

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB SSC 08-08

Department of Corrections

**SPONSOR(S):** Safety & Security Council

**TIED BILLS:**

**IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Safety & Security Council	10 Y, 0 N	Cunningham	Havlicak
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

Currently, offenders convicted of a forcible felony are precluded from being placed on community control. PCB 08-08 would allow offenders convicted of forcible felonies to be placed on community control.

In Florida, every prospective law enforcement, correctional, and correctional probation officer must successfully complete a basic recruit training program in order to receive their certification. If the trainee's employing agency pays for such training, the trainee must remain in the employment of the employing agency for a period of two years. If such employment is terminated within two years, the trainee must reimburse the employing agency for tuition and wages and benefits received during the basic recruit training period. PCB 08-08 removes the requirement that a trainee whose employment or appointment is terminated within two years reimburse the employing agency for *wages and benefits* paid by the employing agency during the basic recruit training period.

Currently, one category of young adult offenders is permitted to be housed with youthful offenders while another category is precluded from doing so. PCB 08-08 authorizes DOC to house both categories of young adult offenders with youthful offenders.

Currently, it is unlawful for a person to introduce items declared to be contraband into or upon the grounds of any state correctional institution. PSB 08-08 adds cell phones and other similar devices to the list of items declared to be contraband. The PCB makes introducing such devices into or upon the grounds of any state correctional institution a 3<sup>rd</sup> degree felony.

The PCB also reorganizes portions of the Corrections Mental Health Act to standardize and clarify hearing procedures and adopt elements from Florida's Mental Health Act.

On February 26, 2008, the Criminal Justice Impact Conference determined that the cell phone contraband portion of the PCB would have an insignificant prison bed impact. The officer certification wages and benefits reimbursement portion of the PCB may have a fiscal impact on entities. The community control and youthful offender portions of the PCB do not appear to have a fiscal impact. See "Fiscal Impact" section.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty – The PCB makes introducing a cellular phone or other portable communication device into a prison a 3<sup>rd</sup> degree felony.

Provide Limited Government – The PCB authorizes DOC to adopt rules defining criteria for successful participation in the youthful offender program.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Community Control**

Community control is a form of intensive, supervised custody in which the freedom of an offender is restricted within the community and specific sanctions are imposed and enforced.<sup>1</sup> Community control is administered by officers with restricted caseloads.

##### Requirements re: Development and Implementation of the Community Control Program

Section 948.10, F.S., currently requires the Department of Corrections (DOC) to:

- Develop a community control program in consultation with the Florida Conference of Circuit Court Judges and the Office of State Courts Administrator;
- Develop and implement procedures to diagnose offenders during the prison intake process in order to recommend to the sentencing courts suitable community control candidates;
- Develop an implementation manual, a resource directory, and training programs for implementing community control programs;
- Notify certain persons, upon written request, when an offender is placed on community control;
- Provide certain notifications and reports regarding offenders who were sentenced to community control but who were ineligible for such sentence;
- Develop and maintain a weighted statewide caseload equalization strategy designed to ensure that high risk offenders receive the highest level of supervision; and
- Develop and implement a supervision risk assessment instrument for the community control population.

Section 948.10, F.S., also requires the Florida Court Education Council and the Office of State Courts Administrator to coordinate development and implementation of a reference manual, directory, and training program for judges in relation to community control disposition.

##### *Effect of the Bill*

PCB 08-08 removes the above requirements and makes a conforming change in s. 948.01, F.S. DOC stated in their analysis of this PCB that many of these requirements were necessary upon implementation and development of the community control program but are now obsolete.

##### Forcible Felonies

Sections 921.187(2) and 948.10(2), F.S., currently preclude an offender from being placed in community control if the offender has been:

- Convicted of or adjudication is withheld for a forcible felony<sup>2</sup>; and
- Previously convicted of or adjudication was withheld for a forcible felony.

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<sup>1</sup> Section 948.001(2), F.S.

<sup>2</sup> For purposes of s. 921.187, F.S., the term “forcible felony” is defined as “treason; murder; sexual battery; carjacking; home-invasion robbery; robbery; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.” See s. 776.08, F.S.

Thus, offenders who have been convicted of a forcible felony may only be placed on regular probation if a prison sanction is not imposed.

#### *Effect of the Bill*

PCB 08-08 deletes ss. 921.187(2) and 948.10(2), F.S. Consequently, the offenders convicted of certain forcible felonies may be eligible for placement in community control.

#### **Officer Certification Tuition and Exams – Payment and Reimbursement**

In Florida, the Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement (FDLE), establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement, correctional, and correctional probation officers.<sup>3</sup> Every prospective officer must successfully complete a CJSTC-developed Basic Recruit Training Program and pass a statewide certification exam in order to receive their certification.<sup>4</sup>

Section 943.16, F.S., currently requires trainees who attend a basic recruit training program at the expense of an employing agency to remain in the employment or appointment of the employing agency for a period of two years after graduation from the basic recruit training program. If such employment or appointment is terminated at the trainee's own initiative within two years, the trainee must reimburse the employing agency for the following costs:

- Tuition and other course expenses; and
- Wages and benefits paid by the employing agency during the basic recruit training period according to a staggered schedule.<sup>5</sup>

In their analysis of the PCB, DOC stated the following:

It has been determined that any attempt to recover the full salary of trainees who leave at any time is a clear violation of the [federal] Fair Labor Standards Act (FLSA), which provides for a minimum wage for such employees.

#### *Effect of the Bill*

PCB 08-08 removes the requirement that trainees whose employment or appointment is terminated at the trainee's own initiative within two years reimburse the employing agency for *wages and benefits* paid by the employing agency during the basic recruit training period. As a result, such trainees will only be responsible for reimbursing the employing agency for tuition and other course expenses.

#### **Youthful Offenders**

Section 958.03, F.S., defines the term "youthful offender" as "any person who is sentenced as such by the court or is classified as such by the Department of Correction pursuant to s. 958.04, F.S."

#### Eligibility

Section 958.04, F.S., authorizes a court to sentence as a youthful offender any person:

- (1) Who is at least 18 years of age or who has been transferred for prosecution to the criminal division of the circuit court pursuant to chapter 985;
- (2) Who is found guilty of or who has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime which is, under the laws of this state, a felony if such crime was committed before the defendant's 21st birthday; and
- (3) Who has not previously been classified as a youthful offender; however, no person who has been found guilty of a capital or life felony may be sentenced as a youthful offender.

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<sup>3</sup> <http://www.fdle.state.fl.us/cjst/commission/index.html>

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

<sup>5</sup> s. 943.16, F.S.

### *Effect of the Bill*

PCB 08-08 revises (2) of the above-described criteria to allow the court to sentence as a youthful offender any person who meets the other two criteria and who is found guilty of or who has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime which is, under the laws of this state, a felony if the offender is younger than 21 years of age *at the time sentence is imposed*.

### Successful Participation in the Youthful Offender Program

Currently, if a youthful offender successfully completes a youthful offender program, DOC is authorized to recommend to the court a modification or early termination of community supervision or sentence.

### *Effect of the Bill*

PCB 08-08 requires DOC to adopt rules defining criteria for successful participation in the youthful offender program to include program participation, academic and vocational training, and satisfactory adjustment.

### Youthful Offenders – Post-Release

Currently, a DOC probation or parole officer must visit a youthful offender prior to the offender's release from incarceration.<sup>6</sup> The purpose of the visit is to assist in the youthful offender's transition. Additionally, DOC is currently required to develop partnerships with the Department of Labor and Employment Security (DLES), the Department of Children and Families (DCF), community health agencies, and school systems to provide youthful offenders with post-release community resources.<sup>7</sup>

### *Effect of the Bill*

PCB 08-08 removes the requirement that a DOC probation or parole officer visit with a youthful offender prior to the offender's release from incarceration. According to DOC, probation and parole officers do not visit inmates for release transition purposes. Instead, this function is accomplished by the releasing facility in partnership with community providers and services. The PCB also removes the specific references to DLES and DCF to the list of entities that DOC must develop partnerships, and replaces such references with "state agencies" and "private agencies."

### Female Youthful Offenders

Section 958.11(2), F.S., specifies that female youthful offenders may be housed at Florida Correctional Institution and Broward Correctional Institution until a female youthful offender institution is established or adapted to accommodate all custody classifications.

### *Effect of the Bill*

PCB 08-08 removes the specific references to Florida Correctional Institution and Broward Correctional Institution and provides that female youthful offenders of all ages may be housed together at those institutions designated by DOC rule. As noted in DOC's analysis of this PCB, Florida Correctional Institution is now Lowell Correctional Institution and Lowell Correctional Institution Annex. The changes made by the PCB delete these obsolete references as well as other incorrect references to certain offices and programs within DOC.

### Young Adult Offenders

Currently, there are two categories of "young adult" offenders (different than youthful offenders). The first category of young adult offenders consists of those who are 15 or younger at the time of their offender and who have no prior adjudications.<sup>8</sup> DOC is required by statute to house these young adult

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<sup>6</sup> s. 958.12, F.S.

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

<sup>8</sup> s. 944.1905, F.S.

offenders in youthful offenders facilities until they are 18.<sup>9</sup> The second category of young adult offenders consists of those with prior adjudications or those that are over 15 at the time of their offense.<sup>10</sup> DOC is required by statute to house this second category of young adult offenders in a dormitory that is separate from inmates who are 18 or older.<sup>11</sup> Thus, unlike the first category of young adult offenders, the second category of young adult offenders cannot be housed with youthful offenders.

#### *Effect of the Bill*

PCB 08-08 revises s. 944.1905(5), F.S., to require DOC to assign to facilities housing youthful offenders *all inmates* who are less than 18 and who have not been assigned to a facility for youthful offenders. Such inmates shall be assigned to a youthful offender facility until the inmate is 18; however, DOC may assign such an inmate to a youthful offender facility until the inmate reaches an age not to exceed 21 if DOC determines that the continued assignment is in the best interests of the inmate and the assignment does not pose an unreasonable risk to other inmates in the facility.

#### **Contraband**

Currently, s. 944.47, F.S., makes it unlawful for a person to introduce items declared to be contraband into or upon the grounds of any state correctional institution, or to take or attempt to take or send or attempt to send, items declared to be contraband. The statute declares the following articles contraband:

- (1) Any written or recorded communication or any currency or coin given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.
- (2) Any article of food or clothing given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.
- (3) Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.
- (4) Any controlled substance as defined in s. 893.02(4) or any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.
- (5) Any firearm or weapon of any kind or any explosive substance.<sup>12</sup>

The penalty for violating the above-described offense is a 3<sup>rd</sup> degree felony<sup>13</sup> if the offense involved contraband described in paragraphs (1) or (2). The penalty for violating the above-described offense is a 2<sup>nd</sup> degree felony<sup>14</sup> if the offense involved contraband described in paragraphs (3), (4), or (5).

#### *Effect of the Bill*

PCB 08-08 adds the following to the list of items declared to be contraband:

- Any cellular phone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of any state correctional institution without prior authorization or consent from the officer in charge of such correctional institution.

Portable communication devices refer to any device carried, worn, or stored which is designed or intended to receive or transmit verbal or written messages, access or store data, connect electronically to the internet or any other electronic device, and which allows communications in any form. The PCB specifies that such devices may include but are not limited to portable two-way pagers, hand-held radios, cellular telephones, "Blackberry" type devices, Personal Digital Assistants (PDA's), laptop computers, or any components of these devices that are intended to be used to assemble such devices. The definition also includes any new technology developed for similar purposes, but excludes

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

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

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

<sup>12</sup> s. 944.47, F.S.

<sup>13</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

<sup>14</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

any device with communication capabilities which have been approved or issued by DOC for investigative or institutional security purposes or for conducting other state business.

The PCB makes introducing a cellular phone or other portable communication device a 3<sup>rd</sup> degree felony.

### **Mental Health**

The provisions of ss. 945.40-945.49, F.S., are referred to as the Corrections Mental Health Act (Act). The Act establishes procedures for the involuntary placement of inmates into a hospital setting for the purpose of mental health treatment.

### Contracting

Currently, s. 945.41, F.S., requires DOC to contract with the Department of Children and Families (DCF) for the provision of mental health services in any DOC mental health treatment facility.

### *Effect of the Bill*

PCB 08-08 removes this requirement. In their analysis of this PCB, DOC stated that the Act originally contemplated a single centralized treatment facility for mentally ill inmates where DCF would be providing treatment. DOC states that the contracting requirement is now obsolete in that there is no longer a centralized facility. Instead, DOC maintains inpatient mental health treatment facilities within certain individual correctional institutions and provides mental health treatment.

### Definitions

Currently, s. 945.42, F.S., provides the following definitions:

- "In immediate need of care and treatment" means that an inmate is apparently mentally ill and is not able to be appropriately cared for in the institution where the inmate is confined and that, without intervention, the alleged mental illness poses an immediate, real, and present threat of substantial harm to the inmate's well-being or to the safety of others.
- "In need of care and treatment" means that an inmate has a mental illness for which inpatient services in a mental health treatment facility are necessary, which mental illness poses a real and present threat of substantial harm to the inmate's well-being or to the safety of others.
- "Mental health treatment facility" means the Corrections Mental Health Institution and any other institution that the Assistant Secretary for Health Services of the department specifically designates by rule to provide acute psychiatric care at the hospital level, in contrast to less intensive levels of care such as outpatient mental health care, transitional mental health care, or crisis stabilization care.
- "Mentally ill" means an impairment of the emotional processes, of the ability to exercise conscious control of one's actions, or of the ability to perceive reality or to understand, which impairment substantially interferes with a person's ability to meet the ordinary demands of living, regardless of etiology, except that, for the purposes of transfer of an inmate to a mental health treatment facility, the term does not include retardation or developmental disability as defined in chapter 393, simple intoxication, or conditions manifested only by antisocial behavior or drug addiction.
- "Psychologist" means a behavioral practitioner who has an approved degree in psychology that is primarily clinical in nature from a university or professional graduate school that is state-authorized or accredited by an accrediting agency approved by the United States Department of Education and who is professionally certified by the appropriate professional psychology association or is licensed as a psychologist pursuant to chapter 490.
- "Transitional mental health care" means a level of care that is more intensive than outpatient care, but less intensive than crisis stabilization care, and is characterized by the provision of traditional mental health treatments such as group and individual therapy, activity therapy, recreational therapy, and chemotherapy, in the context of a structured residential setting. Transitional mental health care is indicated for a person with chronic or residual symptomatology who does not require crisis stabilization care or acute psychiatric care at the

hospital level, but whose impairments in functioning nevertheless render him or her incapable of adjusting satisfactorily within the general inmate population, even with the assistance of outpatient care.

*Effect of the Bill*

PCB 08-08 amends the above definitions as follows:

- "In immediate need of care and treatment" means that an inmate is apparently mentally ill and is not able to be appropriately cared for in the institution where he or she is confined and that, but for being isolated in a more restrictive and secure housing environment, because of the apparent mental illness:
  - o (1)
    - The inmate is demonstrating a refusal to care for himself or herself and without immediate treatment intervention, is likely to continue to refuse to care for himself or herself, and such refusal poses an immediate, real, and present threat of substantial harm to his or her well-being; or
    - There is an immediate, real, and present threat that the inmate will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior involving causing, attempting, or threatening such harm;
  - o (2)
    - The inmate has refused voluntary placement for treatment at a mental health treatment facility after sufficient and conscientious explanation and disclosure of the purpose of placement; or
    - The inmate is unable to determine for himself or herself whether placement is necessary; and
  - o (3) All available less restrictive treatment alternatives that would offer an opportunity for improvement of the inmate's condition have been clinically determined to be inappropriate.
- "In need of care and treatment" means that an inmate has a mental illness for which inpatient services in a mental health treatment facility are necessary and that, but for being isolated in a more restrictive and secure housing environment, because of the mental illness:
  - o (1)
    - The inmate is demonstrating a refusal to care for himself or herself, without treatment is likely to continue to refuse to care for himself or herself, and such refusal poses a real and present threat of substantial harm to his or her well-being; or
    - There is a substantial likelihood that in the near future the inmate will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm;
  - o (2)
    - The inmate has refused voluntary placement for treatment at a mental health treatment facility after sufficient and conscientious explanation and disclosure of the purpose of placement; or
    - The inmate is unable to determine for himself or herself whether placement is necessary; and
  - o (3) All available less restrictive treatment alternatives that would offer an opportunity for improvement of the inmate's condition have been clinically determined to be inappropriate.
- "Mental health treatment facility" means any extended treatment or hospitalization-level unit within the corrections system which the Assistant Secretary for Health Services of the department specifically designates by rule to provide acute psychiatric care and which may include involuntary treatment and therapeutic intervention in contrast to less intensive levels of care such as outpatient mental health care, transitional mental health care, or crisis stabilization care.
- "Mentally ill" means an impairment of the mental or emotional processes, of the ability to exercise conscious control of one's actions, or of the ability to perceive or understand reality which impairment substantially interferes with a person's ability to meet the ordinary demands of living,

regardless of etiology, except that, for the purposes of transfer of an inmate to a mental health treatment facility, the term does not include retardation or developmental disability as defined in chapter 393, simple intoxication, or conditions manifested only by antisocial behavior or substance abuse addiction. However, an individual who is mentally retarded or developmentally disabled may also have a mental illness.

- The term "psychologist" is replaced by the term "psychological professional" which means a behavioral practitioner who has an approved doctoral degree in psychology as defined in s. 490.003(3)(b) and is employed by the department or who is licensed as a psychologist pursuant to chapter 490.
- "Transitional mental health care" means a level of care that is more intensive than outpatient care, but less intensive than crisis stabilization care, and is characterized by the provision of traditional mental health treatments such as group and individual therapy, activity therapy, recreational therapy, and psychotropic medications in the context of a structured residential setting. Transitional mental health care is indicated for a person with chronic or residual symptomatology who does not require crisis stabilization care or acute psychiatric care but whose impairment in functioning nevertheless renders him or her incapable of adjusting satisfactorily within the general inmate population.

PCB 08-08 also adds the following definition:

- "Crisis stabilization care" means a level of care that is less restrictive and intense than care provided in a mental health treatment facility, that includes a broad range of evaluation and treatment services provided within a highly structured setting or locked residential setting, and that is intended for inmates who are experiencing acute emotional distress and who cannot be adequately evaluated and treated in a transitional care unit or infirmary isolation management room. Such treatment is also more intense than treatment provided in a transitional care unit and is devoted principally toward rapid stabilization of acute symptoms and conditions.

In their analysis of the PCB, DOC stated that the above changes clarify and update several definitions used in the Act in an effort to echo Florida's Baker Act terminology.

#### Admitting Inmates to a Mental Health Treatment Facility – Written Notice

In order to admit an inmate into a mental health facility (commonly referred to as a CMHI facility), the warden must file a certificate under the Act in the local circuit court and a hearing must take place in order to determine whether the inmate meets the statutory criteria for involuntary placement in the hospital setting.<sup>15</sup> Currently, the certificate must be served on the inmate accompanied by:

- (1) A written notice, in plain and simple language, that the inmate or the inmate's representative may apply at any time for a hearing on the issue of the inmate's need for treatment if he or she has previously waived such a hearing.
- (2) A petition for such hearing, which requires only the signature of the inmate or the inmate's representative for completion.
- (3) A written notice that the petition may be filed with the court in the county in which the inmate is hospitalized at the time and stating the name and address of the judge of such court.
- (4) A written notice that the inmate or the inmate's representative may apply immediately to the court to have an attorney appointed if the inmate cannot afford one.<sup>16</sup>

#### *Effect of the Bill*

PCB 08-08 removes the requirement that the certificate served on the inmate be accompanied by provisions (1), (2), and (3) described above. Thus, the certificate served on an inmate must only be accompanied by a written notice that the inmate or the inmate's representative may apply immediately to the court to have an attorney appointed if the inmate cannot afford one.

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<sup>15</sup> s. 945.43, F.S.

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



The PCB also authorizes an attorney representing an inmate in a CMHI hearing to have access to the inmate and any records, including medical or mental health records, which are relevant to the representation of the inmate.

#### Continued Placement in a Mental Health Treatment Facility

CMHI admission orders generally permit DOC to place inmates in CMHI status for six months. If the inmate still requires CMHI level care after six months, DOC must request an order authorizing continued placement and a hearing must take place.

PCB 08-08 specifies that instead of “requesting an order authorizing continue placement”, DOC must file a petition for continuing admission with the Division of Administrative Hearings (DOAH), which shall assign an Administrative Law Judge (ALJ). The ALJ may appoint a private pro bono attorney in the circuit in which the treatment facility is located to represent the inmate. The ALJ may also waive the presence of the inmate at the hearing if such waiver is consistent with the best interests of the inmate and the inmate’s counsel does not object. The PCB also specifies that an inmate may remain in a CMHI facility pending a hearing after the timely filing of such petition.

#### Initiation of Involuntary Placement Proceedings – Inmates Scheduled for Release

Currently, if an inmate who is receiving mental health treatment is scheduled for release but continues to be mentally ill and in need of care and treatment, wardens are authorized to initiate procedures for involuntary placement pursuant to s. 394.467, F.S.

##### *Effect of the Bill*

PCB 08-08 authorizes the warden to initiate procedures for involuntary examination for any inmate who has a mental illness and meets the criteria of s. 394.463(1), F.S.

#### Involuntary Treatment of Inmates – Emergency Situations

Currently, wardens may petition the court for an order authorizing involuntary treatment of an inmate.

##### *Effect of the Bill*

PCB 08-08 specifies that a hearing on a petition for involuntary treatment must be held within 5 days after the petition is filed and the court may appoint a general or special magistrate to preside. The PCB specifies that one of the inmate’s physicians whose opinion supported the petition shall appear as a witness. The court may also waive the presence of the inmate at the hearing if consistent with the best interests of the inmate and the inmate’s counsel does not object.

In their analysis of the mental health portion of the PCB, DOC stated the following:

The PCB reorganizes portions of the Mental Health Act to clarify areas where administrative confusion exists, standardizes and clarifies hearing procedures, and adopts, where reasonably applicable in the correctional setting, elements from Florida’s Mental Health Act (Baker Act). Currently, the Act’s procedure for administration of mental health services does not allow for expediency in hearings for treatment of mentally ill inmates. This proposal is in the best interests of state inmates to facilitate an efficient and efficacious mental health placement and treatment system.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 921.187, F.S., relating to disposition and sentencing; alternatives; restitution.

**Section 2.** Amends s. 943.16, F.S., relating to payment of tuition or officer certification examination fee by employing agency; reimbursement of tuition, other course expenses, wages, and benefits.

- Section 3.** Amends s. 944.1905, F.S., relating to initial inmate classification; inmate reclassification.
- Section 4.** Amends s. 944.47, F.S., relating to introduction, removal, or possession of certain articles unlawful; penalty.
- Section 5.** Amends s. 948.01, F.S., relating to when court may place defendant on probation or into community control.
- Section 6.** Amends s. 948.10, F.S., relating to community control programs.
- Section 7.** Amends s. 958.04, F.S., relating to judicial disposition of youthful offenders.
- Section 8.** Amends s. 958.11, F.S., relating to designation of institutions and programs for youthful offenders; assignment from youthful offender institutions and programs.
- Section 9.** Amends s. 958.12, F.S., relating to participation in certain activities required.
- Section 10.** Amends s. 120.57, F.S., relating to additional procedures for particular cases.
- Section 11.** Amends s. 945.41, F.S., relating to legislative intent of ss. 945.40-945.49.
- Section 12.** Amends s. 945.42, F.S., relating to definitions.
- Section 13.** Amends s. 945.43, F.S., relating to admission of inmate to mental health treatment facility.
- Section 14.** Amends s. 945.44, F.S., relating to emergency placement of inmate in a mental health treatment facility.
- Section 15.** Amends s. 945.45, F.S., relating to continued placement of inmates in a mental health treatment facility.
- Section 16.** Amends s. 945.46, F.S., relating to initiation of involuntary placement proceedings with respect to a mentally ill inmate scheduled for release.
- Section 17.** Amends s. 945.47, F.S., relating to discharge of inmate from mental health treatment.
- Section 18.** Amends s. 945.48, F.S., relating to rights of inmates provided mental health treatment; procedure for involuntary treatment.
- Section 19.** Amends s. 945.49, F.S., relating to operation and administration.
- Section 20.** This bill takes effect October 1, 2008.

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

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

1. Revenues:  
See "Fiscal Comments."
2. Expenditures:  
See "Fiscal Comments."

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

1. Revenues:  
See "Fiscal Comments."
2. Expenditures:  
See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

**Community Control**

PCB 08-08 would allow offenders convicted of forcible felonies to be placed on community control.

In their analysis, DOC reported that this portion of the PCB was not anticipated to have a fiscal impact.

**Officer Certification – Payment and Reimbursement**

The PCB removes the requirement that trainees who attend a basic recruit training program at the expense of their employing agency and then leave such employment within 2 years after graduation reimburse their employing agency for wages and benefits.

In their analysis of this PCB, DOC stated that they have not required former trainees to reimburse DOC for wages and benefits. Consequently, DOC reported that there was no anticipated fiscal impact of this portion of the PCB. However, it should be noted that to the extent employing agencies (FDLE, local police departments, sheriff's departments, etc...) are currently requiring their trainees to reimburse them for wages and benefits, this bill would have a fiscal impact.

**Youthful Offenders**

The PCB revises the criteria a court uses to determine whether a person may be sentenced as a youthful offender. It also requires DOC to adopt rules defining criteria for successful participation in the youthful offender program. The PCB also authorizes DOC to house young adult offenders with youthful offenders.

DOC reported that this portion of the PCB would have no fiscal impact. DOC stated in their analysis of the PCB that since there are no correctional officer positions assigned to young adult offenders, there would be no reduction in FTE.

**Contraband**

The PCB makes introducing a cellular phone or other portable communication device a 3<sup>rd</sup> degree felony.

On February 26, 2008, the Criminal Justice Impact Conference determined that this portion of the PCB would have an insignificant prison bed impact.

**Mental Health**

The PCB reorganizes portions of the Mental Health Act to clarify areas where administrative confusion exists, standardizes and clarifies hearing procedures, and adopts, where reasonably applicable in the correctional setting, elements from Florida's Mental Health Act (Baker Act).

DOC reported that this portion of the PCB would have no fiscal impact.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

Additionally, portions of this bill appear to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because they are criminal laws.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

Lines 413-417 require DOC to adopt rules defining criteria for successful participation in the youthful offender program to include program participation, academic and vocational training and satisfactory adjustment. The bill appears to give sufficient rule making authority that is appropriately limited.

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

None.

#### D. STATEMENT OF THE SPONSOR

Not applicable.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES