facility employee who commits sexual misconduct with an inmate or offender in violation of s. 944.35(3)(b)2., F.S.¹⁰

Effect of the Bill

The bill amends s. 921.0021(7)(c), F.S., so that victim injury points may be assessed for sexual contact or sexual penetration caused by a Department employee or a private correctional facility employee who commits sexual misconduct with an inmate or offender.

Gain-Time

Currently, the Department may grant inmates incentive gain-time for each month in which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities.¹¹ For offenses committed on or after October 1, 1995, the Department is authorized to grant up to 10 days per month of incentive gain-time, but the total amount of incentive gain-time cannot result in release of an inmate before he or she serves a minimum of 85 percent of his or her sentence.¹² Inmates sentenced to life imprisonment or sentenced pursuant to certain statutes¹³ are not entitled to gain-time.¹⁴ When an inmate is found guilty of a violation of the laws of the state or Department rules, gain-time may be forfeited.¹⁵

Section 944.275(4)(d), F.S., specifies that an inmate who earns a GED or vocational certificate may be awarded a one-time grant for 60 days of incentive gain-time (educational gain-time). However, this award may not be granted to inmates who committed their offense on or after October 1, 1995.¹⁶

Effect of the Bill

The bill amends s. 944.275(4)(d), F.S., to allow the Department to award educational gain-time to an inmate who earns a GED or vocational certificate, even if the inmate committed their offense on or after October 1, 1995. Educational gain-time may not be awarded where it would reduce an inmate's tentative release date below the 85 percent minimum service date of the sentence.

The bill prohibits educational gain-time from being awarded if the inmate is or has previously been convicted of specified sexual offenses¹⁷ or a forcible felony offense specified in s. 776.08, F.S., except burglary as specified in s. 810.02(4), F.S.

Safety and Security

Florida law contains a variety of provisions relating to the security of correctional facilities under the Department's control.¹⁸ For example, s. 944.151, F.S., requires the Secretary of the Department (Secretary) to appoint a security review committee, which must:

- Include, at a minimum, the inspector general, the statewide security coordinator, the regional security coordinators, and three wardens and one correctional officer;
- Establish a schedule for physical inspections of the buildings and structures of correctional institutions, giving priority to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a history of escapes or escape attempts;

¹⁰ Section 944.35(3)(b)2., F.S., prohibits any Department employee or employee of a private correctional facility as defined in s. 944.710, F.S., from engaging in sexual misconduct with an inmate or an offender supervised by the department in the community, without committing the crime of sexual battery.

¹¹ s. 944.275(4)(b), F.S.

¹² s. 944.275(4)(b)3., F.S.

¹³ For example, inmates sentenced to a mandatory minimum term of imprisonment as a dangerous sexual felony offender are not eligible to receive gain-time. s. 794.0115(7), F.S.

¹⁴ s. 944.275(4)(b)3., F.S.

¹⁵ s. 944.275(5), F.S.

¹⁶ s. 944.275(4)(b)3. and (d), F.S.

¹⁷ These offenses include ss. 794.011, 794.05, former 796.03, former 796.035, 800.04, 825.1025, 827.03, 827.071, 847.0133, 847.0135, 847.0137, 847.0138, 847.0145, and 985.701(1), F.S.

¹⁸ The majority of these provisions are contained in ch. 944, F.S.

- Conduct or cause to be conducted announced and unannounced security audits of correctional institutions;
- Adopt and enforce minimum standards and policies;
- Make annual written prioritized budget recommendations to the Secretary that identify critical security deficiencies at major correctional institutions;
- Investigate and evaluate the usefulness and dependability of existing security technology at institutions and the new technology available;
- Contract with security experts the committee deems necessary for security audits and consultation; and
- Establish a periodic schedule to conduct announced and unannounced escape simulation drills.¹⁹

The statute also requires the Secretary to produce quarterly reports of escape statistics and to adopt, enforce, and evaluate emergency response procedures for escapes. The Secretary must include in the annual legislative budget request a prioritized summary of critical security repair and renovation needs.²⁰

Effect of the Bill

The bill amends s. 944.151, F.S., to include “safety” as part of the Department’s responsibilities in operating correctional institutions and facilities, and expands the required responsibilities of the security review committee to include:

- Evaluating new safety and security technology;
- Reviewing and discussing current issues impacting correctional facilities; and
- Reviewing and discussing other issues as requested by management.

The bill expands the types of facilities that should be given priority for physical inspections to include institutions with a high level of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse.

The bill expands the scope of announced and unannounced security audits to include safety concerns, and to give priority to institutions with a high level of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse. Audits must also identify a number of specified areas of safety and security concern (e.g., identification of blind spots or areas where staff or inmates may be isolated).

The bill also expands the required items in the Department’s legislative budget request to include a prioritized summary of critical safety and security deficiencies.

Inspector General

Section 944.31, F.S., requires the Department’s Office of Inspector General to be responsible for prison inspection and investigation, internal affairs investigations, and management reviews.²¹ The Inspector General has specific duties relating to inspections and investigations and must ensure compliance with Department rules and regulations.²² The Inspector General must maintain a Memorandum of Understanding (MOU) with the Florida Department of Law Enforcement (FDLE) for notification and investigation of suspicious deaths, organized criminal activity, and any other mutually-agreed upon events.

The Inspector General is authorized to employ inspectors to carry out its inspection and investigation duties, but is not currently required to provide any specific training to the inspectors to prepare them for their duties.²³ The Secretary is also authorized to designate personnel within its office as law

¹⁹ s. 944.151(1), F.S.

²⁰ s. 944.151(2) - (4), F.S.

²¹ s. 944.31, F.S.

²² *Id.*

²³ *Id.*

enforcement officers who are empowered to conduct criminal investigations and make arrests.²⁴ Unlike inspectors, a person designated as a law enforcement officer must be a certified pursuant to s. 943.1395, F.S., which includes law enforcement officer training, and must have a minimum of three years of experience as a Department inspector.²⁵

Effect of the Bill

The bill amends s. 944.31, F.S., to require the Department to maintain a *written* MOU with FDLE, and provide timely copies of the active MOU to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill also requires the Inspector General and the inspectors who conduct sexual abuse investigations in confinement settings to receive specialized training in conducting such investigations. Such training must be provided by the Department and must include, at a minimum:

- Techniques for interviewing sexual abuse victims;
- Proper use of Miranda and Garrity warnings;
- Sexual abuse evidence collection in confinement settings; and
- The criteria and evidence needed to substantiate a case for administrative action or criminal prosecution.

Felons Sentenced to County Jails

Pursuant to s. 775.08(1), F.S., the term “felony” means any criminal offense that is punishable under the laws of Florida, or that would be punishable if committed in Florida, by death or imprisonment in the state penitentiary. “State penitentiary” includes state correctional facilities. A person must be imprisoned in the state penitentiary for each sentence which exceeds one year. All felonies are punishable by incarceration in state prison. A person who receives a sentence of a year or less for a felony serves that sentence in a county jail.

Effect of the Bill

This bill provides that, effective for offenses committed on or after July 1, 2015, a court may sentence an offender to a term in the county jail in the county where the offense was committed for no more than 24 months if the offender meets all of the following criteria:

- The offender’s total sentence points score, as provided in s. 921.0024, F.S., is more than 44 points but no more than 60 points;
- The offender’s primary offense is not a forcible felony as defined in s. 776.08, F.S., but excluding any third degree felony violation under chapter 810, F.S. (burglary and trespass); and
- The offender’s primary offense is not punishable by a minimum mandatory sentence in excess of 24 months.

The Department must enter into a contract with any chief correctional officer of a county that requests to enter a contract to allow inmates to be sentenced to the county jail as provided in this bill. The contract must specifically establish the maximum number of beds and the validated per diem rate. The contract must provide for per diem reimbursement for occupied inmate days based on the contracting county’s most recent annual adult male custody or adult female custody per diem rates not to exceed \$60. All contractual per diem rates must be validated by the Auditor General before payments are made.

A specific appropriation category (“Inmates Sentenced to County Jail”) is created within the House proposed Fiscal Year 2015-16 GAA and appropriated \$5,845,415 to fund the incarceration of offenders sentenced under this bill. In addition to the appropriation, the bill authorizes the department to transfer funds into this specific category in order to fulfill the Department’s contractual per diem obligation which may not exceed the Department’s average male or female total per diem published for the preceding fiscal year. This allows the Department flexibility in the amount they must transfer into this specific category because the number of counties that will request contracts to have offenders sentenced to their jail is unknown. The \$5,845,415 appropriation will fund the remaining contract amount not to

²⁴ *Id.*

²⁵ *Id.*

exceed a per diem of \$60. The maximum appropriation allowable would be the appropriated funds plus any funds that are transferred from other Department categories to fulfill the Department's contractual per diem obligation. Any contract executed as provided in this bill is contingent upon a specific appropriation in the General Appropriations Act (GAA). Contracts must be awarded by DOC on a first-come, first-served basis up to the maximum appropriation.

B. SECTION DIRECTORY:

Section 1. Amends s. 20.315, F.S., relating to Department administrative regions.

Section 2. Amends s. 216.136, F.S., relating to consensus estimating conferences; duties and principals.

Section 3. Amends s. 921.0021, F.S., relating to definitions.

Section 4. Amends s. 944.151, F.S., relating to security of correctional institutions and facilities.

Section 5. Amends s. 944.275, F.S., relating to gain-time.

Section 6. Amends s. 944.31, F.S., relating to inspector general; inspectors; power and duties.

Section 7. Provides an appropriation.

Section 8. Amends s. 947.1405, F.S., relating to conditional release.

Section 9. Creates s. 950.021, F.S., relating to sentencing offenders to county jail.

Section 10. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

This bill requires the Department to administer its institutional operations through five regions instead of three. This bill provides an appropriation of \$1,258,256 in recurring general revenue and \$206,388 in nonrecurring general revenue to fund 10 positions and operational expenses for the two new regions.

The Criminal Justice Impact Conference (CJIC) met March 27, 2015, and determined that the portion of the bill permitting assessment of sentencing points for specified criminal acts may have an insignificant prison bed impact on the Department of Corrections (i.e., an increase of 10 or fewer beds annually. Specifically, the bill permits assessment of victim injury points for acts of sexual penetration or sexual contact in connection with violations of s. 944.35(3)(b)2., F.S. (Sexual Misconduct with an Inmate or Supervised Offender), which may increase the length of affected sentences. By adding these injury points, sexual contact creates a potential sentence range of a non-prison to a five year maximum prison sentence, while sexual penetration would range from 42 months in prison to a maximum sentence of five years. From Fiscal Year 2008-09 through Fiscal Year 2013-14, there were six persons sentenced for this violation, with none receiving a prison sentence.

This bill also amends s. 944.275, F.S., allowing 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

additional days. An inmate may receive a one-time award of 60 days of gain-time for receiving a General Education Development diploma or for earning a certificate for completion of a vocational program, as long as this does not bring the inmate below 85% of his/her sentence served.

CJIC determined that this portion of the bill may result in prisoners leaving department custody earlier than currently projected (126 in Fiscal Year 2015-16).

The bill may increase Department expenditures because the bill expands the required duties of the security review committee and creates additional training requirements for specified inspectors, which may increase administrative costs. However, the Department states that these costs can be absorbed within current resources.

The bill provides the Department must enter into a contract with any chief correctional officer of a county that requests to enter a contract to allow inmates to be sentenced to the county jail as provided in this bill. The contract must specifically establish the maximum number of beds and the validated per diem rate. The contract must provide for per diem reimbursement for occupied inmate days based on the contracting county's most recent annual adult male custody or adult female custody per diem rates not to exceed \$60. All contractual per diem rates must be validated by the Auditor General before payments are made.

The Department's most recent annual adult male custody per diem rate is \$43.03, and the bill limits the total per diem to \$60. Most County detention facilities per diem rates are above the \$60 rate, therefore the state will be responsible for paying that additional amount of the total per diem up to \$60. For instance, if a county per diem is \$60 and the county chooses to contract with the Department for 100 inmates, the total daily cost would be \$6,000 per day; \$4,303 (\$43.03 per inmate per day) of that would be the cost the Department would have expended if those prisoners were sentenced to state prison. The remaining would be paid from the funds provided in the specific appropriation category "Inmates Sentenced to County Jail."

The House proposed Fiscal Year 2015-16 General Appropriations Act provides the sum of \$5,845,415 for the incarceration of felons sentenced to a county facility pursuant to the provisions of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

Counties with excess jail capacity that have a contract with DOC will benefit from the state paying the cost of incarceration.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditures of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 944.09, F.S., authorizes the Department to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement its statutory authority. The bill does not appear to create a need for additional rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 7, 2015, the Justice Appropriations Subcommittee adopted three amendments to the bill and one technical amendment to an amendment and reported the bill favorably as a committee substitute. The amendments:

- Require the Department to administer its institutional operations through five regions;
- Provide an appropriation to fund 10 positions and operational expenses for the two new regions;
- Authorize certain felons to be sentenced to county jails.

This analysis is drafted to the bill as passed by the Justice Appropriations Subcommittee