

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.¹ The Criminal Justice Estimating Conference (CJEC) is a subpart of the estimating conference that is primarily responsible for compiling and analyzing data related to the criminal justice system.² Section 216.136(5), F.S., currently requires CJEC to develop official information³ relating to the:

- Criminal justice system, including forecasts of prison admissions and population and of supervised felony offender admissions and population;
- Number of eligible discharges and the projected number of civil commitments for determining space needs pursuant to involuntary civil commitment of sexually violent predators; and
- Number of sexual offenders and sexual predators who are required by law to be placed on community control, probation, or conditional release who are subject to electronic monitoring.⁴

Effect of the Bill

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

Victim Injury Sentencing Points

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

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

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.¹⁰

Effect of the Bill

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

² s. 216.136, F.S.

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

⁴ s. 216.136(5), F.S.

⁵ s. 921.0022, F.S.

⁶ s. 921.0024, F.S.

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

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

⁹ s. 921.0024(1)(a), F.S.

¹⁰ 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.

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

Gain-Time

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

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

Effect of the Bill

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

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

Safety and Security

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

- Include, at a minimum, the inspector general, the statewide security coordinator, the regional security coordinators, and three wardens and one correctional officer;
- Establish a schedule for physical inspections of the buildings and structures of correctional institutions, giving priority to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a history of escapes or escape attempts;
- Conduct or cause to be conducted announced and unannounced security audits of correctional institutions;
- Adopt and enforce minimum standards and policies;
- Make annual written prioritized budget recommendations to the Secretary that identify critical security deficiencies at major correctional institutions;
- Investigate and evaluate the usefulness and dependability of existing security technology at institutions and the new technology available;
- Contract with security experts the committee deems necessary for security audits and consultation; and

¹¹ Section 944.275(4)(b), F.S.

¹² Section 944.275(4)(b)3., F.S.

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

¹⁴ Section 944.275(4)(b)3., F.S.

¹⁵ Section 944.275(5), F.S.

¹⁶ s. 944.275(4)(b)3. and (d), F.S.

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

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

- Establish a periodic schedule to conduct announced and unannounced escape simulation drills.¹⁹

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

Effect of the Bill

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

- Evaluating new safety and security technology;
- Reviewing and discussing 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.²¹ The Inspector General has specific duties relating to inspections and investigations and must ensure compliance with Department rules and regulations.²² The Inspector General must maintain a Memorandum of Understanding (MOU) with the Florida Department of Law Enforcement (FDLE) for notification and investigation of suspicious deaths, organized criminal activity, and any other mutually-agreed upon events.

The Inspector General is authorized to employ inspectors to carry out its inspection and investigation duties, but is not currently required to provide any specific training to the inspectors to prepare them for their duties.²³ The Secretary is also authorized to designate personnel within its office as law enforcement officers who are empowered to conduct criminal investigations and make arrests.²⁴ Unlike inspectors, a person designated as a law enforcement officer must be a certified pursuant to s. 943.1395, F.S., which includes law enforcement officer training, and must have a minimum of three years of experience as a Department inspector.²⁵

Effect of the Bill

¹⁹ s. 944.151(1), F.S.

²⁰ s. 944.151(2) - (4), F.S.

²¹ s. 944.31, F.S.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

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).

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.