



---

# **Justice Appropriations Subcommittee**

# **Meeting Packet**

**April 7, 2015  
10:30 a.m. – 12:30 p.m.  
Reed Hall**



# **The Florida House of Representatives**

## **APPROPRIATION COMMITTEE**

Justice Appropriations Subcommittee

**Steve Crisafulli**  
Speaker

**Larry Metz**  
Chair

### **MEETING AGENDA**

Reed Hall  
April 7, 2015

- I.** Meeting Called To Order
- II.** Opening Remarks by Chair
- III.** Consideration of the following bill(s):
  - CS/CS/HB 69 - Missing Persons with Special Needs by Children; Families & Seniors Subcommittee and Criminal Justice Subcommittee; Rep. Porter
  - CS/HB 287 - Controlled Substances by Criminal Justice Subcommittee; Reps. Jacobs, Moraitis
  - HB 7113 - Mental Health Services in the Criminal Justice System by Judiciary Subcommittee; Rep. McBurney
  - HB 7131 - Corrections by Criminal Justice Subcommittee; Rep. Trujillo
- IV.** Closing Remarks
- V.** Meeting Adjourned

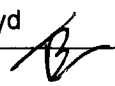


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 69 Missing Persons with Special Needs

**SPONSOR(S):** Children, Families & Seniors Subcommittee; Criminal Justice Subcommittee; Porter and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cox	Cunningham
2) Children, Families & Seniors Subcommittee	10 Y, 0 N, As CS	Langston	Brazzell
3) Justice Appropriations Subcommittee		Schrader	Lloyd
4) Judiciary Committee		JSS	

### SUMMARY ANALYSIS

Elopement, which is defined as leaving an area without supervision or caregiver permission, is prevalent among persons with certain special needs and may expose them to dangerous situations. Individuals with Alzheimer's disease or with autism are two populations at higher risk to elope.

There are a number of personal devices on the market that aid in search and rescue of individuals who elope.

CS/CS/HB 69 creates the "Project Leo" pilot program in Baker, Columbia, Hamilton, and Suwanee Counties to provide personal devices to aid in search-and-rescue for persons with special needs in case of elopement.

The project will be developed and administered by the Center for Autism and Related Disabilities at the University of Florida (CARD UF). The bill directs CARD UF to select participants on a first-come, first-served basis to receive a personal device to aid in search and rescue based on criteria it develops. Criteria must consider, at a minimum, the individual's risk of elopement. The number of participants shall be determined based on available funding. The respective county sheriff's offices will distribute these devices to the project participants.

The bill requires CARD UF to submit preliminary and final reports to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The final report must include recommendations for modifications or continued implementation of the program.

The bill provides that the act is subject to available funding and expires on June 30, 2017.

The bill is effective on July 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Elopement of Individuals with Special Needs

Elopement, which is defined as leaving an area without supervision or caregiver permission, is prevalent among persons with certain special needs and may expose a person to dangerous situations.<sup>1</sup> Wandering and elopement are concerns in particular with children and adults with autism and seniors with Alzheimer's.<sup>2</sup>

##### *Elopement and Wandering of Individuals with Autism*

There are various reasons someone with autism may wander; more often than not, he or she will wander to something of interest (especially bodies of water) or away from something that is bothersome (such as uncomfortable noise or bright lights).<sup>3</sup> Children and adults with autism wander from all types of settings, such as educational, therapeutic, residential, camp programs, outdoor, public places, and home settings.<sup>4</sup>

Approximately half of children with autism have a tendency to wander or elope.<sup>5</sup> Families report that about half of those children who have a tendency to wander succeeded and went missing long enough to cause serious concern. A substantial portion of those children who wander are at risk for bodily harm.<sup>6</sup> Of those children who went missing, 24% were in danger of drowning and 65% were in danger of traffic injury.<sup>7</sup>

##### *Elopement and Wandering of Individuals with Alzheimer's Disease*

Wandering and elopement can also be dangerous for individuals with Alzheimer's disease and other forms of dementia, as the individual may not remember his or her name or address to assist rescuers; they can become disoriented, even in familiar places. An individual with Alzheimer's disease who wanders or elopes is most often looking for someone or something familiar, escaping a source of stress or anxiety, or may be reliving the past.<sup>8</sup>

---

<sup>1</sup> Russell Lang, et al., *Treatment of elopement in individuals with developmental disabilities: A systematic review*, RESEARCH IN DEVELOPMENTAL DISABILITIES 30 (2009) 670–681, [http://scholar.google.com/scholar\\_url?url=http://www.researchgate.net/profile/Christina\\_Fragale/publication/23716164\\_Treatment\\_of\\_elopement\\_in\\_individuals\\_with\\_developmental\\_disabilities\\_a\\_systematic\\_review/links/53e3f99e0cf21cc29fc75814.pdf&hl=en&sa=X&scisig=AAGBfm33xL1MHakTS87tq\\_NEgw\\_oFixP4w&nossl=1&oi=scholar](http://scholar.google.com/scholar_url?url=http://www.researchgate.net/profile/Christina_Fragale/publication/23716164_Treatment_of_elopement_in_individuals_with_developmental_disabilities_a_systematic_review/links/53e3f99e0cf21cc29fc75814.pdf&hl=en&sa=X&scisig=AAGBfm33xL1MHakTS87tq_NEgw_oFixP4w&nossl=1&oi=scholar) (last visited in January 29, 2015).

<sup>2</sup> *Autism & Wandering*, AWAARE COLLABORATION, <http://awaare.nationalautismassociation.org/autism-wandering/> (last visited March 24, 2015).

<sup>3</sup> *Supra*, note 2.

<sup>4</sup> *Id.*

<sup>5</sup> Michelle Diament, *Autism Wandering Poses "Critical Safety Issue," Survey Suggests*, DISABILITY SCOOP, (April 21, 2011), <http://www.disabilityscoop.com/2011/04/21/autism-wandering-survey/12953/> (last visited March 24, 2015).

<sup>6</sup> Connie Anderston, et al., *Occurrence and Family Impact of Elopement in Children With Autism Spectrum Disorders*, PEDIATRICS, (October 8, 2012), available at <http://pediatrics.aappublications.org/content/early/2012/10/02/peds.2012-0762.full.pdf+html> (last visited March 24, 2015).

<sup>7</sup> *Id.*

<sup>8</sup> *Alzheimer's: Understand and control wandering*, MAYO CLINIC, <http://www.mayoclinic.org/healthy-living/caregivers/in-depth/alzheimers/art-20046222> (last visited March 25, 2015).

Statistics indicate that in the U.S., more than 34,000 individuals with Alzheimer's disease wander out of their homes or care facilities each year.<sup>9</sup> Six in 10 people with a some of dementia will wander or elope;<sup>10</sup> additionally, it is estimated that 11-24% of institutionalized dementia patients wander.<sup>11</sup>

### Personal Devices for Individuals with Special Needs

Anti-wandering and GPS tracking devices can be worn as a bracelet, attached to an individual's shoe or belt loop or even sewn into clothing. In the event that an individual goes missing, a caregiver can utilize products and services from the monitoring company for the device to pinpoint the wearer's location. There are a number of anti-wandering and GPS tracking devices on the market that can aid in search and rescue for individuals with special needs who are prone to wander. Two examples are the Protect and Locate (PAL) tracking system through Project Lifesaver and the Amber Alert GPS.

The PAL is a tracking device that is worn as a watch by the individual at risk of wandering and has a companion portable receiver which notifies the caregiver of a wandering event. Through the use of cell ID location and GPS technologies, it provides the location of a wearer accurate to nine feet.<sup>12</sup> If an individual wearing a PAL device wanders outside of a set perimeter, the caregiver's receiver will receive an alert and the caregiver will receive an email alert and send a text message with the date and location of the wandering event.<sup>13</sup> Additionally, a caregiver can press the "find" button on his or her receiver to have the location of the individual and the address displayed on the portable receiver. If the individual wearing the PAL watch/transmitter is lost, he or she can to push the panic button on the PAL watch to have the current address shown on the caregiver's portable receiver.<sup>14</sup> The PAL tracking system costs \$249.99 per unit and requires a monitoring/service plan of \$29.95 per month.<sup>15</sup>

The Amber Alert GPS is a small disk that can be put in an individual's purse or backpack or, with the purchase of an accessory, can be attached to the individual. The Amber Alert GPS syncs with an online tracking portal and mobile application for iPhone, Blackberry, and Droid cellular phones to provide the real-time location of the wearer.<sup>16</sup> It allows the caregiver to designate up to 20 "safe zones" and receive an alert each time a wearer leaves one of the designated safe zones.<sup>17</sup> It also has a two-way voice feature to allow the caregiver and wearer to talk to each other through the device and an SOS button that the wearer can push in the event of an emergency to notify the caregiver and up to ten additional individuals.<sup>18</sup> Amber Alert GPS costs \$179 per unit and requires a monitoring/service plan of \$10-42 per month.<sup>19</sup>

### Center for Autism and Related Disabilities

The Center for Autism and Related Disabilities (CARD) works with families, caregivers and professionals to optimize the potential of people with autism and related disabilities.<sup>20</sup> CARD serves children and adults of all levels of intellectual functioning who have autism, autistic-like disabilities,

---

<sup>9</sup> *Wandering and Elopement Resources*, NATIONAL COUNCIL OF CERTIFIED DEMENTIA PRACTITIONERS, <http://www.nccd.org/wandering.htm> (last visited March 25, 2015).

<sup>10</sup> *Wandering and Getting Lost*, ALZHEIMER'S ASSOCIATION, <http://www.alz.org/care/alzheimers-dementia-wandering.asp> (last visited March 25, 2015).

<sup>11</sup> *Supra*, note 9.

<sup>12</sup> *PAL Info*, PROJECT LIFESAVER, <http://www.projectlifesaver.org/Pal-info/> (last visited March 24, 2015).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *10 Resources And Devices For Wandering Children With Autism*, FRIENDSHIP CIRCLE BLOG, (June 1, 2011; updated 2014) <http://www.friendshipcircle.org/blog/2011/06/01/10-resources-for-wandering-children-with-autism/> (last visited March 24, 2015).

<sup>16</sup> *Amber Alert GPS Smart Locator*, AMBER ALERT GPS, <https://www.amberalertgps.com/products> (last visited March 24, 2015).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Supra*, Note 15.

<sup>20</sup> CENTER FOR AUTISM AND RELATED DISABILITIES UNIVERSITY OF FLORIDA, *About CARD FAQ*, <http://card.ufl.edu/about-card/faq/> (last visited March 24, 2015).

pervasive developmental disorder, dual sensory impairments (deaf-blindness), or a vision or hearing loss with another disabling condition.<sup>21</sup>

There are seven non-residential CARD centers across the state; the Center for Autism and Related Disabilities at the University of Florida (CARD UF) serves fourteen counties in North Central Florida.<sup>22</sup> The counties Served by CARD UF are Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Levy, Marion, Putnam, Suwannee, Union.<sup>23</sup>

### **Effect of Proposed Changes**

CS/CS/HB 69 creates the "Project Leo" pilot program in Baker, Columbia, Hamilton, and Suwannee Counties to provide personal devices to aid search-and-rescue for persons with special needs in case of elopement. The bill does not define the term "special needs."

The project will be developed and administered by CARD UF; the bill directs CARD UF to select participants based on criteria it develops, which must include, at a minimum, the individual's risk of elopement. The participants will be selected on a first-come, first-served basis. The number of participants must be determined based on available funding.

Participation in the project is voluntary. Participants will be provided a personal device to aid in search and rescue that is attachable to clothing or otherwise wearable. The project will fund the monitoring fee for the personal devices. The respective county sheriff's offices will distribute these devices to the project participants.

The bill requires CARD UF to submit preliminary and final reports to the Governor, the Speaker of the House of Representatives, and the President of the Senate. Both reports must include:

- The criteria used to select the participants;
- The number of participants;
- The age of the participants;
- The nature of the participants' special needs;
- The number of participants who elope;
- The amount of time taken to rescue a participant following elopement; and
- The outcome of any rescue attempts.

Additionally, the final report must include recommendations for modifications or continued implementation of the program.

The bill provides that the act is subject to available funding and expires on June 30, 2017.

The bill provides that the act shall take effect July 1, 2015.

### **B. SECTION DIRECTORY:**

**Section 1:** Creates s. 937.041, F.S., relating to the missing persons with special needs pilot program.

**Section 2:** Provides an effective date of July 1, 2015.

---

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> CENTER FOR AUTISM AND RELATED DISABILITIES UNIVERSITY OF FLORIDA, *About CARD*, <http://card.ufl.edu/about-card/> (last visited March 24, 2015).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill is subject to available funding.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Deletes the requirement that FDLE and DCF provide electronic monitoring devices to specified individuals with special needs, as well as the requirement for APD to produce of a list of persons eligible for the electronic monitoring devices; and



- Removes the requirement that FDLE incorporate training on retrieving missing persons with special needs in its law enforcement officer training.

On March 24, 2015, the Children, Families, and Seniors Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Creates the "Project Leo" pilot program in Baker, Columbia, Hamilton, and Suwanee Counties to provide personal devices to aid in search-and-rescue for persons with special needs in case of elopement.
- Provides that the pilot project is to be developed and administered by the Center for Autism and Related Disabilities at the University of Florida and that the respective county sheriff's offices will distribute the personal devices.
- Requires the center to submit preliminary and final reports to the Governor, the Speaker of the House of Representatives, and the President of the Senate.
- Provides that the act is subject to available funding and expires on June 30, 2017.

This bill analysis is drafted to the committee substitute as passed by the Children, Families, and Seniors Subcommittee.

1                   A bill to be entitled  
 2           An act relating to missing persons with special needs;  
 3           creating s. 937.041, F.S.; creating a pilot project in  
 4           specified counties to provide personal devices to aid  
 5           search-and-rescue efforts for persons with special  
 6           needs; providing for administration of the project;  
 7           requiring reports; providing for expiration; providing  
 8           an effective date.

9

10 Be It Enacted by the Legislature of the State of Florida:

11

12           Section 1. Section 937.041, Florida Statutes, is created  
 13 to read:

14           937.041 Missing persons with special needs pilot project.-

15           (1) There is created a pilot project in Baker, Columbia,  
 16 Hamilton, and Suwannee Counties to be known as "Project Leo" to  
 17 provide personal devices to aid search-and-rescue efforts for  
 18 persons with special needs in the case of elopement.

19           (2) Participants for the pilot project shall be selected  
 20 based on criteria developed by the Center for Autism and Related  
 21 Disabilities at the University of Florida. Criteria for  
 22 participation shall include, at a minimum, the person's risk of  
 23 elopement. The qualifying participants shall be selected on a  
 24 first-come, first-served basis by the center to the extent of  
 25 available funding. The project shall be voluntary and free to  
 26 participants.

27       (3) Under the pilot project, personal devices to aid  
 28 search-and-rescue efforts that are attachable to clothing or  
 29 otherwise worn shall be provided by the center to the sheriff's  
 30 offices of the participating counties. The devices shall be  
 31 distributed to project participants by the county sheriff's  
 32 offices in conjunction with the center. The project shall fund  
 33 any costs associated with monitoring the devices.

34       (4) The center shall submit a preliminary report by  
 35 December 1, 2015, and a final report by December 15, 2016, to  
 36 the Governor, the President of the Senate, and the Speaker of  
 37 the House of Representatives describing the implementation and  
 38 operation of the pilot project. At a minimum, the report shall  
 39 include the criteria used to select participants, the number of  
 40 participants, the age of the participants, the nature of the  
 41 participants' special needs, the number of participants who  
 42 elope, the amount of time taken to rescue such participants  
 43 following elopement, and the outcome of any rescue attempts. The  
 44 final report shall also provide recommendations for modification  
 45 or continued implementation of the project.

46       (5) The project shall operate to the extent of available  
 47 funding.

48       (6) This section expires June 30, 2017.

49       Section 2. This act shall take effect July 1, 2015.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Justice Appropriations  
 2 Subcommittee

3 Representative Porter offered the following:

**Amendment**

6 Remove lines 25-47 and insert:

7 available funding within the center's existing resources. The  
 8 project shall be voluntary and free to participants.

9 (3) Under the pilot project, personal devices to aid  
 10 search-and-rescue efforts that are attachable to clothing or  
 11 otherwise worn shall be provided by the center to the sheriff's  
 12 offices of the participating counties. The devices shall be  
 13 distributed to project participants by the county sheriff's  
 14 offices in conjunction with the center. The center shall fund  
 15 any costs associated with monitoring the devices.

16 (4) The center shall submit a preliminary report by  
 17 December 1, 2015, and a final report by December 15, 2016, to

Amendment No. 1


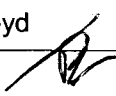
18 | the Governor, the President of the Senate, and the Speaker of  
19 | the House of Representatives describing the implementation and  
20 | operation of the pilot project. At a minimum, the report shall  
21 | include the criteria used to select participants, the number of  
22 | participants, the age of the participants, the nature of the  
23 | participants' special needs, the number of participants who  
24 | elope, the amount of time taken to rescue such participants  
25 | following elopement, and the outcome of any rescue attempts. The  
26 | final report shall also provide recommendations for modification  
27 | or continued implementation of the project.

28 |       (5) The project shall operate to the extent of available  
29 | funding within the center's existing resources.  
30 |  
31 |



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 287 Controlled Substances  
**SPONSOR(S):** Criminal Justice Subcommittee; Jacobs and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 764

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Judiciary Committee			

### SUMMARY ANALYSIS

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the "potential for abuse" of the substance listed therein and whether there is a currently accepted medical use for the substance. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States. Cannabis and heroin are examples of Schedule I drugs.

Mitragyna speciosa korth, also known as "Kratom," is a tropical tree indigenous to Thailand, Malaysia, Myanmar, and other areas of Southeast Asia. The Drug Enforcement Administration (DEA) states that there is no legitimate medical use for Kratom in the United States, but anecdotal reports claim that it provides general pain relief, alleviates the symptoms of PMS and depression, lowers blood pressure, decreases anxiety, provides diarrhea relief, and increases mental acuity.

Kratom abuse is not currently monitored by any national drug abuse surveys and it is not scheduled under the Controlled Substances Act.

The bill directs the Office of the Attorney General (AG), in collaboration with the Department of Children and Families' Substance Abuse and Mental Health Program Office and the Florida Department of Law Enforcement, to gather specified information on mitragyna speciosa korth and make a recommendation on whether the substance should be placed in a controlled substance schedule. The bill requires the AG to report its findings and present them to the President of the Senate and the Speaker of the House of Representatives by December 31, 2015.

According to the AG and the Florida Department of Law Enforcement, the reporting requirements of this bill will have an insignificant impact and can be absorbed within current resources.

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Chapter 893, F.S.**

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act (Controlled Substance Act) and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the “potential for abuse”<sup>1</sup> of the substance listed therein and whether there is a currently accepted medical use for the substance.<sup>2</sup> Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.<sup>3</sup> Cannabis and heroin are examples of Schedule I drugs.<sup>4</sup>

Chapter 893, F.S., contains a variety of provisions criminalizing behavior related to controlled substances. Most of these provisions are found in s. 893.13, F.S., which criminalizes the possession, sale, purchase, manufacture, and delivery of controlled substances. The penalty for violating these provisions depends largely on the schedule in which the substance is listed.<sup>5</sup> Other factors, such as the quantity of controlled substance involved in a crime, can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

Section 395.035(5), F.S., authorizes the AG to request from the Department of Health and the Department of Law Enforcement a medical and scientific evaluation of any new substance that is considered to have potential for abuse similar to or greater than a schedule I substance, to recommend the appropriate classification, if any, of any new substance as a controlled substance.

##### **Kratom**

Kratom, also known as *mitragyna speciosa korth*, is a tropical tree indigenous to Thailand, Malaysia, Myanmar, and other areas of Southeast Asia.<sup>6</sup> Kratom is primarily used orally as a tea or by chewing the leaves,<sup>7</sup> and has been used as an herbal drug in Southeast Asia for decades, most notably as a stimulant or a substitute for opium.<sup>8</sup> It has also been used to manage opioid withdrawal symptoms by chronic opioid users.<sup>9</sup> It has recently become very prevalent in the United States.

The Drug Enforcement Administration (DEA) states that there is no legitimate medical use for Kratom in the United States.<sup>10</sup> However, anecdotal reports claim that it provides general pain relief, alleviates the symptoms of PMS and depression, lowers blood pressure, decreases anxiety, provides diarrhea relief, and increases mental acuity.<sup>11</sup>

---

<sup>1</sup> Section 893.035(3)(a), F.S., defines “potential for abuse” as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: used in amounts that create a hazard to the user’s health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user’s own initiative rather than on the basis of professional medical advice.

<sup>2</sup> See, s. 893.03, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See, e.g., s. 893.13(1)(a) and (c), F.S.

<sup>6</sup> *Kratom*, Drug Enforcement Administration, Office of Divison Control, Drug and Chemical Evaluation section, p. 1 (on file with the Criminal Justice Subcommittee)(hereinafter cited as “DEA Report”).

<sup>7</sup> DEA Report, p. 1 and *What is Kratom and is it Dangerous?*, <http://www.promises.com/articles/abused-drugs/what-is-kratom-and-is-it-dangerous/> (last visited March 19, 2015).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

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

<sup>11</sup> *Kratom under attack in Florida legislature and Palm Beach County*, <http://www.examiner.com/article/kratom-under-attack-florida-legislature-and-palm-beach-county> (last visited March 19, 2015).



Kratom has been described to have both sedative and stimulant effects.<sup>12</sup> At low doses, it is reported to increase alertness, physical energy, talkativeness, and social behavior.<sup>13</sup> At high doses, opiate, sedative, and euphoric effects, such as pain relief and relaxation, are produced.<sup>14</sup> The effects occur within five to ten minutes after ingestion and last for two to five hours.<sup>15</sup> The DEA states that acute side effects include nausea, itching, sweating, dry mouth, constipation, increased urination, and loss of appetite.<sup>16</sup>

There are some reports of deaths associated with Kratom, but often the victims also had other psychiatric drugs in their system or the person was taking a mixture of the drug with a known opioid compound.<sup>17</sup>

Kratom abuse is not currently monitored by any national drug abuse surveys and is not scheduled under the Controlled Substances Act.<sup>18</sup>

### **Recent Efforts to Ban Kratom**

Several Florida counties have attempted to ban Kratom, including Broward, Palm Beach, and Sarasota counties. Sarasota County does currently regulate the distribution of Kratom.<sup>19</sup> Both Palm Beach County and Broward County failed to pass ordinances that banning the substance during recent county commission meetings.<sup>20</sup> Many of the commissioners in both counties stated that there was a need for more research before moving forward on a ban of Kratom.<sup>21</sup>

Kratom has been banned by the U.S. Army and Navy and has been placed on a watch list by DEA.<sup>22</sup>

### Effect of the Bill

The bill directs the Office of the Attorney General (AG), in collaboration with the Department of Children and Families' (DCF) Substance Abuse and Mental Health Program Office and the Florida Department of Law Enforcement (FDLE), to gather specified information on *mitragyna speciosa korth* and make a recommendation on whether the substance should be placed in a controlled substance schedule. The bill requires the AG to consult and gather information from the following:

- Substance abuse treatment providers;
- Local law enforcement agencies;
- Local governments, including those who have banned the substance;
- DCF;
- FDLE;
- Research from medically accepted journals; and
- Medical doctors specializing in addiction medicine or currently researching the effects of *mitragyna speciosa korth*.

The bill requires the AG to collect various types of data on *mitragyna speciosa korth* including:

- Whether the substance has an actual or relative potential for abuse;

---

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

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *What is kratom and is it dangerous?*, <http://www.promises.com/articles/abused-drugs/what-is-kratom-and-is-it-dangerous/> (last visited March 19, 2015).

<sup>18</sup> DEA Report, p. 1.

<sup>19</sup> *Sarasota County bans sale of synthetic marijuana*, <http://www.heraldtribune.com/article/20140212/ARTICLE/140219895/0/search> (last visited March 19, 2015). The Sarasota County ordinance regulates the marketing and packaging of the substance

<sup>20</sup> *Broward opts not to ban kratom – for now*, <http://www.sun-sentinel.com/local/broward/fl-kratom-ban-broward-20141028-story.html> (last visited March 19, 2015).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

- Any scientific evidence of the substance's pharmacological effect;
- The current scientific knowledge related to psychological or physical dependence on the substance;
- The history and current pattern of abuse of the substance, including the scope, duration, and significance of abuse; and
- What, if any, risk the substance poses to the public health.

The bill requires the AG to report its findings and present them to the President of the Senate and the Speaker of the House of Representatives by December 31, 2015.

The bill also provides the following legislative findings:

WHEREAS, the Legislature finds that substance abuse is a major health problem that affects multiple service systems and leads to such profoundly disturbing consequences as serious impairment, chronic addiction, criminal behavior, vehicular casualties, spiraling health care costs, AIDS, and business losses, and significantly affects the culture, socialization, and learning ability of children within our schools and educational systems, and

WHEREAS, the threat of Designer Drugs and Misbranded Consumer Commodities is significant and presents a threat to the public health, safety, and welfare of Floridians, and

WHEREAS, there is no currently accepted medicinal use of mitragyna speciosa korth, and any compound or derivative thereof, also known as "Kratom," and

WHEREAS, in the absence of FDA testing and regulation and with a lack of knowledge regarding the long term health effects and addictive properties of mitragyna speciosa korth, and any compound or derivative thereof, there is a need for further research into this substance.

#### B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of statute directing the Attorney General to conduct a study on mitragyna speciosa korth.

Section 2. Provides an effective date upon becoming law.

## 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:

According to the AG and the FDLE the reporting requirements of this bill will have an insignificant impact and can be absorbed within current resources.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

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

2. Expenditures:

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

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 expenditure 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 395.035(5), F.S., authorizes the AG to request from the Department of Health (DOH) and the Department of Law Enforcement a medical and scientific evaluation of any new substance that is considered to have potential for abuse similar to or greater than a schedule I substance, to recommend the appropriate classification, if any, of any new substance as a controlled substance.

Because of this, DOH would be the more appropriate agency to assist in the reporting requirements of this bill. According to DCF, they are inappropriate agency to assist with the determination as to whether Kratom needs to be scheduled.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Criminal Justice Subcommittee adopted one strike-all amendment and an amendment to the strike-all amendment and reported the bill favorably. The amendments collectively:

- Provide legislative findings;
- Direct the AG to gather specified information on *mitragyna speciosa korth* and make a recommendation on whether the substance should be placed in a controlled substance schedule; and
- Require the AG to report its findings and present them to the President of the Senate and the Speaker of the House of Representatives by December 31, 2015.

This bill analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1                                   A bill to be entitled  
 2           An act relating to controlled substances; requiring  
 3           the Attorney General's office, the Department of  
 4           Children and Families' Substance Abuse and Mental  
 5           Health Program Office, and the Department of Law  
 6           Enforcement to collect data regarding mitragyna  
 7           speciosa korth, also known as "Kratom"; providing data  
 8           collection requirements; requiring a report; providing  
 9           an effective date.

10  
 11           WHEREAS, the Legislature finds that substance abuse is a  
 12           major health problem that affects multiple service systems and  
 13           leads to such profoundly disturbing consequences as serious  
 14           impairment, chronic addiction, criminal behavior, vehicular  
 15           casualties, spiraling health care costs, AIDS, and business  
 16           losses and significantly affects the culture, socialization, and  
 17           learning ability of children within the state's schools and  
 18           educational systems, and

19           WHEREAS, the threat of designer drugs and misbranded  
 20           consumer commodities is significant and presents a threat to the  
 21           public health, safety, and welfare of Floridians, and

22           WHEREAS, there is no currently accepted medicinal use of  
 23           mitragyna speciosa korth, or any compound or derivative thereof,  
 24           also known as "Kratom," and

25           WHEREAS, in the absence of the United States Food and Drug  
 26           Administration's testing and regulation and with a lack of

27 | knowledge regarding the long-term health effects and addictive  
 28 | properties of mitragyna speciosa korth, and any compound or  
 29 | derivative thereof, there is a need for further research into  
 30 | this substance, NOW, THEREFORE,

31 |  
 32 | Be It Enacted by the Legislature of the State of Florida:

33 |  
 34 |       Section 1. (1) The Legislature directs the Attorney  
 35 | General's office, in collaboration with the Department of  
 36 | Children and Families' Substance Abuse and Mental Health Program  
 37 | Office and the Department of Law Enforcement, to gather  
 38 | information on mitragyna speciosa korth, and any compound or  
 39 | derivative thereof, and make a recommendation as to whether the  
 40 | Legislature or the Attorney General should place mitragyna  
 41 | speciosa korth in a controlled substance schedule within this  
 42 | state.

43 |       (a) In making this recommendation, the Attorney General's  
 44 | office shall consult and gather information from the following:

- 45 |       1. Substance abuse treatment providers.
- 46 |       2. Local law enforcement agencies.
- 47 |       3. Local governments, including those that have banned the  
 48 | substance.
- 49 |       4. The Department of Children and Families.
- 50 |       5. The Department of Law Enforcement.
- 51 |       6. Research from medically accepted journals.
- 52 |       7. Medical doctors who specialize in addiction medicine or

53 | who are currently researching the effects of mitragyna speciosa  
 54 | korth.

55 | (b) The Attorney General's office shall gather data on  
 56 | mitragyna speciosa korth and any compound or derivative thereof,  
 57 | including:

58 | 1. Whether the substance has an actual or relative  
 59 | potential for abuse.

60 | 2. Any scientific evidence of the substance's  
 61 | pharmacological effect.

62 | 3. The current scientific knowledge related to  
 63 | psychological or physical dependence on the substance.

64 | 4. The history and current pattern of abuse of the  
 65 | substance, including the scope, duration, and significance of  
 66 | abuse.

67 | 5. What, if any, risk the substance poses to the public  
 68 | health.

69 | (2) The Attorney General's office shall prepare a summary  
 70 | of its findings and present it to the President of the Senate  
 71 | and the Speaker of the House of Representatives by December 31,  
 72 | 2015.

73 | Section 2. This act shall take effect upon becoming a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Justice Appropriations  
 2 Subcommittee  
 3 Representative Jacobs offered the following:  
 4

**Amendment (with title amendment)**

Remove lines 36-49 and insert:

7 of Health and the Department of Law Enforcement, to gather  
 8 information on mitragyna speciosa korth, and any compound or  
 9 derivative thereof, and make a recommendation as to whether the  
 10 Legislature or the Attorney General should place mitragyna  
 11 speciosa korth in a controlled substance schedule within this  
 12 state.

13 (a) In making this recommendation, the Attorney General's  
 14 office shall consult and gather information from the following:

- 15 1. Substance abuse treatment providers.  
 16 2. Local law enforcement agencies.

Amendment No. 1

17 | 3. Local governments, including those that have banned the  
18 | substance.

19 | 4. The Department of Health.  
20 |  
21 |

22 | -----

23 | **T I T L E A M E N D M E N T**

24 | Remove lines 4-5 and insert:

25 | Health, and the Department of Law





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7113    PCB JDC 15-01    Mental Health Services in the Criminal Justice System  
**SPONSOR(S):** Judiciary Committee, McBurney  
**TIED BILLS:**                    **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	17 Y, 0 N	Weber	Havlicak
1) Justice Appropriations Subcommittee		McAuliffe	Lloyd

### SUMMARY ANALYSIS

Florida's mental health courts, veterans' courts, drug courts, and juvenile delinquency pretrial intervention programs provide pretrial or postadjudicatory alternatives for qualifying offenders involved in the criminal justice system. These courts allow offenders to access programs and treatment options that address the underlying cause of the offender's actions.

This bill:

- Expands the definition of veteran, for the purpose of participation in veterans' court, to include those discharged or released under a general discharge;
- Allows counties to create and fund treatment-based mental health court programs;
- Allows qualifying offenders to transfer to a problem-solving court in another county;
- Creates a Forensic Hospital Diversion Pilot Program;
- Allows judges to require offenders to participate in postadjudicatory treatment-based mental health court programs if certain eligibility requirements are met;
- Allows judges to require qualifying veterans to participate in treatment programs as part of their probation or community control;
- Permits a defendant with a mental illness and who meets qualifying criteria to participate in pretrial mental health court program; and
- Allows a juvenile offender with a mental illness to be admitted to a delinquency pretrial program for treatment purposes and allows a judge to dismiss charges against the juvenile upon the juvenile's successful completion of the program.

This bill contains provisions that may have a negative fiscal impact on the Department of Children and Families, the court system, and local governments. See Fiscal Analysis section.

The bill provides an effective date of July 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Mental Health and Substance Use of Offenders in the Criminal Justice System**

On any given day in Florida there are approximately 17,000 prison inmates, 15,000 local jail detainees, and 40,000 individuals under correctional supervision in the community who experience serious mental illness.<sup>1</sup> Every year there are as many as 125,000 adults with mental illnesses or substance use disorders who require immediate treatment that are arrested and booked into Florida jails.<sup>2</sup> 150,000 children and adolescents are referred to Florida's Department of Juvenile Justice every year, and over 70 percent of those children and adolescents have at least one mental health disorder.<sup>3</sup>

From 2002-2010, the population of inmates with mental illnesses or substance use disorders in Florida increased from 8,000 to 17,000 individuals.<sup>4</sup> By 2020, the number of inmates with these types of disorders is expected to reach more than 35,000, with an average annual increase of 1,700 individuals.<sup>5</sup> Between 2002 and 2010 forensic commitments increased from 863 to 1,549 and are projected to reach nearly 2,800 by 2016.<sup>6</sup>

The majority of individuals with serious mental illnesses or substance use disorders who come in contact with the criminal justice system are charged with minor misdemeanor and low-level felony offenses that are often a direct result of their untreated condition.<sup>7</sup> These individuals are typically poor, uninsured, homeless, minorities, and experiencing co-occurring mental health or substance use disorders.<sup>8</sup>

##### **Florida's Forensic Mental Health Programs**

Qualifying offenders<sup>9</sup>, can be involuntarily committed to state civil<sup>10</sup> and forensic<sup>11</sup> treatment facilities by the Department of Children and Families (DCF), under the authority of Chapter 916. Individuals

---

<sup>1</sup> The Florida Senate, *Interim Report 2011-106*, (Oct. 2010). [hereinafter *Senate Interim Report 2011-106*]

<sup>2</sup> *Id.*

<sup>3</sup> Department of Children and Families, *Staff Analysis and Economic Impact, Senate Bill Number 2018* (Mar. 2, 2009). [hereinafter *Staff Analysis, Senate Bill Number 2018*]

<sup>4</sup> *Senate Interim Report 2011-106*.

<sup>5</sup> *Id.* This increase is enough to fill more than 20 correction institutions which essentially equates to one new prison added every year.

*Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Staff Analysis, Senate Bill Number 2018*.

<sup>8</sup> These individuals often have difficulty accessing resources because of lack of knowledge about available services, lack of funds, criminal record stigma, or a lack of capacity to access the services. *State and County Collaboration: Mental Health and the Criminal Justice System*, National Association of Counties, available at

<http://www.oip.usdoj.gov/newsroom/testimony/2009/statecountycollabo.pdf> [hereinafter *State and County Collaboration*]

<sup>9</sup> Chapter 916, F.S., provides the criteria for defendants who are adjudicated incompetent to proceed. The court must find by clear and convincing evidence that the defendant is mentally ill and because of the mental illness:

- The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and that neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being;
- There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person;
- All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings have been judge to be inappropriate; and
- There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and defendant will regain competency to proceed in the reasonably foreseeable future.

committed to the custody of DCF are usually treated at one of the three forensic mental health treatment facilities (Florida State Hospital in Chattahoochee, North Florida Evaluation and Treatment Center in Gainesville, or South Florida Evaluation and Treatment Center in Miami). In 2011, Florida spent more than \$210 million each year on 1,700 beds, serving approximately 3,000 individuals in forensic treatment; the amount spent on those beds alone was one third of all adult mental health dollars and two thirds of all state mental health hospital dollars.<sup>12</sup>

The cost to local governments to house these individuals who are arrested and booked into Florida jails is estimated to be over \$500 million.<sup>13</sup> Another \$600 million is spent each year housing individuals with mental illnesses in state prisons and forensic treatment facilities.<sup>14</sup> It has been projected that the number of state prison beds serving inmates with mental illnesses will more than double from 17,000 to 35,000 by 2020 and will be accompanied with capital and operating costs of more than \$3.6 billion for the new beds alone.<sup>15</sup>

### **Miami-Dade Forensic Alternative Center and Community-Based Mental Health System**

DCF implemented a pilot program, the Miami-Dade Forensic Alternative Center (MD-FAC), in the Eleventh Judicial Circuit in the fall of 2009.<sup>16</sup> The program was established to demonstrate the feasibility of diverting those individuals with mental illness who had been deemed incompetent to proceed to trial from state hospital placement to community-based treatment and competency restoration services.<sup>17</sup>

Between August 2009 and August 2010, a total of 111 individuals were accepted and admitted to the program.<sup>18</sup> As of 2010, 38 individuals either stepped down from forensic commitment or completed the program; of those, 27 remained actively linked to the MD-FAC program and 11 did not.<sup>19</sup> Of the 27 individuals who remained actively linked to the MD-FAC program and the services it provides, 19 individuals did not recidivate.<sup>20</sup> Of those individuals, only one individual was charged with committing a new offense (misdemeanor, petit theft), while 8 were rebooked into jail for non-compliance with conditions of release.<sup>21</sup>

---

<sup>10</sup> A "civil facility" is a mental health facility established within DCF or by contract with DCF to serve individuals committed pursuant to chapter 394, F.S., and those defendants pursuant to chapter 916, F.S., who do not require the security provided in a forensic facility. Section 916.106(4), F.S.

<sup>11</sup> A "forensic facility" is a separate and secure facility established within DCF or an agency to service forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons with retardation or autism and separately housing persons who have been involuntarily committed pursuant to chapter 916, F.S., from nonforensic residents. Section 916.106(10), F.S.

<sup>12</sup> *Senate Interim Report 2011-106*.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* In order to be eligible for admission to MD-FAC, an individual must be charged with a less serious offense (ex. second or third degree felony). Miami-Dade Forensic Alternative Ctr., *Pilot Program Status Report*, (Aug. 2010) (on file with the House Judiciary Comm.).

<sup>18</sup> *Pilot Program Status Report* at 3.

<sup>19</sup> *Id.* at 5-6.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* The individuals who remained linked to MD-FAC services accounted for 11 jail bookings and spent a total of 85 days in jail after stepping down from forensic commitment; in contrast, of the 11 individuals who did not remain linked with the program, 9 were rebooked for a total of 23 books resulting from new offenses and 15 resulting from technical violations. The 9 individuals who recidivated accounted for 1,435 days in jail since stepping down from forensic commitment. *Id.*

As a result of the MD-FAC program:

- The average number of days to restore competency has been reduced, as compared to forensic treatment facilities.<sup>22</sup>
- The burden on local jails has been reduced, as individuals served by MD-FAC are not returned to jail upon restoration of competency.<sup>23</sup>
- Because individuals are not returned to jail, it prevents the individual's symptoms from worsening while incarcerated, possibly requiring readmission to state treatment facilities.<sup>24</sup>
- Individuals access treatment more quickly and efficiently because of the ongoing assistance, support, and monitoring following discharge from inpatient treatment and community re-entry.<sup>25</sup>
- Individuals in the program receive additional services not provided in the state treatment facilities, such as intensive services targeting competency restoration, as well as community-living and re-entry skills.<sup>26</sup>
- It is standard practice at MD-FAC to provide assistance to all individuals in accessing federal entitlement benefits that pay for treatment and housing upon discharge.<sup>27</sup>

### Florida's Veterans' Courts

Veterans' courts are specialty courts that serve veterans and active duty servicemembers who are involved in the criminal justice system and have a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem.<sup>28</sup>

Section 394.47891, F.S., allows each circuit's chief judge to establish veterans' courts, and as of January 2015, Florida has 21 veterans' courts, including 7 courts that receive state general revenue funding. For Fiscal Year 2014-15, 7 counties in Florida received state general revenue funding to

22

<b>Comparison of competency restoration services provided forensic treatment facilities and MD-FAC (average number of days year to date, FY 2009-10):</b>	<b>Forensic facilities</b>	<b>MD-FAC</b>	<b>Difference*</b>
Average days to restore competency (admission date to date court notified as competent)	138.9	99.3	39.6 days (-29%)
Average length of stay for individuals restored to competency (this includes the time it takes for counties to pick up individuals)	157.8	139.6	18.2 days (-12%)

*Id.* “[I]ndividuals enrolled in MD-FAC are not rebooked into the jail following restoration of competency. Instead, they remain at the treatment program where they are re-evaluated by court appointed experts while the treatment team develops a comprehensive transition plan for eventual step-down into a less restrictive community placement. When court hearings are held to determine competency and/or authorize step-down into community placements, individuals are brought directly to court by MD-FAC staff. This not only reduces burdens on the county jail, but eliminates the possibility that individuals will decompensate while incarcerated and require subsequent readmission to state treatment facilities. It also ensures that individuals remain linked to the service provider through the community re-entry and re-integration process.” *Id.*

However, those individuals diverted to MD-FAC have to meet certain criteria, which may result in the less mentally ill or individuals with less serious charges to go to MD-FAC. Additionally, the state hospitals accept individuals from across the mental health spectrum. This variance may be a contributing factor in the above comparison.

<sup>22</sup> MD-FAC program staff provides ongoing assistance, support and monitoring following an individual's discharge from inpatient treatment and community re-entry. Additionally, individuals are less likely to return to state hospitals, emergency rooms, and other crisis settings. *Id.*

<sup>24</sup> Of the 44 individuals referred to MD-FAC between 2009 and 2010, 23% had one or more previous admissions to a state forensic hospital for competency restoration and subsequent readmission to the Miami-Dade County Jail. *Id.*

<sup>25</sup> *Senate Interim Report 2011-106* at 9.

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

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

<sup>28</sup> *State-Funded Veterans' Courts in Florida*, The Florida Legislature's Office of Program Policy Analysis and Government Accountability (Jan. 30, 2015) (on file with the House Judiciary Committee). [hereinafter *State-Funded Veterans' Courts in Florida*]

create or maintain veterans' courts.<sup>29</sup> Because Florida's veterans' courts are statutorily required to serve only servicemembers and veterans who have been discharged from military service under honorable conditions, court participants are generally eligible to receive services through the U.S. Department of Veterans Affairs (VA) and do not require court funding for the majority of services.<sup>30</sup>

Florida's veterans' and servicemember courts use several factors to determine eligibility. First, a veteran must fit into the statutory definition of a veteran or servicemember.<sup>31</sup> Because of the statutory definition of veteran, the veteran must have a military service discharge under honorable conditions. Second, the veteran must have a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem. Third, he or she must have committed a misdemeanor or felony crime that is accepted in veterans' court.<sup>32</sup> If the veteran meets these eligibility requirements and agrees to participate, the case is sent to the state attorney for approval. Depending on availability, participants may be placed in either pretrial or post-adjudication diversion programs. Pretrial diversion is structured such that the charges may be dismissed or reduced when the participant completes the program. The post-adjudication track corresponds with probation supervision and may allow the participant to join in a treatment program instead of being incarcerated.<sup>33</sup>

Individuals who commit a qualifying offense listed in section 948.06(8)(c), F.S., cannot be admitted into veterans' courts.<sup>34</sup> 52 percent of the participants in Florida's state-funded veterans' courts committed felonies, primarily third degree felonies; the most common of which were grand theft, burglary, felony battery, and drug possession.<sup>35</sup> 48 percent of the participants committed first and second degree misdemeanors; the most common of which were battery and driving under the influence.<sup>36</sup>

As of October 1, 2014, the seven state-funded courts had 265 participants and between July 2013 and October 2014, 45 participants graduated from state-funded courts.<sup>37</sup> It generally takes 12 to 18 months to successfully complete veterans' court. The number of graduates is expected to increase over time because of this.<sup>38</sup>

---

<sup>29</sup> Clay, Okaloosa, Pasco, and Pinellas Counties received \$150,000 each/\$600,000 total in Recurring General Revenue, Duval and Orange Counties received \$200,000 each/\$400,000 total in Recurring General Revenue, and Alachua County received \$150,000 total in Recurring General Revenue.

<sup>30</sup> Section 1.01, F.S., defines a veteran as a person who served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the U.S. Department of Veterans Affairs on individuals discharged or released with other than honorable discharges. There are five types of discharge: honorable, general discharge under honorable conditions (general), other than honorable, bad conduct, and dishonorable. *State-Funded Veterans' Courts in Florida*. Typically, veterans who received honorable discharges or general discharges are eligible for VA benefits while veterans who received other than honorable, bad conduct, or dishonorable discharges are not. *Id.*

<sup>31</sup> See *supra* note 30 for the definition of veteran. Section 250.01, F.S., defines a servicemember as any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Force.

<sup>32</sup> Eligibility requirements can be found in *State-Funded Veterans' Courts in Florida* at 2-3. Florida Statutes prohibit individuals charged with certain types of violent crimes from admission into veterans' court. See Section 948.06(8)(c), F.S. Each veterans' court also has the discretion to limit veteran participation based on the type or nature of the alleged crime or crime committed. *State-Funded Veterans' Courts in Florida* at 3.

<sup>33</sup> *State-Funded Veterans' Courts in Florida* at 3.

<sup>34</sup> *Id.* Section 948.06(8)(c) lists over 19 "qualifying offenses" that would preclude an individual's admission into veterans' court.

<sup>35</sup> *State-Funded Veterans' Courts in Florida* at 5. Per s. 775.081, F.S., felonies of the third degree are the lowest degree of felony. Per s. 775.082, F.S., persons convicted of a third degree felony can be sentenced to a term of imprisonment not exceeding 5 years.

<sup>36</sup> *Id.* at 5. Per s. 775.082, F.S., a person who has been convicted of a misdemeanor of the first degree may be sentenced to a term of imprisonment not exceeding one year, and persons convicted of a misdemeanor of the second degree may be sentenced to a term of imprisonment not exceeding 60 days.

<sup>37</sup> *State-Funded Veterans' Courts in Florida* at 3.

<sup>38</sup> *Id.*

## Mental Health Courts

As of October 2014, there were 26 mental health courts operating in 16 counties across the state of Florida.<sup>39</sup> Mental health courts hold offenders accountable while connecting them to the treatment services necessary to address their mental illness.<sup>40</sup> Mental health courts typically share the following goals:

- To improve public safety by reducing criminal recidivism;
- To improve the quality of life of people with mental illnesses and to increase their participation in effective treatment; and
- To reduce court- and corrections-related costs through administrative efficiencies and often by providing an alternative to incarceration.<sup>41</sup>

However, there is no statutory framework which codifies these mental health courts and, as a result, eligibility, program requirements, and other processes differ among the courts.

For example, in order to be eligible to participate in Alachua County's Mental Health Court, a defendant must be diagnosed with a mental illness or developmental disability and be arrested for a misdemeanor or criminal traffic offense.<sup>42</sup> However, in order to be eligible to participate in Nassau County's Mental Health Court, the defendant must have an Axis I mental health diagnosis<sup>43</sup> and have been charged with non-violent misdemeanors.<sup>44</sup> Nassau County's Mental Health Court may also consider third degree felony convictions.<sup>45</sup>

Additionally, anyone can refer a person to the Mental Health Court in Nassau County<sup>46</sup>; whereas only judges, private attorneys, public defenders, state attorneys, or pretrial officers can refer a person to Okaloosa County's Mental Health Court.<sup>47</sup>

## Effects of the Bill

### Section 1

Section 1 amends s. 394.47891, F.S., to include veterans who were discharged or released under a general discharge as eligible veterans for a Military Veterans and Servicemembers Court Program.

---

<sup>39</sup>FLORIDA COURTS, *Mental Health Courts*, <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/mental-health-courts.stml> (last visited Mar. 16, 2015).

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

<sup>41</sup> *Id.*

<sup>42</sup> OFFICE OF THE STATE ATTORNEY EIGHTH JUDICIAL CIRCUIT, *Alachua County Mental Health Court*, <http://sao8.org/Mental%20Health.htm> (last visited Mar. 16, 2015). Those charged with domestic violence, driving under the influence, and sexual offenses are excluded from the program. However, Alachua County does provide certain exemptions for:

- Defendants charged with domestic violence involving parents and children or siblings may be admitted if the court approves;
- Defendants charged with simple battery, if the victim consents; and
- Defendants who violate county court probation with the consent of the county court judge to whom the case is assigned. *Id.*

<sup>43</sup> Axis I is the top-level of the Diagnostic and Statistical Manual of Mental Disorders multiaxial system of diagnosis. *Axis I*, PSY.WEB (May 15, 2014), [http://www.psyweb.com/DSM\\_IV/jsp/Axis\\_I.jsp](http://www.psyweb.com/DSM_IV/jsp/Axis_I.jsp). Axis I diagnoses are the most widely recognized (ex., schizophrenic episode, panic attack, major depressive episode, dementia, eating disorders, mood disorders, etc.). *Id.*

<sup>44</sup> NASSAU COUNTY MENTAL HEALTH COURT, *Eligibility And Referral*, <http://www.ncmhc.org/default.cfm?page=eligibility> (last visited Mar. 16, 2015).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* Nassau County's Mental Health Court website states that anyone can refer a person to that court. Police, corrections staff, attorneys, friends, family members, community behavior health providers, judges, and court staff may do so by contacting the Program Director and indicating that person's case may be eligible. *Id.*

<sup>47</sup> FIRST JUDICIAL CIRCUIT OF FLORIDA, *Mental Health Court*, <http://www.firstjudicialcircuit.org/programs-and-services/mental-health-court> (last visited Mar. 16, 2015).

## Section 2

Section 2 creates s. 394.47892, F.S., which allows each county to fund a treatment-based mental health court program under which defendants in the justice system assessed with a mental illness will be processed respective to the severity of their identified mental illness; however, if a county chooses to fund a treatment-based mental health court program, the county must secure funding from sources other than the state for costs not otherwise assumed by the state.

The bill will require that entry into any pretrial treatment-based mental health court program shall be voluntary and any entry into any postadjudicatory treatment-based mental health court program must be based upon the sentencing court's assessment of:

- The defendant's criminal history;
- The defendant's mental health screening outcome;
- The defendant's amenability to the services of the program;
- The defendant's total sentence points;
- The recommendation of the state attorney and the victim, if any; and
- The defendant's agreement to enter the program.

Section 2 also creates s. 394.47892(5), F.S., which, contingent on annual appropriation by the Legislature, commands each judicial circuit to establish, at a minimum, one coordinator position for the treatment-based mental health court program and establishes the coordinator's duties and responsibilities.

The bill requires each circuit to report sufficient client-level and programmatic data to the Office of State Courts Administrator annually for the purposes of program evaluation. Client-level data includes:

- Primary offenses that resulted in the mental health court referral or sentence;
- Treatment compliance;
- Completion status and reasons for failure to complete;
- Offenses committed during treatment and sanctions imposed, frequency of court appearances; and
- Units of service.

Program level data includes:

- Referral and screening procedures;
- Eligibility criteria;
- Type and duration of treatment offered; and
- Residential treatment resources.

Finally, the bill authorizes the chief judge of each judicial circuit to appoint an advisory committee for the treatment-based mental health court program and sets out who can serve on such a committee.

## Section 3

Section 3 amends s. 910.035, F.S., to include case transfer from one county to another because of the defendant's participation in a problem-solving court.

The bill defines the term problem-solving court as a drug court, military veterans and servicemembers court, mental health court, or a delinquency pretrial intervention court program and allows for a case to be transferred to a county other than that in which the charge arose if the following conditions are met:

- If the person is eligible for participation in a problem-solving court, upon request by the person or a court and if the defendant agrees to the transfer, the case shall be transferred to a county other than that in which the charge arose;
  - The authorized representative of the trial court must consult with the authorized representative of the problem-solving court and both must agree to the transfer;



- If all parties agree, the trial court shall enter a transfer order directing the case transferred to the county that has accepted the defendant into its problem-solving court;
- The appropriate documentation must be provided whether it is pretrial or post-trial admission to a problem-solving court; and
- After the transfer to the problem-solving court takes place, the clerk shall set the matter to hearing, and the court shall ensure the defendant's entry into the problem-solving court.

If the defendant successfully completes the problem-solving court, the case shall be disposed of; if not, the case shall be disposed of within the guidelines of the Criminal Punishment Code.

#### *Section 4*

Section 4 amends the definition of "Court" in s. 916.106, F.S., to include the county court as provided in s. 916.17, F.S.

#### *Section 5*

Currently, only circuit court judges with defendants before them charged with felony offenses may order the defendant to conditional release with an approved plan of providing appropriate outpatient care and treatment in lieu of involuntary commitment for offenders with mental illnesses. Section 5 amends s. 916.17, F.S., to authorize county court judges to order conditional release for this purpose for defendants charged with misdemeanor offenses.

#### *Section 6*

Section 6 creates s. 916.185, F.S., which creates a Forensic Hospital Diversion Pilot Program to serve eligible individuals who have mental illnesses or co-occurring mental illnesses and substance use disorders who are involved in or at risk of entering state forensic mental health treatment facilities, prisons, jails, or state civil mental health treatment facilities. The program is designed to provide competency-restoration and community-reintegration services in either a locked residential treatment facility, when appropriate, or a community-based facility based upon consideration of public safety, the needs of the defendant, and available resources. Additionally, the section instructs DCF to implement the Pilot Program in Escambia County, Hillsborough County, and Dade County that mirrors the MD-FAC.

#### *Section 7*

Section 7 amends s. 948.01, F.S., which allows a court to place a defendant, who committed an offense on or after July 1, 2015, into a postadjudicatory treatment-based mental health court program as a condition of probation or community control if:

- The offense is a nonviolent felony<sup>48</sup>;
- The defendant is amenable to mental health treatment;
- The defendant meets the requirements for mental health courts found in s. 394.47892(4)(a), F.S.<sup>49</sup>; and

<sup>48</sup> The bill defines a "nonviolent felony" as a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08. Defendants charged with resisting an officer with violence under s. 843.01, F.S., battery on a law enforcement officer under s. 784.07, F.S., or aggravated assault may participate in the mental health court program if the court so orders after the victim has been given his or her right to provide testimony or written statement to the court as provided in s. 921.143, F.S.

<sup>49</sup> Entry into any postadjudicatory treatment-based mental health court program as a condition of probation or community control must be based upon the sentencing court's assessment of:

- The defendant's criminal history;
- The defendant's mental health screening outcome;
- The defendant's amenability to the services of the program;

- The defendant agrees to enter the program.

The bill authorizes the Department of Corrections to establish designated mental health probation officers to support individuals under supervision of the mental health court.

### Section 8

Section 8 amends s. 948.06, F.S., which allows a court to order a defendant, whose offense was committed on or after July 1, 2015, to successfully complete a postadjudicatory treatment-based mental health court program or military veterans and servicemembers court program if:

- The offender has violated his or her community control or probation;
- The underlying offense is a nonviolent felony<sup>50</sup>;
- The offender is amenable to the services of postadjudicatory treatment-based mental health court program;
- The offender agreed to participate in the program after the court explains its purpose; and
- The offender is otherwise qualified.<sup>51</sup>

If the offender fails to comply with the terms of the program or the offender's sentence is completed, the case is returned to the sentencing court.

### Section 9

A person who is charged with a felony, other than a felony listed in s. 948.06(8)(c),<sup>52</sup> and who is identified as a veteran under s. 1.01, F.S., is eligible for voluntary admission into a pretrial veterans' treatment intervention program if the veteran or service member suffers from a:

- Military service-related mental illness;
- Traumatic brain injury;
- Substance abuse disorder; or
- Psychological problem.

Section 9 amends s. 948.08, F.S., to include veterans who were discharged or released under a general discharge within the definition of veteran, as persons eligible for voluntary admission into a pretrial veterans' treatment intervention program.

Section 9 amends s. 948.08, F.S., which states that if a person, who is identified as having a mental illness and who has not previously been convicted of a felony, is charged with:

- A nonviolent felony that includes a third degree felony violation of chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.;
- Resisting an officer with violence under s. 843.01, if the law enforcement officer and state attorney consent to the defendant's participation;
- Battery on a law enforcement officer under s. 784.07, if the law enforcement officer and state attorney consent to the defendant's participation; or
- Aggravated assault where the victim and state attorney consent to the defendant's participation

is eligible for voluntary admission into a pretrial mental health court program, subject to approval by the chief judge of the circuit for a period to be determined by the risk and needs assessment of the defendant.

- 
- The defendant's total sentence points;
  - The recommendation of the state attorney and the victim, if any; and
  - The defendant's agreement to enter the program.

<sup>50</sup> See definition of nonviolent felony, *supra* note 48.

<sup>51</sup> See factors to determine qualification, *supra* note 49.

<sup>52</sup> s. 948.06(8)(c) lists over 19 "qualifying offenses" that would preclude a defendant's participation in a pretrial veterans' treatment intervention program.

If, at the end of the program, the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment or order that the charges revert to normal channels for prosecution. If, at the end of the program, the court finds that the defendant has successfully completed the pretrial program, the court shall dismiss the charges.

### *Section 10*

A person who is charged with a misdemeanor, and who is identified as a veteran under s. 1.01, F.S., is eligible for voluntary admission into a pretrial veterans' treatment intervention program if the veteran or service member suffers from a:

- Military service-related mental illness;
- Traumatic brain injury;
- Substance abuse disorder; or
- Psychological problem.

Section 10 amends s. 948.16, F.S., to include veterans who were discharged or released under a general discharge within the definition of veteran, as persons eligible for voluntary admission into a pretrial veterans' treatment intervention program.

The bill also to allows a defendant, who is identified as having a mental illness and who is charged with a misdemeanor, to voluntarily enter a misdemeanor pretrial mental health court program, upon the motion of either party or the court, subject to the approval of the chief judge of the circuit.

Section 10 requires any public or private entity providing a pretrial mental health program to contract with the county or appropriate government entity.

### *Section 11*

Section 11 amends s. 948.21, F.S., to allow a court to impose a condition requiring a probationer or community controllee, whose crime was committed on or after July 1, 2015, who is a veteran (including veterans who were discharged or released under a general discharge) or servicemember, and who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem to participate in a treatment program capable of treating the veteran's mental illness, injury, disorder or problem.

### *Section 12*

Section 12 amends s. 985.345, F.S., which allows a child, who is identified as having a mental illness and who has not previously been adjudicated for a felony, to voluntarily be admitted to a delinquency pretrial mental health court program, upon motion of either party or the court, subject to approval by the chief judge of the circuit, if the child is charged with:

- A misdemeanor;
- A nonviolent felony<sup>53</sup>;
- Resisting an officer with violence, if the law enforcement officer and state attorney consent to the child's participation;
- Battery on a law enforcement officer, if the law enforcement officer and state attorney consent to the child's participation; or
- Aggravated assault, if the victim and state attorney consent to the child's participation.

If, at the end of the program, the court finds that the child has not successfully completed the delinquency pretrial intervention program, the court may order the child to continue if resources and

---

<sup>53</sup> For the purposes of this subsection, the term "nonviolent felony" means a third degree felony violation of chapter 810 or any other felony offense that is not a forcible felony as define din s. 776.08.

funding are available or order the charges revert to normal channels for prosecution. However, if the court finds that the child has successfully completed the delinquency pretrial intervention program, the court may dismiss the charges against the child and the child may subsequently have his or her arrest record and plea of nolo contendere expunged as to the charges.

Section 12 also requires any public or private entity providing a pretrial mental health program under this section to contract with the county or appropriate government entity.

### *Section 13*

Section 13 provides an effective date of July 1, 2015.

## **B. SECTION DIRECTORY:**

Section 1 amends s. 394.47891, F.S., relating to military veterans and servicemembers court programs.

Section 2 creates 394.47892, F.S., relating to treatment-based mental health court programs.

Section 3 amends s. 910.035, F.S., relating to transfer from county for plea and sentence.

Section 4 amends s. 916.106, F.S., relating to definitions.

Section 5 amends s. 916.17, F.S., relating to conditional release.

Section 6 creates s. 916.185, F.S., relating to Forensic Hospital Diversion Pilot Program.

Section 7 amends s. 948.01, F.S., relating to when court may place defendant on probation or into community control.

Section 8 amend 948.06, F.S., relating to violation of probation or community control.

Section 9 amends s. 948.08, F.S., relating to pretrial intervention program.

Section 10 amends s. 948.16, F.S., relating to misdemeanor pretrial substance abuse education and treatment intervention program; misdemeanor pretrial veterans' treatment intervention program.

Section 11 amends s. 948.21, F.S., relating to condition of probation or community control; military servicemembers and veterans.

Section 12 amends s. 985.345, F.S., relating to delinquency pretrial intervention program.

Section 13 provides an effective date of July 1, 2015.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

This bill expands the definition of the term veteran to include veterans who were discharged or released under a general discharge for the purposes of eligibility to participate in problem-solving courts. This may increase the number of veterans eligible to participate in these problem-solving

courts and programs, which may have a negative fiscal impact on existing or new problem-solving courts and/or related programs.

The bill requires DCF to implement the Forensic Hospital Diversion Pilot Program. DCF estimates that it will cost approximately \$4,788,000 to fund all three pilot programs. Because the bill requires the DCF to implement the pilot programs within existing resources, DCF would have to reallocate funding currently used to provide services to adults in community mental health programs and forensic mental health programs. The redirection of \$4,788,000 from existing resources could impact the availability of resources to provide services to adults in both community and forensic mental health programs.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

This bill expands the definition of the term veteran to include veterans who were discharged or released under general discharge for the purposes of eligibility to participate in problem-solving courts. This may increase the number of veterans eligible to participate in these problem-solving courts and programs, which may have a negative fiscal impact on local governments that choose to fund problem-solving courts and/or related programs.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure 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 6 of the bill creates s. 916.185, F.S, authorizing the creation of a Forensic Hospital Diversion Pilot Program. In subsection (6) of this section, DCF is given authority to adopt rules under ss. 120.536(1) and 120.54, F.S., to administer this section.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1                                   A bill to be entitled  
 2       An act relating to mental health services in the  
 3       criminal justice system; amending s. 394.47891, F.S.;  
 4       expanding eligibility for military veterans and  
 5       servicemembers court programs; creating s. 394.47892,  
 6       F.S.; authorizing the creation of treatment-based  
 7       mental health court programs; providing for  
 8       eligibility; providing program requirements; providing  
 9       for an advisory committee; amending s. 910.035, F.S.;  
 10      defining the term "problem-solving court"; authorizing  
 11      a person eligible for participation in a problem-  
 12      solving court to transfer his or her case to another  
 13      county's problem-solving court under certain  
 14      circumstances; making technical changes; amending s.  
 15      916.106, F.S.; redefining the term "court" to include  
 16      county courts in certain circumstances; amending s.  
 17      916.17, F.S.; authorizing a county court to order the  
 18      conditional release of a defendant for the provision  
 19      of outpatient care and treatment; creating s. 916.185,  
 20      F.S.; creating the Forensic Hospital Diversion Pilot  
 21      Program; providing legislative findings and intent;  
 22      providing definitions; requiring the Department of  
 23      Children and Families to implement a Forensic Hospital  
 24      Diversion Pilot Program in specified judicial  
 25      circuits; providing for eligibility for the program;  
 26      providing legislative intent concerning training;

27 authorizing rulemaking; amending ss. 948.01 and  
 28 948.06, F.S.; providing for courts to order certain  
 29 defendants on probation or community control to  
 30 postadjudicatory mental health court programs;  
 31 amending s. 948.08, F.S.; expanding eligibility  
 32 requirements for certain pretrial intervention  
 33 programs; providing for voluntary admission into  
 34 pretrial mental health court program; amending s.  
 35 948.16, F.S.; expanding eligibility of veterans for a  
 36 misdemeanor pretrial veterans' treatment intervention  
 37 program; providing eligibility of misdemeanor  
 38 defendants for a misdemeanor pretrial mental health  
 39 court program; amending s. 948.21, F.S.; expanding  
 40 veterans' eligibility for participating in treatment  
 41 programs while on court-ordered probation or community  
 42 control; amending s. 985.345, F.S.; authorizing  
 43 pretrial mental health court programs for certain  
 44 juvenile offenders; providing for disposition of  
 45 pending charges after completion of the pretrial  
 46 intervention program; providing an effective date.

47  
 48 Be It Enacted by the Legislature of the State of Florida:

49  
 50 Section 1. Section 394.47891, Florida Statutes, is amended  
 51 to read:

52 394.47891 Military veterans and servicemembers court



53 | programs.—The chief judge of each judicial circuit may establish  
 54 | a Military Veterans and Servicemembers Court Program under which  
 55 | veterans, as defined in s. 1.01, including veterans who were  
 56 | discharged or released under a general discharge, and  
 57 | servicemembers, as defined in s. 250.01, who are charged or  
 58 | convicted of a criminal offense and who suffer from a military-  
 59 | related mental illness, traumatic brain injury, substance abuse  
 60 | disorder, or psychological problem can be sentenced in  
 61 | accordance with chapter 921 in a manner that appropriately  
 62 | addresses the severity of the mental illness, traumatic brain  
 63 | injury, substance abuse disorder, or psychological problem  
 64 | through services tailored to the individual needs of the  
 65 | participant. Entry into any Military Veterans and Servicemembers  
 66 | Court Program must be based upon the sentencing court's  
 67 | assessment of the defendant's criminal history, military  
 68 | service, substance abuse treatment needs, mental health  
 69 | treatment needs, amenability to the services of the program, the  
 70 | recommendation of the state attorney and the victim, if any, and  
 71 | the defendant's agreement to enter the program.

72 |       Section 2. Section 394.47892, Florida Statutes, is created  
 73 | to read:

74 |       394.47892 Treatment-based mental health court programs.—  
 75 |       (1) Each county may fund a treatment-based mental health  
 76 | court program under which defendants in the justice system  
 77 | assessed with a mental illness shall be processed in such a  
 78 | manner as to appropriately address the severity of the

79 identified mental illness through treatment services tailored to  
 80 the individual needs of the participant. The Legislature intends  
 81 to encourage the Department of Corrections, the Department of  
 82 Children and Families, the Department of Juvenile Justice, the  
 83 Department of Health, the Department of Law Enforcement, the  
 84 Department of Education, and other such agencies, local  
 85 governments, law enforcement agencies, interested public or  
 86 private entities, and individuals to support the creation and  
 87 establishment of problem-solving court programs. Participation  
 88 in treatment-based mental health court programs does not relieve  
 89 a public or private agency of its responsibility for a child or  
 90 an adult, but enables these agencies to better meet the child's  
 91 or adult's needs through shared responsibility and resources.

92 (2) Treatment-based mental health court programs may  
 93 include pretrial intervention programs as provided in ss.  
 94 948.08, 948.16, and 985.345, postadjudicatory treatment-based  
 95 mental health court programs as provided in ss. 948.01 and  
 96 948.06, and review of the status of compliance or noncompliance  
 97 of sentenced defendants through a treatment-based mental health  
 98 court program.

99 (3) Entry into a pretrial treatment-based mental health  
 100 court program is voluntary.

101 (4)(a) Entry into a postadjudicatory treatment-based  
 102 mental health court program as a condition of probation or  
 103 community control pursuant to s. 948.01 or s. 948.06 must be  
 104 based upon the sentencing court's assessment of the defendant's

105 criminal history, mental health screening outcome, amenability  
 106 to the services of the program, and total sentence points; the  
 107 recommendation of the state attorney and the victim, if any; and  
 108 the defendant's agreement to enter the program.

109 (b) A defendant who is sentenced to a postadjudicatory  
 110 mental health court program and who, while a mental health court  
 111 participant, is the subject of a violation of probation or  
 112 community control under s. 948.06 shall have the violation of  
 113 probation or community control heard by the judge presiding over  
 114 the postadjudicatory mental health court program. After a  
 115 hearing on or admission of the violation, the judge shall  
 116 dispose of any such violation as he or she deems appropriate if  
 117 the resulting sentence or conditions are lawful.

118 (5) (a) Contingent upon an annual appropriation by the  
 119 Legislature, each judicial circuit shall establish, at a  
 120 minimum, one coordinator position for the treatment-based mental  
 121 health court program within the state courts system to  
 122 coordinate the responsibilities of the participating agencies  
 123 and service providers. Each coordinator shall provide direct  
 124 support to the treatment-based mental health court program by  
 125 providing coordination between the multidisciplinary team and  
 126 the judiciary, providing case management, monitoring compliance  
 127 of the participants in the treatment-based mental health court  
 128 program with court requirements, and providing program  
 129 evaluation and accountability.

130 (b) Each circuit shall report sufficient client-level and

131 programmatic data to the Office of the State Courts  
 132 Administrator annually for purposes of program evaluation.  
 133 Client-level data include primary offenses that resulted in the  
 134 mental health court referral or sentence, treatment compliance,  
 135 completion status and reasons for failure to complete, offenses  
 136 committed during treatment and the sanctions imposed, frequency  
 137 of court appearances, and units of service. Programmatic data  
 138 include referral and screening procedures, eligibility criteria,  
 139 type and duration of treatment offered, and residential  
 140 treatment resources.

141 (6) If a county chooses to fund a treatment-based mental  
 142 health court program, the county must secure funding from  
 143 sources other than the state for those costs not otherwise  
 144 assumed by the state pursuant to s. 29.004. However, this  
 145 subsection does not preclude counties from using funds for  
 146 treatment and other services provided through state executive  
 147 branch agencies. Counties may provide, by interlocal agreement,  
 148 for the collective funding of these programs.

149 (7) The chief judge of each judicial circuit may appoint  
 150 an advisory committee for the treatment-based mental health  
 151 court program. The committee shall be composed of the chief  
 152 judge, or his or her designee, who shall serve as chair; the  
 153 judge of the treatment-based mental health court program, if not  
 154 otherwise designated by the chief judge as his or her designee;  
 155 the state attorney, or his or her designee; the public defender,  
 156 or his or her designee; the treatment-based mental health court

157 program coordinators; community representatives; treatment  
 158 representatives; and any other persons that the chair deems  
 159 appropriate.

160 Section 3. Subsection (5) of section 910.035, Florida  
 161 Statutes, is amended to read:

162 910.035 Transfer from county for plea, ~~and~~ sentence, or  
 163 participation in a problem-solving court.-

164 (5) PROBLEM-SOLVING COURTS.-

165 (a) As used in this subsection, the term "problem-solving  
 166 court" means a drug court pursuant to s. 948.01, s. 948.06, s.  
 167 948.08, s. 948.16, or s. 948.20; a military veterans and  
 168 servicemembers court pursuant to s. 394.47891, s. 948.08, s.  
 169 948.16, or s. 948.21; a mental health court pursuant to s.  
 170 394.47892, s. 948.01, s. 948.06, s. 948.08, or s. 948.16; or a  
 171 delinquency pretrial intervention court program pursuant to s.  
 172 985.345.

173 (b) Any person eligible for participation in a problem-  
 174 solving drug court shall, upon request by the person or a court,  
 175 ~~treatment program pursuant to s. 948.08(6) may be eligible to~~  
 176 have the case transferred to a county other than that in which  
 177 the charge arose if the person agrees to the transfer and the  
 178 ~~drug court program agrees and if the following conditions are~~  
 179 ~~met:~~

180 (a) the authorized representative of the trial drug court  
 181 consults program of the county requesting to transfer the case  
 182 ~~shall consult~~ with the authorized representative of the problem-

183 solving drug court program in the county to which transfer is  
 184 desired, and both representatives agree to the transfer.

185 (c) ~~(b)~~ If all parties agree to the transfer as required by  
 186 paragraph (b), approval for transfer is received from all  
 187 parties, the trial court shall ~~accept a plea of nolo contendere~~  
 188 ~~and~~ enter a transfer order directing the clerk to transfer the  
 189 case to the county that ~~which~~ has accepted the defendant into  
 190 its problem-solving drug court program.

191 (d)1. ~~(e)~~ When transferring a pretrial problem-solving  
 192 court case, the transfer order shall include a copy of the  
 193 probable cause affidavit; any charging documents in the case;  
 194 all reports, witness statements, test results, evidence lists,  
 195 and other documents in the case; the defendant's mailing address  
 196 and phone number; and the defendant's written consent to abide  
 197 by the rules and procedures of the receiving county's problem-  
 198 solving drug court program.

199 2. When transferring a postadjudicatory problem-solving  
 200 court case, the transfer order shall include a copy of the  
 201 charging documents in the case; the final disposition; all  
 202 reports, test results, and other documents in the case; the  
 203 defendant's mailing address and telephone number; and the  
 204 defendant's written consent to abide by the rules and procedures  
 205 of the receiving county's problem-solving court.

206 (e) ~~(d)~~ After the transfer takes place, the clerk shall set  
 207 the matter for a hearing before the problem-solving drug court  
 208 to program judge and ~~the court shall~~ ensure the defendant's

209 entry into the problem-solving ~~drug~~ court ~~program~~.

210 ~~(f)(e)~~ Upon successful completion of the problem-solving  
 211 ~~drug~~ court program, the jurisdiction to which the case has been  
 212 transferred shall dispose of the case ~~pursuant to s. 948.08(6)~~.  
 213 If the defendant does not complete the problem-solving ~~drug~~  
 214 court program successfully, the jurisdiction to which the case  
 215 has been transferred shall dispose of the case within the  
 216 guidelines of the Criminal Punishment Code.

217 Section 4. Subsection (5) of section 916.106, Florida  
 218 Statutes, is amended to read:

219 916.106 Definitions.—For the purposes of this chapter, the  
 220 term:

221 (5) "Court" means the circuit court and a county court  
 222 ordering the conditional release of a defendant as provided in  
 223 s. 916.17.

224 Section 5. Subsection (1) of section 916.17, Florida  
 225 Statutes, is amended to read:

226 916.17 Conditional release.—

227 (1) Except for an inmate currently serving a prison  
 228 sentence, the committing court may order a conditional release  
 229 of any defendant in lieu of an involuntary commitment to a  
 230 facility pursuant to s. 916.13 or s. 916.15 based upon an  
 231 approved plan for providing appropriate outpatient care and  
 232 treatment. A county court may order the conditional release of a  
 233 defendant for purposes of the provision of outpatient care and  
 234 treatment only. Upon a recommendation that outpatient treatment

235 of the defendant is appropriate, a written plan for outpatient  
 236 treatment, including recommendations from qualified  
 237 professionals, must be filed with the court, with copies to all  
 238 parties. Such a plan may also be submitted by the defendant and  
 239 filed with the court with copies to all parties. The plan shall  
 240 include:

241 (a) Special provisions for residential care or adequate  
 242 supervision of the defendant.

243 (b) Provisions for outpatient mental health services.

244 (c) If appropriate, recommendations for auxiliary services  
 245 such as vocational training, educational services, or special  
 246 medical care.

247

248 In its order of conditional release, the court shall specify the  
 249 conditions of release based upon the release plan and shall  
 250 direct the appropriate agencies or persons to submit periodic  
 251 reports to the court regarding the defendant's compliance with  
 252 the conditions of the release and progress in treatment, with  
 253 copies to all parties.

254 Section 6. Section 916.185, Florida Statutes, is created  
 255 to read:

256 916.185 Forensic Hospital Diversion Pilot Program.—

257 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds  
 258 that many jail inmates who have serious mental illnesses and who  
 259 are committed to state forensic mental health treatment  
 260 facilities for restoration of competency to proceed could be



261 served more effectively and at less cost in community-based  
 262 alternative programs. The Legislature further finds that many  
 263 people who have serious mental illnesses and who have been  
 264 discharged from state forensic mental health treatment  
 265 facilities could avoid returning to the criminal justice and  
 266 forensic mental health systems if they received specialized  
 267 treatment in the community. Therefore, it is the intent of the  
 268 Legislature to create the Forensic Hospital Diversion Pilot  
 269 Program to serve offenders who have mental illnesses or co-  
 270 occurring mental illnesses and substance use disorders and who  
 271 are involved in or at risk of entering state forensic mental  
 272 health treatment facilities, prisons, jails, or state civil  
 273 mental health treatment facilities.

274 (2) DEFINITIONS.—As used in this section, the term:

275 (a) "Best practices" means treatment services that  
 276 incorporate the most effective and acceptable interventions  
 277 available in the care and treatment of offenders who are  
 278 diagnosed as having mental illnesses or co-occurring mental  
 279 illnesses and substance use disorders.

280 (b) "Community forensic system" means the community mental  
 281 health and substance use forensic treatment system, including  
 282 the comprehensive set of services and supports provided to  
 283 offenders involved in or at risk of becoming involved in the  
 284 criminal justice system.

285 (c) "Evidence-based practices" means interventions and  
 286 strategies that, based on the best available empirical research,

287 demonstrate effective and efficient outcomes in the care and  
288 treatment of offenders who are diagnosed as having mental  
289 illnesses or co-occurring mental illnesses and substance use  
290 disorders.

291 (3) CREATION.—There is created a Forensic Hospital  
292 Diversion Pilot Program to provide competency-restoration and  
293 community-reintegration services in either a locked residential  
294 treatment facility when appropriate or a community-based  
295 facility based on considerations of public safety, the needs of  
296 the individual, and available resources.

297 (a) The department shall implement a Forensic Hospital  
298 Diversion Pilot Program modeled after the Miami-Dade Forensic  
299 Alternative Center, taking into account local needs and  
300 resources, in Escambia County, in conjunction with the First  
301 Judicial Circuit in Escambia County; in Hillsborough County, in  
302 conjunction with the Thirteenth Judicial Circuit in Hillsborough  
303 County; and in Miami-Dade County, in conjunction with the  
304 Eleventh Judicial Circuit in Miami-Dade County.

305 (b) In creating and implementing the program, the  
306 department shall include a comprehensive continuum of care and  
307 services that use evidence-based practices and best practices to  
308 treat offenders who have mental health and co-occurring  
309 substance use disorders.

310 (c) The department and the corresponding judicial circuits  
311 shall implement this section within available resources. The  
312 department may reallocate resources from forensic mental health

313 programs or other adult mental health programs serving offenders  
 314 involved in the criminal justice system.

315 (4) ELIGIBILITY.—Participation in the Forensic Hospital  
 316 Diversion Pilot Program is limited to offenders who:

317 (a) Are 18 years of age or older.

318 (b) Are charged with a felony of the second degree or a  
 319 felony of the third degree.

320 (c) Do not have a significant history of violent criminal  
 321 offenses.

322 (d) Are adjudicated incompetent to proceed to trial or not  
 323 guilty by reason of insanity pursuant to this part.

324 (e) Meet public safety and treatment criteria established  
 325 by the department for placement in a community setting.

326 (f) Otherwise would be admitted to a state mental health  
 327 treatment facility.

328 (5) TRAINING.—The Legislature encourages the Florida  
 329 Supreme Court, in consultation and cooperation with the Florida  
 330 Supreme Court Task Force on Substance Abuse and Mental Health  
 331 Issues in the Courts, to develop educational training for judges  
 332 in the pilot program areas which focuses on the community  
 333 forensic system.

334 (6) RULEMAKING.—The department may adopt rules to  
 335 administer this section.

336 Section 7. Subsection (8) is added to section 948.01,  
 337 Florida Statutes, to read:

338 948.01 When court may place defendant on probation or into

339 community control.-

340 (8)(a) Notwithstanding s. 921.0024 and effective for  
 341 offenses committed on or after July 1, 2015, the sentencing  
 342 court may place the defendant into a postadjudicatory treatment-  
 343 based mental health court program if the offense is a nonviolent  
 344 felony, the defendant is amenable to mental health treatment,  
 345 including taking prescribed medications, and the defendant is  
 346 otherwise qualified under s. 394.47892(4). The satisfactory  
 347 completion of the program must be a condition of the defendant's  
 348 probation or community control. As used in this subsection, the  
 349 term "nonviolent felony" means a third degree felony violation  
 350 under chapter 810 or any other felony offense that is not a  
 351 forcible felony as defined in s. 776.08. Defendants charged with  
 352 resisting an officer with violence under s. 843.01, battery on a  
 353 law enforcement officer under s. 784.07, or aggravated assault  
 354 may participate in the mental health court program if the court  
 355 so orders after the victim is given his or her right to provide  
 356 testimony or written statement to the court as provided in s.  
 357 921.143.

358 (b) The defendant must be fully advised of the purpose of  
 359 the program and the defendant must agree to enter the program.  
 360 The original sentencing court shall relinquish jurisdiction of  
 361 the defendant's case to the postadjudicatory treatment-based  
 362 mental health court program until the defendant is no longer  
 363 active in the program, the case is returned to the sentencing  
 364 court due to the defendant's termination from the program for

365 failure to comply with the terms thereof, or the defendant's  
 366 sentence is completed.

367 (c) The Department of Corrections may establish designated  
 368 mental health probation officers to support individuals under  
 369 supervision of the mental health court.

370 Section 8. Paragraph (j) is added to subsection (2) of  
 371 section 948.06, Florida Statutes, to read:

372 948.06 Violation of probation or community control;  
 373 revocation; modification; continuance; failure to pay  
 374 restitution or cost of supervision.-

375 (2)

376 (j)1. Notwithstanding s. 921.0024 and effective for  
 377 offenses committed on or after July 1, 2015, the court may order  
 378 the offender to successfully complete a postadjudicatory  
 379 treatment-based mental health court program under s. 394.47892  
 380 or a military veterans and servicemembers court program under s.  
 381 394.47891 if:

382 a. The court finds or the offender admits that the  
 383 offender has violated his or her community control or probation.

384 b. The underlying offense is a nonviolent felony. As used  
 385 in this subsection, the term "nonviolent felony" means a third  
 386 degree felony violation under chapter 810 or any other felony  
 387 offense that is not a forcible felony as defined in s. 776.08.  
 388 Offenders charged with resisting an officer with violence under  
 389 s. 843.01, battery on a law enforcement officer under s. 784.07,  
 390 or aggravated assault may participate in the mental health court

391 program if the court so orders after the victim is given his or  
 392 her right to provide testimony or written statement to the court  
 393 as provided in s. 921.143.

394 c. The court determines that the offender is amenable to  
 395 the services of a postadjudicatory treatment-based mental health  
 396 court program, including taking prescribed medications, or a  
 397 military veterans and servicemembers court program.

398 d. The court explains the purpose of the program to the  
 399 offender and the offender agrees to participate.

400 e. The offender is otherwise qualified to participate in a  
 401 postadjudicatory treatment-based mental health court program  
 402 under s. 394.47892(4) or a military veterans and servicemembers  
 403 court program under s. 394.47891.

404 2. After the court orders the modification of community  
 405 control or probation, the original sentencing court shall  
 406 relinquish jurisdiction of the offender's case to the  
 407 postadjudicatory treatment-based mental health court program  
 408 until the offender is no longer active in the program, the case  
 409 is returned to the sentencing court due to the offender's  
 410 termination from the program for failure to comply with the  
 411 terms thereof, or the offender's sentence is completed.

412 Section 9. Subsection (8) of section 948.08, Florida  
 413 Statutes, is renumbered as subsection (9), paragraph (a) of  
 414 subsection (7) is amended, and a new subsection (8) is added to  
 415 that section, to read:

416 948.08 Pretrial intervention program.—

417 (7)(a) Notwithstanding any provision of this section, a  
 418 person who is charged with a felony, other than a felony listed  
 419 in s. 948.06(8)(c), and identified as a veteran, as defined in  
 420 s. 1.01, including veterans who were discharged or released  
 421 under a general discharge, or servicemember, as defined in s.  
 422 250.01, who suffers from a military service-related mental  
 423 illness, traumatic brain injury, substance abuse disorder, or  
 424 psychological problem, is eligible for voluntary admission into  
 425 a pretrial veterans' treatment intervention program approved by  
 426 the chief judge of the circuit, upon motion of either party or  
 427 the court's own motion, except:

428 1. If a defendant was previously offered admission to a  
 429 pretrial veterans' treatment intervention program at any time  
 430 before trial and the defendant rejected that offer on the  
 431 record, the court may deny the defendant's admission to such a  
 432 program.

433 2. If a defendant previously entered a court-ordered  
 434 veterans' treatment program, the court may deny the defendant's  
 435 admission into the pretrial veterans' treatment program.

436 (8)(a) Notwithstanding any provision of this section, a  
 437 defendant identified as having a mental illness and who has not  
 438 been convicted of a felony and is charged with:

439 1. A nonviolent felony that includes a third degree felony  
 440 violation of chapter 810 or any other felony offense that is not  
 441 a forcible felony as defined in s. 776.08;

442 2. Resisting an officer with violence under s. 843.01, if

HB 7113

2015

443 the law enforcement officer and state attorney consent to the  
444 defendant's participation;

445 3. Battery on a law enforcement officer under s. 784.07,  
446 if the law enforcement officer and state attorney consent to the  
447 defendant's participation; or

448 4. Aggravated assault where the victim and state attorney  
449 consent to the defendant's participation,

450  
451 is eligible for voluntary admission into a pretrial mental  
452 health court program, established pursuant to s. 394.47892, and  
453 approved by the chief judge of the circuit, for a period to be  
454 determined by the risk and needs assessment of the defendant,  
455 upon motion of either party or the court's own motion.

456 (b) At the end of the pretrial intervention period, the  
457 court shall consider the recommendation of the treatment  
458 provider and the recommendation of the state attorney as to  
459 disposition of the pending charges. The court shall determine,  
460 by written finding, whether the defendant has successfully  
461 completed the pretrial intervention program. If the court finds  
462 that the defendant has not successfully completed the pretrial  
463 intervention program, the court may order the person to continue  
464 in education and treatment, which may include a mental health  
465 program offered by a licensed service provider, as defined in s.  
466 394.455, or order that the charges revert to normal channels for  
467 prosecution. The court shall dismiss the charges upon a finding  
468 that the defendant has successfully completed the pretrial



469 intervention program.

470 Section 10. Subsections (3) and (4) of section 948.16,  
 471 Florida Statutes, are renumbered as subsections (4) and (5),  
 472 respectively, paragraph (a) of subsection (2) and present  
 473 subsection (4) are amended, and a new subsection (3) is added to  
 474 that section, to read:

475 948.16 Misdemeanor pretrial substance abuse education and  
 476 treatment intervention program; misdemeanor pretrial veterans'  
 477 treatment intervention program; misdemeanor pretrial mental  
 478 health court program.-

479 (2) (a) A veteran, as defined in s. 1.01, including  
 480 veterans who were discharged or released under a general  
 481 discharge, or servicemember, as defined in s. 250.01, who  
 482 suffers from a military service-related mental illness,  
 483 traumatic brain injury, substance abuse disorder, or  
 484 psychological problem, and who is charged with a misdemeanor is  
 485 eligible for voluntary admission into a misdemeanor pretrial  
 486 veterans' treatment intervention program approved by the chief  
 487 judge of the circuit, for a period based on the program's  
 488 requirements and the treatment plan for the offender, upon  
 489 motion of either party or the court's own motion. However, the  
 490 court may deny the defendant admission into a misdemeanor  
 491 pretrial veterans' treatment intervention program if the  
 492 defendant has previously entered a court-ordered veterans'  
 493 treatment program.

494 (3) A defendant who is charged with a misdemeanor and

495 identified as having a mental illness is eligible for voluntary  
 496 admission into a misdemeanor pretrial mental health court  
 497 program established pursuant to s. 394.47892, approved by the  
 498 chief judge of the circuit, for a period to be determined by the  
 499 risk and needs assessment of the defendant, upon motion of  
 500 either party or the court's own motion.

501 (5)-(4) Any public or private entity providing a pretrial  
 502 substance abuse education and treatment program or mental health  
 503 program under this section shall contract with the county or  
 504 appropriate governmental entity. The terms of the contract shall  
 505 include, but not be limited to, the requirements established for  
 506 private entities under s. 948.15(3). This requirement does not  
 507 apply to services provided by the Department of Veterans'  
 508 Affairs or the United States Department of Veterans Affairs.

509 Section 11. Section 948.21, Florida Statutes, is amended  
 510 to read:

511 948.21 Condition of probation or community control;  
 512 military servicemembers and veterans.—

513 (1) Effective for a probationer or community controllee  
 514 whose crime was committed on or after July 1, 2012, and who is a  
 515 veteran, as defined in s. 1.01, or servicemember, as defined in  
 516 s. 250.01, who suffers from a military service-related mental  
 517 illness, traumatic brain injury, substance abuse disorder, or  
 518 psychological problem, the court may, in addition to any other  
 519 conditions imposed, impose a condition requiring the probationer  
 520 or community controllee to participate in a treatment program

521 | capable of treating the probationer or community controllee's  
 522 | mental illness, traumatic brain injury, substance abuse  
 523 | disorder, or psychological problem.

524 |       (2) Effective for a probationer or community controllee  
 525 | whose crime is committed on or after July 1, 2015, and who is a  
 526 | veteran, as defined in s. 1.01, including veterans who were  
 527 | discharged or released under a general discharge, or  
 528 | servicemember, as defined in s. 250.01, who suffers from a  
 529 | military service-related mental illness, traumatic brain injury,  
 530 | substance abuse disorder, or psychological problem, the court  
 531 | may, in addition to any other conditions imposed, impose a  
 532 | condition requiring the probationer or community controllee to  
 533 | participate in a treatment program capable of treating the  
 534 | probationer or community controllee's mental illness, traumatic  
 535 | brain injury, substance abuse disorder, or psychological  
 536 | problem.

537 |       (3) The court shall give preference to treatment programs  
 538 | for which the probationer or community controllee is eligible  
 539 | through the United States Department of Veterans Affairs or the  
 540 | Florida Department of Veterans' Affairs. The Department of  
 541 | Corrections is not required to spend state funds to implement  
 542 | this section.

543 |       Section 12. Subsection (4) of section 985.345, Florida  
 544 | Statutes, is renumbered as subsection (7) and amended, and new  
 545 | subsections (4) through (6) are added to that section, to read:

546 |       985.345 Delinquency pretrial intervention program.—

547        (4) Notwithstanding any other provision of law, a child is  
 548 eligible for voluntary admission into a delinquency pretrial  
 549 mental health court program, established pursuant to s.  
 550 394.47892, approved by the chief judge of the circuit, for a  
 551 period based on the program requirements and the treatment  
 552 services that are suitable for the child, upon motion of either  
 553 party or the court's own motion if the child is charged with:  
 554            (a) A misdemeanor;  
 555            (b) A nonviolent felony; for purposes of this subsection,  
 556 the term "nonviolent felony" means a third degree felony  
 557 violation of chapter 810 or any other felony offense that is not  
 558 a forcible felony as defined in s. 776.08;  
 559            (c) Resisting an officer with violence under s. 843.01, if  
 560 the law enforcement officer and state attorney consent to the  
 561 child's participation;  
 562            (d) Battery on a law enforcement officer under 784.07, if  
 563 the law enforcement officer and state attorney consent to the  
 564 child's participation; or  
 565            (e) Aggravated assault, if the victim and state attorney  
 566 consent to the child's participation,  
 567  
 568 and the child is identified as having a mental illness and has  
 569 not been previously adjudicated for a felony.  
 570        (5) At the end of the delinquency pretrial intervention  
 571 period, the court shall consider the recommendation of the state  
 572 attorney and the program administrator as to disposition of the

573 pending charges. The court shall determine, by written finding,  
 574 whether the child has successfully completed the delinquency  
 575 pretrial intervention program. If the court finds that the child  
 576 has not successfully completed the delinquency pretrial  
 577 intervention program, the court may order the child to continue  
 578 in an education, treatment, or monitoring program if resources  
 579 and funding are available or order that the charges revert to  
 580 normal channels for prosecution. The court may dismiss the  
 581 charges upon a finding that the child has successfully completed  
 582 the delinquency pretrial intervention program.

583 (6) A child whose charges are dismissed after successful  
 584 completion of the mental health court program, if otherwise  
 585 eligible, may have his or her arrest record and plea of nolo  
 586 contendere to the dismissed charges expunged under s. 943.0585.

587 (7)(4) Any entity, whether public or private, providing  
 588 pretrial substance abuse education, treatment intervention, ~~and~~  
 589 a urine monitoring program, or a mental health program under  
 590 this section must contract with the county or appropriate  
 591 governmental entity, and the terms of the contract must include,  
 592 but need not be limited to, the requirements established for  
 593 private entities under s. 948.15(3). It is the intent of the  
 594 Legislature that public or private entities providing substance  
 595 abuse education and treatment intervention programs involve the  
 596 active participation of parents, schools, churches, businesses,  
 597 law enforcement agencies, and the department or its contract  
 598 providers.

HB 7113

2015

599

Section 13. This act shall take effect July 1, 2015.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Justice Appropriations  
 2 Subcommittee

3 Representative McBurney offered the following:  
 4

**Amendment (with title amendment)**

6 Remove lines 297-314 and insert:

7 (a) The department may implement a Forensic Hospital  
 8 Diversion Pilot Program modeled after the Miami-Dade Forensic  
 9 Alternative Center, taking into account local needs and  
 10 resources, in Escambia County, in conjunction with the First  
 11 Judicial Circuit in Escambia County; in Hillsborough County, in  
 12 conjunction with the Thirteenth Judicial Circuit in Hillsborough  
 13 County; and in Miami-Dade County, in conjunction with the  
 14 Eleventh Judicial Circuit in Miami-Dade County.

15 (b) If the department elects to create and implement the  
 16 program the department shall include a comprehensive continuum  
 17 of care and services that use evidence-based practices and best

Amendment No. 1

18 practices to treat offenders who have mental health and co-  
19 occurring substance use disorders.

20 (c) The department and the corresponding judicial circuits  
21 may implement this section if existing resources are available  
22 to do so on a recurring basis. The Department of Children and  
23 Families may request budget amendments pursuant to chapter 216,  
24 to realign funds between Mental Health Services and Community  
25 Substance Abuse and Mental Health Services in order to implement  
26 this pilot program.

27

28

29

-----  
**T I T L E   A M E N D M E N T**

30

Remove lines 22-23 and insert:

31

providing definitions; providing the Department of Children and

32

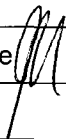
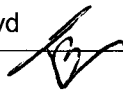
Families may implement a Forensic Hospital





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7131      PCB CRJS 15-07      Corrections  
**SPONSOR(S):** Criminal Justice Subcommittee, Trujillo and others  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

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

### 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 Criminal Justice Estimating Conference (CJEC) to develop projections of prison admissions and populations for elderly felony offenders;
- Allows victim injury points to 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;
- Allows 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, so long as the award does not reduce an inmate's tentative release date below the 85 percent minimum service date of the sentence;
- 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 types of facilities that should be given priority for physical inspections;
- Expands the scope of security audits, and to 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 provide copies to the Governor, the President of the Senate, and the Speaker of the House of Representatives; 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 Criminal Justice Impact Conference (CJIC) met March 27, 2015 and determined that this bill will have the net impact of decreasing state prison beds over time. (See Fiscal Impact)

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 is effective July 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **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.<sup>1</sup> 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.<sup>2</sup> Section 216.136(5), F.S., currently requires CJEC to develop official information<sup>3</sup> 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.<sup>4</sup>

##### Effect of the Bill

The bill amends s. 216.136(5) 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.<sup>5</sup> 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.<sup>6</sup>

As noted above additional points may be assessed by the court for “victim injury”<sup>7</sup> directly caused by any offense that is before a court for sentencing.<sup>8</sup> 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.<sup>9</sup>

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 of Corrections (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.<sup>10</sup>

---

<sup>1</sup> 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).

<sup>2</sup> s. 216.136, F.S.

<sup>3</sup> 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.

<sup>4</sup> s. 216.136(5), F.S.

<sup>5</sup> s. 921.0022, F.S.

<sup>6</sup> s. 921.0024, F.S.

<sup>7</sup> 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.

<sup>8</sup> FLA. R. CRIM. P. 702(d)(5) and 703(d)(9).

<sup>9</sup> s. 921.0024(1)(a), F.S.

<sup>10</sup> s. 921.0021(7)(c), F.S.; 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.

### 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.<sup>11</sup> 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.<sup>12</sup> Inmates sentenced to life imprisonment or sentenced pursuant to certain statutes<sup>13</sup> are not entitled to gain-time.<sup>14</sup> When an inmate is found guilty of a violation of the laws of the state or Department rules, gain-time may be forfeited.<sup>15</sup>

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.<sup>16</sup>

### 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 offenses<sup>17</sup> 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.<sup>18</sup> 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;
- 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;

---

<sup>11</sup> Section 944.275(4)(b), F.S.

<sup>12</sup> Section 944.275(4)(b)3., F.S.

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

<sup>14</sup> Section 944.275(4)(b)3., F.S.

<sup>15</sup> Section 944.275(5), F.S.

<sup>16</sup> s. 944.275(4)(b)3. and (d), F.S.

<sup>17</sup> 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.

<sup>18</sup> The majority of these provisions are contained in ch. 944, F.S.

- 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.<sup>19</sup>

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.<sup>20</sup>

#### 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 issues impacting correctional facilities;
- 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.<sup>21</sup> The Inspector General has specific duties relating to inspections and investigations and must ensure compliance with Department rules and regulations.<sup>22</sup> 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.<sup>23</sup> The Secretary is also authorized to designate personnel within its office as law enforcement officers who are empowered to conduct criminal investigations and make arrests.<sup>24</sup> Unlike inspectors, a person designated as a law enforcement officer must be a certified pursuant to s.

<sup>19</sup> s. 944.151(1), F.S.

<sup>20</sup> s. 944.151(2) - (4), F.S.

<sup>21</sup> s. 944.31, F.S.

<sup>22</sup> *Id.*

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

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

943.1395, F.S., which includes law enforcement officer training, and must have a minimum of three years of experience as a Department inspector.<sup>25</sup>

#### 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.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 216.136, F.S., relating to consensus estimating conferences; duties and principals.

Section 2. Amends s. 921.0021, F.S., relating to definitions.

Section 3. Amends s. 944.151, F.S., relating to security of correctional institutions and facilities.

Section 4. Amends s. 944.275, F.S., relating to gain-time.

Section 5. Amends s. 944.31, F.S., relating to inspector general; inspectors; power and duties.

Section 6. 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:

The Criminal Justice Impact Conference (CJIC) met March 27, 2015 and determined that the portion of the bill that deletes s. 921.0021(7)(c), F.S., which will remove the prohibition against assessing victim injury points for sexual penetration or sexual contact in calculating the sentencing score for s. 944.35(3)(b)2., F.S. (Sexual Misconduct with an Inmate or Supervised Officer). By adding these injury points, sexual contact creates a potential sentence range of 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.

CJIC determined that this portion of the bill may result in an insignificant increase in state prison beds (an increase of 10 or fewer beds annually).

---

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

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.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

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

2. Expenditures:

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

**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

None.



1                                    A bill to be entitled  
2                    An act relating to corrections; amending s. 216.136,  
3                    F.S.; requiring the Criminal Justice Estimating  
4                    Conference to develop projections of prison admissions  
5                    and populations for elderly felony offenders; amending  
6                    s. 921.0021, F.S.; revising the definition of the term  
7                    "victim injury" by removing a prohibition on assessing  
8                    certain victim injury sentence points for sexual  
9                    misconduct by certain correctional employees with  
10                    inmates or offenders; amending s. 944.151, F.S.;  
11                    revising legislative intent concerning safety and  
12                    security; expanding the department's security review  
13                    committee functions to include functions related to  
14                    safe operation of institutions and facilities;  
15                    revising provisions relating to physical inspections  
16                    of state and private buildings and structures and  
17                    prioritizing institutions for inspection that meet  
18                    certain criteria; revising provisions relating to  
19                    duties of staff concerning safety and security;  
20                    amending s. 944.275, F.S.; prohibiting an inmate from  
21                    receiving incentive gain-time credits for completing  
22                    the requirements for and receiving a high school  
23                    equivalency diploma or vocational certificate if the  
24                    inmate was convicted of a specified offense on or  
25                    after a specified date; amending s. 944.31, F.S.;  
26                    requiring that a copy of a written memorandum of

27 understanding for notification and investigation of  
 28 certain events between the Department of Corrections  
 29 and the Department of Law Enforcement be provided to  
 30 the Governor, the President of the Senate, and the  
 31 Speaker of the House of Representatives; requiring  
 32 specialized training for inspectors in certain  
 33 circumstances; providing an effective date.

34

35 Be It Enacted by the Legislature of the State of Florida:

36

37 Section 1. Paragraph (d) is added to subsection (5) of  
 38 section 216.136, Florida Statutes, to read:

39 216.136 Consensus estimating conferences; duties and  
 40 principals.-

41 (5) CRIMINAL JUSTICE ESTIMATING CONFERENCE.-The Criminal  
 42 Justice Estimating Conference shall:

43 (d) Develop projections of prison admissions and  
 44 populations for elderly felony offenders.

45 Section 2. Subsection (7) of section 921.0021, Florida  
 46 Statutes, is amended to read:

47 921.0021 Definitions.-As used in this chapter, for any  
 48 felony offense, except any capital felony, committed on or after  
 49 October 1, 1998, the term:

50 (7)(a) "Victim injury" means the physical injury or death  
 51 suffered by a person as a direct result of the primary offense,  
 52 or any additional offense, for which an offender is convicted

HB 7131

2015

53 and which is pending before the court for sentencing at the time  
 54 of the primary offense.

55 (b) Except as provided in paragraph (c): ~~or paragraph (d),~~

56 1. If the conviction is for an offense involving sexual  
 57 contact that includes sexual penetration, the sexual penetration  
 58 must be scored in accordance with the sentence points provided  
 59 under s. 921.0024 for sexual penetration, regardless of whether  
 60 there is evidence of any physical injury.

61 2. If the conviction is for an offense involving sexual  
 62 contact that does not include sexual penetration, the sexual  
 63 contact must be scored in accordance with the sentence points  
 64 provided under s. 921.0024 for sexual contact, regardless of  
 65 whether there is evidence of any physical injury.

66  
 67 If the victim of an offense involving sexual contact suffers any  
 68 physical injury as a direct result of the primary offense or any  
 69 additional offense committed by the offender resulting in  
 70 conviction, such physical injury must be scored separately and  
 71 in addition to the points scored for the sexual contact or the  
 72 sexual penetration.

73 ~~(c) The sentence points provided under s. 921.0024 for~~  
 74 ~~sexual contact or sexual penetration may not be assessed for a~~  
 75 ~~violation of s. 944.35(3)(b)2.~~

76 (c) ~~(d)~~ If the conviction is for the offense described in  
 77 s. 872.06, the sentence points provided under s. 921.0024 for  
 78 sexual contact or sexual penetration may not be assessed.

79            ~~(d)(e)~~ Notwithstanding paragraph (a), if the conviction is  
 80 for an offense described in s. 316.027 and the court finds that  
 81 the offender caused victim injury, sentence points for victim  
 82 injury may be assessed against the offender.

83            Section 3. Section 944.151, Florida Statutes, is amended  
 84 to read:

85            944.151 Safety and security of correctional institutions  
 86 and facilities.—It is the intent of the Legislature that the  
 87 Department of Corrections ~~shall~~ be responsible for the safe  
 88 operation and security of the correctional institutions and  
 89 facilities. The safe operation and security of the state's  
 90 correctional institutions and facilities are ~~is~~ critical to  
 91 ensure public safety and the safety of department employees and  
 92 offenders and to contain violent and chronic offenders until  
 93 offenders are otherwise released from the department's custody  
 94 pursuant to law. The Secretary of Corrections shall, at a  
 95 minimum:

96            (1) Appoint and designate select staff to the safety and a  
 97 security review committee ~~which shall, at a minimum, be composed~~  
 98 ~~of: the inspector general, the statewide security coordinator,~~  
 99 ~~the regional security coordinators, and three wardens and one~~  
 100 ~~correctional officer.~~ The safety and security review committee  
 101 shall evaluate new safety and security technology, review and  
 102 discuss current issues impacting correctional facilities, and  
 103 review and discuss other issues as requested by management.+

104            ~~(2)(a)~~ Ensure that appropriate staff establishes ~~Establish~~

105 a periodic schedule for the physical inspection of buildings and  
 106 structures of each state and private correctional institution  
 107 and facility to determine safety and security deficiencies. In  
 108 scheduling the inspections, priority shall be given to older  
 109 institutions, institutions that house a large proportion of  
 110 violent offenders, institutions with a high level of  
 111 inappropriate incidents of use of force on inmates, assaults on  
 112 employees, or inmate sexual abuse, and institutions that have  
 113 experienced a significant number of escapes or escape attempts  
 114 in the past.

115 ~~(3)(b)~~ Ensure that appropriate staff conducts ~~Conduct~~ or  
 116 causes ~~cause~~ to be conducted announced and unannounced  
 117 comprehensive safety and security audits of all state and  
 118 private correctional institutions. In conducting the safety and  
 119 security audits, priority shall be given to older institutions,  
 120 institutions that house a large proportion of violent offenders,  
 121 institutions with a high level of inappropriate incidents of use  
 122 of force on inmates, assaults on employees, or inmate sexual  
 123 abuse, and institutions that have experienced a history of  
 124 escapes or escape attempts. At a minimum, the audit shall  
 125 include an evaluation of the physical plant, which shall include  
 126 the identification of blind spots or areas where staff or  
 127 inmates may be isolated and the deployment of audio and video  
 128 monitoring systems and other monitoring technologies in such  
 129 areas; landscaping, fencing, security alarms, and perimeter  
 130 lighting; and confinement, arsenal, key and lock, and entrance

131 and exit inmate classification and staffing policies. Each  
 132 correctional institution shall be audited at least annually. ~~The~~  
 133 ~~secretary shall~~

134 (4) Report the general survey findings annually to the  
 135 Governor and the Legislature.

136 (5) Ensure that appropriate staff investigates and  
 137 evaluates the usefulness and dependability of existing safety  
 138 and security technology at the institutions and new technology  
 139 and video monitoring systems available and makes periodic  
 140 written recommendations to the secretary on the discontinuation  
 141 or purchase of various safety and security devices.

142 (6) Contract, if deemed necessary, with security  
 143 personnel, consulting engineers, architects, or other safety and  
 144 security experts that the department deems necessary for safety  
 145 and security consultant services.

146 (7) Ensure that appropriate staff, in conjunction with the  
 147 regional offices, establishes a periodic schedule for conducting  
 148 announced and unannounced escape simulation drills.

149 (8) Adopt, enforce, and annually cause the evaluation of  
 150 emergency escape response procedures, which shall, at a minimum,  
 151 include the immediate notification and inclusion of local and  
 152 state law enforcement through mutual aid agreements.

153 (9) Ensure that appropriate staff reviews staffing  
 154 policies, classification, and practices as needed.

155 (10) ~~(e)~~ Adopt and enforce minimum safety and security  
 156 standards and policies that include, but are not limited to:

- 157        (a)~~1.~~ Random monitoring of outgoing telephone calls by  
 158 inmates.
- 159        (b)~~2.~~ Maintenance of current photographs of all inmates.
- 160        (c)~~3.~~ Daily inmate counts at varied intervals.
- 161        (d)~~4.~~ Use of canine units, where appropriate.
- 162        (e)~~5.~~ Use of escape alarms and perimeter lighting.
- 163        (f)~~6.~~ Florida Crime Information Center/National Crime  
 164 Information Center capabilities.
- 165        (g)~~7.~~ Employment background investigations.
- 166        ~~(d) Annually make written prioritized budget~~  
 167 ~~recommendations to the secretary that identify critical security~~  
 168 ~~deficiencies at major correctional institutions.~~
- 169        ~~(e) Investigate and evaluate the usefulness and~~  
 170 ~~dependability of existing security technology at the~~  
 171 ~~institutions and new technology available and make periodic~~  
 172 ~~written recommendations to the secretary on the discontinuation~~  
 173 ~~or purchase of various security devices.~~
- 174        ~~(f) Contract, if deemed necessary, with security~~  
 175 ~~personnel, consulting engineers, architects, or other security~~  
 176 ~~experts the committee deems necessary for security audits and~~  
 177 ~~security consultant services.~~
- 178        ~~(g) Establish a periodic schedule for conducting announced~~  
 179 ~~and unannounced escape simulation drills.~~
- 180        (11)~~(2)~~ Direct staff to maintain and produce quarterly  
 181 reports with accurate escape statistics. For the purposes of  
 182 these reports, "escape" includes all possible types of escape,

183 regardless of prosecution by the state attorney, and includes  
 184 ~~including~~ offenders who walk away from nonsecure community  
 185 facilities.

186 ~~(3) Adopt, enforce, and annually evaluate the emergency~~  
 187 ~~escape response procedures, which shall at a minimum include the~~  
 188 ~~immediate notification and inclusion of local and state law~~  
 189 ~~enforcement through a mutual aid agreement.~~

190 (12)~~(4)~~ Direct staff to submit in the annual legislative  
 191 budget request a prioritized summary of critical safety and  
 192 security deficiencies and repair and renovation security needs.

193 Section 4. Paragraphs (d) and (e) of subsection (4) of  
 194 section 944.275, Florida Statutes, are amended to read:

195 944.275 Gain-time.-

196 (4)

197 (d) Notwithstanding paragraph (b) ~~subparagraphs (b)1. and~~  
 198 ~~2.~~, the education program manager shall recommend, and the  
 199 Department of Corrections may grant, a one-time award of 60  
 200 additional days of incentive gain-time to an inmate who is  
 201 otherwise eligible and who successfully completes requirements  
 202 for and is awarded a high school equivalency diploma or  
 203 vocational certificate. This incentive gain-time award may be  
 204 granted to reduce any sentence for an offense committed on or  
 205 after October 1, 1995. However, this gain-time may not be  
 206 granted to reduce any sentence for an offense committed on or  
 207 after October 1, 1995, if the inmate is, or has previously been,  
 208 convicted of a violation of s. 794.011, s. 794.05, former s.



209 796.03, former s. 796.035, s. 800.04, s. 825.1025, s. 827.03, s.  
 210 827.071, s. 847.0133, s. 847.0135, s. 847.0137, s. 847.0138, s.  
 211 847.0145, or s. 985.701(1), or a forcible felony offense that is  
 212 specified in s. 776.08, except burglary as specified in s.  
 213 810.02(4). An inmate subject to the 85-percent minimum service  
 214 requirement pursuant to subparagraph (b)3. may not accumulate  
 215 gain-time awards at any point when the tentative release date is  
 216 the same as the 85-percent minimum service date of the sentence  
 217 imposed. Under no circumstances may an inmate receive more than  
 218 60 days for educational attainment pursuant to this section.

219 (e) Notwithstanding subparagraph (b)3. and paragraph (d),  
 220 for sentences imposed for offenses committed on or after October  
 221 1, 2014, the department may not grant incentive gain-time if the  
 222 offense is a violation of s. 782.04(1)(a)2.c.; s. 787.01(3)(a)2.  
 223 or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s.  
 224 794.011(10); s. 800.04; s. 825.1025; or s. 847.0135(5).

225 Section 5. Section 944.31, Florida Statutes, is amended to  
 226 read:

227 944.31 Inspector general; inspectors; power and duties.—

228 (1) The inspector general shall be responsible for prison  
 229 inspection and investigation, internal affairs investigations,  
 230 and management reviews. The office of the inspector general  
 231 shall be charged with the duty of inspecting the penal and  
 232 correctional systems of the state. The office of the inspector  
 233 general shall inspect each correctional institution or any place  
 234 in which state prisoners are housed, worked, or kept within the

235 state, with reference to its physical conditions, cleanliness,  
 236 sanitation, safety, and comfort; the quality and supply of all  
 237 bedding; the quality, quantity, and diversity of food served and  
 238 the manner in which it is served; the number and condition of  
 239 the prisoners confined therein; and the general conditions of  
 240 each institution. The office of inspector general shall see that  
 241 all the rules and regulations issued by the department are  
 242 strictly observed and followed by all persons connected with the  
 243 correctional systems of the state. The office of the inspector  
 244 general shall coordinate and supervise the work of inspectors  
 245 throughout the state. The inspector general and inspectors may  
 246 enter any place where prisoners in this state are kept and shall  
 247 be immediately admitted to such place as they desire and may  
 248 consult and confer with any prisoner privately and without  
 249 molestation. The inspector general and inspectors shall be  
 250 responsible for criminal and administrative investigation of  
 251 matters relating to the Department of Corrections. The secretary  
 252 may designate persons within the office of the inspector general  
 253 as law enforcement officers to conduct any criminal  
 254 investigation that occurs on property owned or leased by the  
 255 department or involves matters over which the department has  
 256 jurisdiction. A person designated as a law enforcement officer  
 257 must be certified pursuant to s. 943.1395 and must have a  
 258 minimum of 3 years' experience as an inspector in the inspector  
 259 general's office or as a law enforcement officer.

260       (2) The department shall maintain a written memorandum of

261 understanding with the Department of Law Enforcement for the  
262 notification and investigation of mutually agreed-upon predicate  
263 events that shall include, but are not limited to, suspicious  
264 deaths and organized criminal activity. A copy of an active  
265 memorandum of understanding shall be provided in a timely manner  
266 to the Governor, the President of the Senate, and the Speaker of  
267 the House of Representatives.

268 (3) During investigations, the inspector general and  
269 inspectors may consult and confer with any prisoner or staff  
270 member privately and without molestation and persons designated  
271 as law enforcement officers under this section shall have the  
272 authority to arrest, with or without a warrant, any prisoner of  
273 or visitor to a state correctional institution for a violation  
274 of the criminal laws of the state involving an offense  
275 classified as a felony that occurs on property owned or leased  
276 by the department and may arrest offenders who have escaped or  
277 absconded from custody. Persons designated as law enforcement  
278 officers have the authority to arrest with or without a warrant  
279 a staff member of the department, including any contract  
280 employee, for a violation of the criminal laws of the state  
281 involving an offense classified as a felony under this chapter  
282 or chapter 893 on property owned or leased by the department. A  
283 person designated as a law enforcement officer under this  
284 section may make arrests of persons against whom arrest warrants  
285 have been issued, including arrests of offenders who have  
286 escaped or absconded from custody. The arrested person shall be

HB 7131

2015

287    surrendered without delay to the sheriff of the county in which  
 288    the arrest is made, with a formal complaint subsequently made  
 289    against her or him in accordance with law.

290        (4) The inspector general, and inspectors who conduct  
 291    sexual abuse investigations in confinement settings, shall  
 292    receive specialized training in conducting such investigations.  
 293    The department is responsible for providing the specialized  
 294    training. Specialized training shall include, but need not be  
 295    limited to, techniques for interviewing sexual abuse victims,  
 296    proper use of Miranda and Garrity warnings, sexual abuse  
 297    evidence collection in confinement settings, and the criteria  
 298    and evidence required to substantiate a case for administrative  
 299    action or prosecution.

300        Section 6. This act shall take effect July 1, 2015.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Justice Appropriations  
2 Subcommittee

3 Representative Trujillo offered the following:

4  
5 **Amendment (with title amendment)**

6 Between lines 36 and 37, insert:

7 Section 1. Subsection (4) of section 20.315, Florida  
8 Statutes, is amended to read:

9 20.315 Department of Corrections.—There is created a  
10 Department of Corrections.

11 (4) REGIONS.—The department shall plan and administer its  
12 program of services for community corrections, ~~security, and~~  
13 ~~institutional operations~~ through regions. The department shall  
14 plan and administer its program of services for security and  
15 institutional operations through five geographical regions. The  
16 secretary shall appoint a director for each of the regions.  
17

Amendment No. 1

18  
19  
20  
21  
22  
23  
24  
25  
26

-----

**T I T L E   A M E N D M E N T**

Remove line 2 and insert:

An act relating to corrections; amending s. 20.315, F.S.;  
requiring the department to plan and administer its program of  
services for security and institutional operations through five  
regions; requiring the secretary to appoint a director for each  
of the regions; amending s. 216.136,

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Justice Appropriations  
 2 Subcommittee

3 Representative Trujillo offered the following:

4  
 5 **Amendment (with title amendment)**

6 Remove line 299 and insert:

7 Section 5. For the 2015-2016 fiscal year, the sum of  
 8 \$1,258,256 in recurring funds and \$206,388 in nonrecurring funds  
 9 are appropriated from the General Revenue Fund to the Department  
 10 of Corrections, and ten full-time equivalent positions with  
 11 717,800 in salary rate is authorized, for staffing and all  
 12 operating expenses associated with establishing two additional  
 13 regional headquarters as required in this act. The Department  
 14 of Corrections may submit budget amendments pursuant to Chapter  
 15 216, Florida Statutes, to reallocate existing resources to  
 16 support the additional regional headquarters.  
 17

Amendment No. 2

18  
19  
20  
21  
22

-----

**T I T L E   A M E N D M E N T**

Remove line 33 and insert:  
Circumstances; providing an appropriation; providing an  
effective date.



Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Justice Appropriations  
 2 Subcommittee

3 Representative Burgess offered the following:

4

5 **Amendment (with title amendment)**

6 Between lines 299 and 300, insert:

7

8 Section 6. Paragraph (a) of Subsection (2) of section  
 9 947.1405, Florida Statutes is amended to read:

10 (2) Any inmate who:

11 (a) Is convicted of a crime committed on or after October  
 12 1, 1988, and before January 1, 1994, and any inmate who is  
 13 convicted of a crime committed on or after January 1, 1994,  
 14 which crime is or was contained in category 1, category 2,  
 15 category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida  
 16 Rules of Criminal Procedure (1993), and who has served at least

Amendment No. 3

17 one prior felony commitment at a state or federal correctional  
18 institution, or a sentence of more than 364 days in county jail;  
19

20 Section 7. Section 950.021, Florida Statutes, is created to  
21 read:

22 950.021 Sentencing of offenders to county jail.-

23 (1) Notwithstanding s. 921.0024 or any other provision of  
24 law, and effective for offenses committed on or after July 1,  
25 2015, a court may sentence an offender to a term in the county  
26 jail under the custody of the chief correctional officer in the  
27 county where the offense was committed for up to 24 months if  
28 the offender meets all of the following criteria:

29 (a) The offender's total sentence points score, as  
30 provided in s. 921.0024, is more than 44 points but no more than  
31 60 points.

32 (b) The offender's primary offense is not a forcible  
33 felony as defined in s. 776.08; however, an offender whose  
34 primary offense is a third degree felony under chapter 810 is  
35 not ineligible to be sentenced to a county jail under this  
36 paragraph.

37 (c) The offender's primary offense is not punishable by a  
38 minimum mandatory sentence of more than 24 months.

39 (d) Offenders sentenced under this section must serve a  
40 minimum of 85% of the sentence.

41 (2) (a) The court may only sentence an offender to a county  
42 jail pursuant to this section if there is a contractual

Amendment No. 3

43 agreement between the chief correctional officer of that county  
44 and the Department of Corrections.

45 (b) If the chief correctional officer of a county requests  
46 the Department of Corrections to enter into a contract that  
47 allows offenders to be sentenced to the county jail pursuant to  
48 subsection (1), subject to the restrictions of this paragraph  
49 and subsections (3) and (6), the Department of Corrections must  
50 enter into such a contract. The contract shall specifically  
51 establish the maximum number of beds and the validated per diem  
52 rate. The contract shall provide for per diem reimbursement for  
53 occupied inmate days based on the contracting county's most  
54 recent annual adult male custody or adult female custody per  
55 diem rates, not to exceed \$60 per inmate.

56 (3) A contract under this section is contingent upon a  
57 specific appropriation in the General Appropriations Act.  
58 Contracts shall be awarded by the Department of Corrections on a  
59 first-come, first-served basis up to the maximum appropriation  
60 allowable in the General Appropriations Act for this purpose.  
61 The maximum appropriation allowable consists of funds  
62 appropriated in or transferred to the specific appropriation in  
63 the Inmates Sentenced to County Jail appropriation category.  
64 Prior to any transferred appropriation under this section, the  
65 Inmates Sentenced to County Jail appropriation category provides  
66 for estimated incremental appropriation for county jail beds  
67 contracted under this section in excess of the Department of  
68 Corrections' per diem for adult male and female inmates.

931119 - 7131-Burgess.docx

Published On: 4/6/2015 6:14:19 PM

Amendment No. 3

69       (4) The Department of Corrections shall transfer funds  
70 pursuant to s. 216.177 from other appropriation categories  
71 within the Adult Male Custody Operations or Adult and Youthful  
72 Offender Female Custody Operations budget entities to the  
73 Inmates Sentenced to County Jail appropriation category in an  
74 amount necessary to satisfy the requirements of each executed  
75 contract, but not to exceed the Department of Corrections'  
76 average total per diem published for the preceding fiscal year  
77 for adult male custody or adult and youthful offender female  
78 custody inmates for each county jail bed contracted.

79       (5) The Department of Corrections shall assume maximum  
80 annual value of each contract when determining the full use of  
81 funds appropriated and to ensure that the maximum appropriation  
82 allowable is not exceeded.

83       (6) All contractual per diem rates under this section as  
84 well as the per diem rates used by the Department of Corrections  
85 must be validated by the Auditor General before payments are  
86 made.

87  
88  
89       -----  
90                   **T I T L E   A M E N D M E N T**

91       Remove line 33 and insert:

92       Circumstances; creating s. 950.021, F.S.; authorizing a court to  
93       sentence certain offenders to a county jail for up to 24 months  
94       if the county has a contract with the Department of Corrections;

Amendment No. 3

95 providing contractual requirements; requiring specific  
96 appropriations; providing for such appropriations; requiring  
97 validation of per diem rates; providing an effective date.