

CS/CS/SB 642 – Criminal Justice

This bill amends s. 212.15, F.S., increasing the maximum threshold stolen revenue values for second degree misdemeanor theft of state funds from under \$300 to under \$1,000. This change to the thresholds would also affect the pool of potential offenders facing a third or subsequent conviction (unranked, 3rd degree felony). For the Level 1, 3rd degree felony, the minimum threshold is increased from \$300 to \$1,000.

Per DOC, in FY 17-18 there was 1 (adj.) offender sentenced for a third or subsequent conviction of a theft of state funds under \$300, with no offenders sentenced to prison. There were 23 (adj.) offenders sentenced for the theft of state funds \$300 or more, but less than \$20,000, with 1 (adj.) offender sentenced to prison (sentence length=12.0 m, incarceration rate: 4.4% adj-4.8% unadj). The number of offenders that currently fall within the proposed changes to the thresholds cannot be differentiated from the current thresholds.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill amends s. 322.34, F.S., deleting the unranked, 3rd degree felony for a third or subsequent conviction of driving with a license that is suspended, revoked, canceled, or disqualified.

See “Removing Felony for Driving with a License that is Suspended, Revoked, Canceled, or Disqualified” Handout for a subset of the effect.

CONFERENCE ADOPTED ESTIMATE: Bed Impact

This bill also amends s. 394.47891, F.S., adding “individuals who are current or former United States Department of Defense contractors; and individuals who are current or former military members of a foreign allied country” to those eligible to participate in the “Military Veterans and Servicemembers Court Program under which veterans... who are charged or convicted of a criminal offense and who suffer from a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem can be sentenced in accordance with chapter 921 in a manner that appropriately addresses the severity of the mental illness, traumatic brain injury, substance abuse disorder, or psychological problem through services tailored to the individual needs of the participant.”

Per DOC, in FY 17-18, there were 148 offenders admitted for veterans’ treatment intervention. It is not known how many more eligible offenders there would be under this new language, so the number of offenders diverted from prison cannot be quantified.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill also amends s. 489.126, F.S., restructuring what constitutes construction contracting offenses and creating multiple felonies for the following offenses:

(For not applying for permits necessary within 30 days after “initial payment, money totaling more than 10 percent of the contract price for repair, restoration, improvement, or construction to residential real property” or starting work “within 90 days after the date all necessary permits for work, if any, are issued”)

- Total money received is less than \$1,000 – 1st degree misdemeanor
- Total money received is at least \$1,000, but less than \$20,000 – unranked, 3rd degree felony (Level 1 by default)
- Total money received is at least \$20,000, but less than \$200,000 – unranked, 2nd degree felony (Level 4 by default)
- Total money received is \$200,000 or more – unranked, 1st degree felony (Level 7 by default)

(For receiving “money for repair, restoration, addition, improvement, or construction of residential real property in excess of the value of the work performed” for any 90-day period)

- Total money received exceeding the value of work performed is less than \$1,000 – 1st degree misdemeanor
- Total money received exceeding the value of work performed is at least \$1,000, but less than \$20,000 – unranked, 3rd degree felony (Level 1 by default)
- Total money received exceeding the value of work performed is at least \$20,000, but less than \$200,000 – unranked, 2nd degree felony (Level 4 by default)
- Total money received exceeding the value of work performed is \$200,000 or more – unranked, 1st degree felony (Level 7 by default)

Under current law, such acts would be punished as theft under s. 812.014, F.S. and its associated thresholds.

This bill also adds that required intent “to prove a criminal violation may be shown to exist at the time that the contractor appropriated the money to his or her own use and is not required to be proven to exist at the time of the taking of the money from the owner or at the time the owner makes a payment to the contractor.” Furthermore, “it may be inferred that a contractor intended to deprive the owner of the right to the money owed, or deprive the owner of the benefit from it, and inferred that the contractor appropriated the money for his or her own use, or to a person not entitled to the use of the money, if the contractor fails to refund any portion of the money owed within 30 days after receiving a written demand for such money from the owner.” This language could expand the ability to prosecute such violations.

Per DOC, in FY 17-18 there were 10,351 (adj.) offenders sentenced for the Level 2, 3rd degree felony under s. 812.014, F.S. (\$300 to \$5,000), with 1,131 (adj.) of these

offenders sentenced to prison (mean sentence length=25.7 m, incarceration rate: 10.9% adj-10.9% unadj). For the Level 3, 3rd degree felony (\$5,000 to \$10,000), there were 334 (adj.) offenders sentenced, with 33 (adj.) of these offenders sentenced to prison (mean sentence length=25.1 m, incarceration rate: 9.9% adj-9.9% unadj). There were 506 (adj.) offenders sentenced for the Level 4, 3rd degree felony (\$10,000 to \$20,000), with 110 (adj.) of these offenders sentenced to prison (mean sentence length=26.7 m, incarceration rate: 21.7% adj-21.8% unadj). There were 420 (adj.) offenders sentenced for the Level 6, 2nd degree felony (\$20,000 to \$100,000), with 119 (adj.) of these offenders sentenced to prison (mean sentence length=34.7 m, incarceration rate: 28.3% adj-28.3% unadj). Finally, there were 8 (adj.) offenders sentenced for the Level 7, 1st degree felony (\$100,000 or more), with 4 (adj.) of these offenders sentenced to prison (mean sentence length=155.8 m, incarceration rate: 50.0% adj-57.1% unadj). It is not known how many of these offenses were committed by contractors.

In FY 17-18, the incarceration rate for an unranked, 3rd degree felony was 8.7%. The incarceration rate for an unranked, 2nd degree felony was 31.7%. The incarceration rate for an unranked, 1st degree felony was 73.7%.

While it is not known how many theft offenses were committed by contractors, this bill's inclusion of higher monetary thresholds and lower felony levels could lower incarceration rates for future offenders. However, elaborating on what constitutes intent could now make it easier to prosecute such offenses.

CONFERENCE ADOPTED ESTIMATE: Positive/Negative Indeterminate

This bill also amends s. 500.451, F.S., removing the minimum mandatory period of incarceration of 1 year for the unranked, 3rd degree felony for selling, transporting, distributing, purchasing, or possessing horse meat for human consumption that is not clearly stamped.

Per DOC, in FY 17-18, nobody was sentenced for horse meat offenses.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill also amends s. 509.151, F.S., adjusting the second degree misdemeanor and third degree felony thresholds for obtaining food or lodging with intent to defraud, increasing the minimum threshold value for the Level 1, 3rd degree felony from \$300 to \$1,000.

Per DOC, in FY 17-18, there were 23 (adj.) offenders sentenced for obtaining food or lodging with intent to defraud for \$300 or more, with no offenders sentenced to prison.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill also amends s. 562.27, F.S., reducing the penalty for possessing a still or still apparatus from a Level 1, 3rd degree felony to a **2nd degree misdemeanor**.

Per DOC, in FY 17-18, nobody was sentenced for possessing a still or still apparatus.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill also amends s. 562.451, F.S., reducing the penalty for owning or possessing “1 gallon or more of liquor...which was not made or manufactured in accordance with the laws in effect at the time when and place where the same was made or manufactured” from an unranked, 3rd degree felony to a **1st degree misdemeanor**.

Per DOC, in FY 17-18, nobody was sentenced for owning or possessing a gallon or more of illegally made or manufactured liquor.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill also amends s. 713.69, F.S., adjusting the second degree misdemeanor and third degree felony thresholds for unlawfully removing property upon which lien has accrued, increasing the minimum threshold value for the Level 1, 3rd degree felony from \$50 to \$1,000.

Per DOC, in FY 17-18, nobody was sentenced for unlawfully removing property upon which lien has accrued.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill also amends s. 775.082, F.S., expanding the pool of offenders eligible for a mandatory minimum sentence for a “prison releasee reoffender” by adding that they committed one of a list of offenses within three years after being released from “a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence.”

Per DOC, in FY 17-18, there were 484 releasee reoffenders admitted to the Florida Department of Corrections. For potential reoffenders impacted by this language, in FY 17-18, there were roughly 570 offenders that were sentenced to time served and released before coming to prison.

While each year following release sees a certain percent of people returning to prison (Year 1: 8%, Year 2: 9%, Year 3: 7%), many of the offenses listed under s. 775.082, F.S. are already receiving extended prison sentences that might not be impacted for many years. At the same time, it is not known how many of the offenders released under time served in jail eventually commit these offenses as reoffenders, nor can it be

determined how many of those would receive a prison sentence as a releasee reoffender who would have been given a different sentence prior to this bill (i.e. community supervision). Finally, state attorneys have discretion on whether or not to pursue sentencing under this statute and it is not known how often they choose this form of sentencing for an eligible offender. Due to these factors, the prison impact cannot be quantified.

CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate

This bill also amends s. 775.087, F.S., retroactively applying “chapter 2016-7, Laws of Florida, only as provided in this subsection to persons who committed aggravated assault or attempted aggravated assault before July 1, 2016, the effective date of chapter 2016-7, Laws of Florida, which amended this section to remove aggravated assault or attempted aggravated assault from the list of predicate offenses for mandatory minimum terms of imprisonment under this section.” Therefore, someone sentenced before October 1, 2019, who committed these offenses before July 1, 2016, and received a mandatory minimum term of imprisonment “shall be resentenced to a sentence without such mandatory minimum term of imprisonment” and will be “eligible to receive any gain-time pursuant to s. 944.275, F.S. which he or she was previously ineligible to receive because of the imposition of the mandatory minimum term of imprisonment.”

Per DOC, there are currently 150 cases eligible under this criteria, though it is unknown how their new sentences would be structured.

CONFERENCE ADOPTED ESTIMATE: Negative Indeterminate

This bill amends s. 784.048, F.S., expanding the definition of cyberstalking by including “to access, or attempt to access the online accounts or Internet-connected home electronic systems of another person without that person's permission.” This expanded definition would impact multiple felonies in the statute involving willfully, maliciously, and repeatedly following, harassing, or cyberstalking:

- aggravated stalking, and makes a credible threat to that person (Level 6, 3rd degree felony)
- aggravated stalking, violation of injunction or court order (Level 7, 3rd degree felony)
- aggravated stalking of person under 16 (Level 6, 3rd degree felony)
- aggravated stalking; prohibited from contacting victim of s. 794.011, s. 800.04, or s. 847.0135(5), violation of court order (Level 7, 3rd degree felony)

Per DOC, in FY 17-18, there were 138 (adj.) offenders sentenced for aggravated stalking and making a credible threat, and 44 (adj.) of these offenders were sentenced to prison (mean sentence length=35.6 m, incarceration rate: 31.9% adj.-31.8% unadj.). There were 179 (adj.) offenders sentenced for aggravated stalking, violation of

injunction or court order, and 72 (adj.) of these offenders were sentenced to prison (mean sentence length=41.3 m, incarceration rate: 40.2% adj.-40.1% unadj.). Additionally, there were 11 (adj.) offenders sentenced for aggravated stalking of person under 16, and 5 (adj.) of these offenders were sentenced to prison (mean sentence length=30.6 m, incarceration rate: 45.5% adj.-50.0% unadj.). Finally, 4 (adj.) offenders sentenced for aggravated stalking, prohibited from contacting victim of sexual offender, and 3 (adj.) of these offenders were sentenced to prison (mean sentence length=34.7 m, incarceration rate: 75.0% adj.-75.0% unadj.). The number of offenders sentenced for cyberstalking cannot be determined from the available data. Furthermore, it is not known how many additional offenders would be added with the expansion of the cyberstalking definition.

CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate

This bill amends s. 800.09, F.S., adding county detention facility employees to the current unranked, 3rd degree felony for lewd or lascivious exhibition in the presence of “a person he or she knows or reasonably should know is an employee.”

Per DOC, in FY 17-18, 5 (adj.) offenders were sentenced under the current statute, with 2 (adj.) sentenced to prison (mean sentence length=18.5 m, incarceration rate: 40.0% adj.-40.0% unadj.).

CONFERENCE ADOPTED ESTIMATE: Positive Insignificant

Amends s. 812.014(2)(c)(1), F.S., increasing the minimum threshold property values for third degree grand theft from \$300 to \$750.

It also amends s. 812.014(2)(d), F.S., increasing the maximum threshold property values for third degree grand theft for stealing property from a dwelling or unenclosed curtilage from \$300 to \$750.

This bill also amends s. 812.014(2)(e), F.S., increasing the maximum threshold property values for petit theft of the first degree (misdemeanor) from \$300 to \$750. These changes would impact s. 812.014(3)(c), F.S., a Level 1, 3rd degree felony for any petit theft committed for a third or subsequent time.

Per DOC, in FY 17-18 there were 10,351 (adj.) offenders sentenced under s. 812.014(2)(c)(1), F.S., with 1,131 (adj.) of these offenders sentenced to prison (mean sentence length=25.7 m, incarceration rate: 10.9% adj.-10.9% unadj). The number of offenders that currently fall within the proposed changes to the s. 812.014(2)(c)(1), F.S. thresholds cannot be differentiated from the current thresholds.

Per DOC, in FY 17-18, there were 116 (adj.) offenders sentenced under s. 812.014(2)(d), F.S., with 10 (adj.) of these offenders sentenced to prison (mean sentence length=20.9 m, incarceration rate: 8.6% adj.-8.3% unadj). A certain number of

offenders currently charged under s. 812.014(2)(c)(1), F.S. will now fall into the new threshold for s. 812.014(2)(d), F.S., where a higher incarceration rate existed in prior years. However, it is not known how many offenders charged under s. 812.014(2)(c)(1), F.S. stole property from a dwelling or unenclosed curtilage of a dwelling.

Per DOC, in FY 17-18, there were 3,389 (adj.) offenders sentenced under s. 812.014(3)(c), F.S., with 436 (adj.) of these offenders sentenced to prison (mean sentence length=23.1 m, incarceration rate: 12.9% adj-12.9% unadj). The available data cannot determine how many offenders would be impacted by the proposed changes.

CONFERENCE ADOPTED ESTIMATE: Negative Significant

This bill also amends s. 812.015(8), F.S., increasing the minimum threshold property values for retail theft from \$300 to \$750, a Level 5, 3rd degree felony. This bill includes additional criteria for the definition of retail theft, including conspiring with another with the intent to sell and placing it into the control of another person in exchange for consideration. Further, the window for the commission of this theft to include additional locations is expanded from a 48-hour period to 30 days for the purpose of aggregating the value of the property. Additionally, conspiring with another with the intent to sell is made a **Level 3, 3rd degree felony** while the other parts of s. 812.015(8), F.S. remain Level 5, 3rd degree felonies. The same changes to the threshold would impact s. 812.015(9)(a), F.S. if committed a second or subsequent time, while the changes to the definitions are also applied to s. 812.015(9)(b), F.S. (Level 6, 2nd degree felony). Finally, “if a person commits retail theft in more than one judicial circuit within a 30-day period, the value of the stolen property resulting from the thefts in each judicial circuit may be aggregated and must be prosecuted by the Office of the Statewide Prosecutor.”

Per DOC, in FY 17-18, there were 301 (adj.) offenders sentenced under s. 812.015(8), F.S., with 65 (adj.) of these offenders sentenced to prison (mean sentence length=30.1 m, incarceration rate: 21.6% adj-21.7% unadj). There were 5 (adj.) offenders sentenced under s. 812.015(9)(a), F.S., and one of these offenders received a prison sentence (sentence length=24.0, incarceration rate: 20.0% adj-20.0% unadj). There were 6 (adj.) offenders sentenced under s. 812.015(9)(b), F.S., and one of these offenders received a prison sentence (sentence length=24.0, incarceration rate: 16.7% adj-16.7% unadj). The number of offenders that currently fall within the proposed changes to the s. 812.015, F.S., threshold cannot be differentiated from the current threshold, and it is not known how much the changes to definitions will impact sentencing.

In FY 17-18, the incarceration rate for Level 3, 3rd degree felony was 10.0%.

CONFERENCE ADOPTED ESTIMATE: Positive/Negative Indeterminate

This bill also amends s. 815.06, F.S., expanding the description of an offense against users of computers, computer systems, computer networks, or electronic devices” to

include “or exceeding authorization” when willfully and knowingly done. This would impact the following felonies:

- accessing, knowing access is unauthorized or the manner of use exceeds authorization; denial of the ability to transmit data; destroys, takes equipment or supplies; destroys, injures, or damages a network or device; introduces a computer contaminant; engages in audio or video surveillance of an individual by accessing any inherent feature or component (Level 1, 3rd degree felony)
- damages of at least \$5,000; any scheme or artifice to defraud or obtain property; interrupts or impairs a public service; interrupts transmittal of data, or gains unauthorized access to a device belonging to any mode of public or private transit (Level 4, 2nd degree felony)
- endangers human life; disruption that affects medical equipment used in the direct administration of medical care or treatment to a person (Level 7, 1st degree felony)

Per DOC, in FY 17-18, there were 9 (adj) offenders convicted for the Level 1, 3rd degree felony under s. 815.06, F.S. with no offenders receiving a prison sentence.

CONFERENCE ADOPTED ESTIMATE: Positive Insignificant

This bill also amends s. 817.413, F.S., increasing the minimum threshold value for the Level 3, 3rd degree felony of selling used motor vehicle goods as new from greater than \$100 to \$1,000 or more.

Per DOC, in FY 17-18, nobody was sentenced for selling used motor vehicle goods as new for greater than \$100.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill also amends s. 831.28(2)(a), F.S., adding the following for the current Level 3, 3rd degree felony (in bold): “It is unlawful to counterfeit a payment instrument with the intent to defraud a financial institution, account holder, or any other person or organization or for a person to have any counterfeit payment instrument in such person’s possession **with the intent to defraud a financial institution, an account holder, or any other person or organization.**”

Per DOC, in FY 17-18, there were 64 (adj.) offenders sentenced under s. 831.28(2)(a), F.S., with 16 (adj.) of these offenders sentenced to prison (mean sentence length=33.2 m, incarceration rate: 25.0% adj-25.0% unadj). It is not known how many were sentenced for possession without intent to defraud who would no longer be sentenced under this new definition.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill also amends s. 847.011, F.S., adding that “a person may not knowingly sell, lend, give away, distribute, transmit, show, or transmute; offer to sell, lend, give away, distribute, transmit, show, or transmute; have in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or advertise in any manner an obscene, child-like sex doll.” A definition for an obscene, child-like sex doll is not provided. A first violation would be a **1st degree misdemeanor**, and a 2nd or subsequent violation would be an **unranked, 3rd degree felony**. Additional misdemeanors are also created for “a person who knowingly has in his or her possession, custody, or control an obscene, child-like sex doll” (**2nd degree misdemeanor**), with a **1st degree misdemeanor** for a second or subsequent time.

Per DOC, in FY 17-18, 10 (adj.) people were sentenced under s. 847.011, F.S., with nobody receiving a prison sentence. In FY 17-18, the incarceration rate for an unranked, 3rd degree felony was 8.7%.

CONFERENCE ADOPTED ESTIMATE: Positive Insignificant

This bill also amends s. 849.01, F.S., reducing the penalty for keeping a gambling house from a Level 1, 3rd degree felony to a **2nd degree misdemeanor**.

Per DOC, in FY 17-18, nobody was sentenced for keeping a gambling house.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill amends s. 893.135, F.S., adding “trafficking in pharmaceuticals” to the list of trafficking offenses under this statute, defined as “a person who knowingly sells, purchases, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 120 or more dosage units containing a controlled substance described in this section.” Additionally, “the term ‘dosage unit’ means an individual tablet, capsule, pill, transdermal patch, unit of sublingual gelatin, or other visually distinctive form, with a clear manufacturer marking on each unit, of a commercial drug product approved by the United States Food and Drug Administration and manufactured and distributed by a pharmaceutical company lawfully doing business in the United States.” Therefore, the new penalties only apply to trafficking of commercial drug products.

The bill specifies that “the sale, purchase, manufacture, delivery, or actual or constructive possession of fewer than 120 dosage units containing any controlled substance described in this section” would not be a violation under s. 893.135, F.S. Therefore, any penalties applied for these amounts would be under s. 893.13, F.S. Otherwise, anything above that threshold for dosage units that is already included under the drug trafficking statute will also be included under the following thresholds (unranked, 1st degree felonies, Level 7 by default):

- between 120-499 dosage units – 3 year mandatory minimum
- between 500-999 dosage units – 7 year mandatory minimum
- between 1,000-4,999 dosage units – 15 year mandatory minimum
- 5,000 or more dosage units – 25 year mandatory minimum

Per DOC, in FY 17-18, there were 32,369 (adj.) offenders sentenced for drug possession offenses under s. 893.13, F.S., and 2,831 (adj.) were sentenced to prison (mean sentence length=23.0 m, incarceration rate: 8.8% adj.-8.8% unadj.). There were 9,424 (adj.) offenders sentenced for sale, manufacture, and delivery penalties under s. 893.13, F.S., with 3,299 (adj.) sentenced to prison (mean sentence length=37.1 m, incarceration rate: 35.0% adj.-35.0% unadj.). Finally, there were 2,005 (adj.) offenders sentenced for drug trafficking offenses, and 1,502 (adj.) were sentenced to prison (mean sentence length=75.7 m, incarceration rate: 74.9% adj.-74.9% unadj.).

It is not known which of the offenses above involved substances in dosage unit form. Additionally, the current incarceration thresholds cannot be broken down any further to examine how possession, sale/manufacture/delivery, and trafficking offense sentences might be structured under the new dosage unit thresholds. However, for certain drugs, these new thresholds could lower the number of offenders receiving drug trafficking mandatory minimum sentences, as well as the number of mandatory minimum years served, due to the dosage unit number thresholds allowing greater weights for controlled substances before triggering mandatory minimum sentences than existing weight thresholds for the same substances. The data on dosage units for commercial drug products containing substances listed under s. 893.135, F.S. is insufficient to determine how prisons might be impacted.

CONFERENCE ADOPTED ESTIMATE: Negative Indeterminate

Further amending s. 893.135, F.S., this bill adds that for an offense under this section the court shall impose a sentence pursuant to Criminal Punishment Code under chapter 921 without regard to any statutory minimum sentence, if the court finds at sentencing, after the State Attorney has been afforded the opportunity to make a recommendation, that:

- (a) The defendant has not previously been convicted of a dangerous crime as defined in s. 907.041(4)(a), F.S. or a violation specified as a predicate offense for registration as a sexual predator under s. 775.21, F.S. or for registration as a sexual offender under s. 943.0435, F.S.;
- (b) The defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon, or induce another participant to do so, in connection with the offense;
- (c) The offense did not result in death or serious bodily injury to any person;
- (d) The defendant was not engaged in a continuing criminal enterprise, as described in s. 893.20, F.S.; and

(e) By the time of the sentencing hearing, the defendant has truthfully provided to the state all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan. The fact that the defendant has no other relevant or useful information to provide or that the state is already aware of the information does not preclude a determination by the court that the defendant has complied with this requirement.

Per DOC, in FY 17-18, there were 526 offenders fitting the criteria for eligibility under the above language. Of those, 48.7% received a sentence under the mandatory minimum, with 121 receiving a prison sentence under the mandatory minimum and 135 receiving a probation sentence. Additionally, of the 392 sentenced to prison, 118 of these offenders would have received a prison sentence that was higher than their actual sentence if the Criminal Punishment Code was used. Therefore, it cannot be quantified how judges' sentencing practices would be impacted under the Criminal Punishment Code.

CONFERENCE ADOPTED ESTIMATE: Negative Significant

Further amending s. 893.135, F.S., this bill creates the opportunity for someone who committed trafficking offenses involving hydrocodone and oxycodone to petition the court for resentencing as follows: "committed a violation of former s. 893.135(1)(c)1., F.S. before July 1, 2014, but who was not sentenced for such violation before October 1, 2019, shall be sentenced as provided in this subsection. A person who was sentenced before October 1, 2019, for a violation of former s. 893.135(1)(c)1., F.S. committed before July 1, 2014, may petition the court for resentencing pursuant to this subsection."

Under prior law, hydrocodone and oxycodone were included under trafficking in illegal drugs with the following thresholds:

- 4 grams or more, less than 14 grams – Level 7, 1st degree felony; 3 year mandatory minimum
- 14 grams or more, less than 28 grams – Level 8, 1st degree felony; 15 year mandatory minimum
- 28 grams or more, less than 30 kilograms – Level 9, 1st degree felony; 25 year mandatory minimum

Under current law for hydrocodone:

- 14 grams or more, less than 28 grams – Level 7, 1st degree felony; 3 year mandatory minimum
- 28 grams or more, less than 50 grams – Level 7, 1st degree felony; 7 year mandatory minimum
- 50 grams or more, less than 200 grams – Level 8, 1st degree felony; 15 year mandatory minimum

- 200 grams or more, less than 30 kilograms – Level 9, 1st degree felony; 25 year mandatory minimum

Under current law for oxycodone:

- 7 grams or more, less than 14 grams – Level 7, 1st degree felony; 3 year mandatory minimum
- 14 grams or more, less than 25 grams – Level 7, 1st degree felony; 7 year mandatory minimum
- 25 grams or more, less than 100 grams – Level 8, 1st degree felony; 15 year mandatory minimum
- 100 grams or more, less than 30 kilograms – Level 9, 1st degree felony; 25 year mandatory minimum

Per DOC, in FY 17-18, there were 467 (adj.) offenders sentenced for trafficking in illegal drugs 4 grams or more, but less than 14 grams, with 388 (adj.) offenders sentenced to prison (mean sentence length=64.5 m, incarceration rate: 83.1% adj-83.0% unadj). There were 95 (adj.) offenders sentenced for trafficking in illegal drugs 14 grams or more, but less than 28 grams, with 77 (adj.) offenders sentenced to prison (mean sentence length=133.6 m, incarceration rate: 81.1% adj-80.9% unadj). There were 87 (adj.) offenders sentenced for trafficking in illegal drugs 28 grams or more, but less than 30 kilograms, with 64 (adj.) offenders sentenced to prison (mean sentence length=157.9 m, incarceration rate: 73.6% adj-74.1% unadj).

Per DOC, in FY 17-18, there were 18 (adj.) offenders sentenced for trafficking in hydrocodone 14 grams or more, but less than 28 grams, with 16 (adj.) offenders sentenced to prison (mean sentence length=40.9 m, incarceration rate: 88.9% adj-88.2% unadj). There were 5 (adj.) offenders sentenced for trafficking in hydrocodone 28 grams or more, but less than 50 grams, with 4 (adj.) offenders sentenced to prison (mean sentence length=93.0 m, incarceration rate: 80.0% adj-80.0% unadj). There were 2 (adj.) offenders sentenced for trafficking in hydrocodone 50 grams or more, but less than 200 grams, with 2 (adj.) offenders sentenced to prison (mean sentence length=60.0 m, incarceration rate: 100%). There was 1 (adj.) offender sentenced for trafficking in hydrocodone 200 grams or more, but less than 30 kilograms, with no offenders receiving a prison sentence.

Per DOC, in FY 17-18, there were 55 (adj.) offenders sentenced for trafficking in oxycodone 7 grams or more, but less than 14 grams, with 44 (adj.) offenders sentenced to prison (mean sentence length=52.8 m, incarceration rate: 85.5% adj-86.3% unadj). There were 19 (adj.) offenders sentenced for trafficking in oxycodone 14 grams or more, but less than 25 grams, with 11 (adj.) offenders sentenced to prison (mean sentence length=90.7 m, incarceration rate: 57.9% adj-55.6% unadj). There were 17 (adj.) offenders sentenced for trafficking in oxycodone 25 grams or more, but less than 100 grams, with 11 (adj.) offenders sentenced to prison (mean sentence length=73.8 m, incarceration rate: 64.7% adj-62.5% unadj). There were 6 (adj.) offenders sentenced for trafficking in oxycodone 100 grams or more, but less than 30 kilograms, with 4 (adj.)

offenders sentenced to prison (mean sentence length=117.0 m, incarceration rate: 66.7% adj-66.7% unadj).

Currently, if the weight is below 14 grams of hydrocodone and below 7 grams of oxycodone, an offender would be subject to the penalties under possession or sale, manufacture, and delivery (s. 893.13, F.S.). Those offenders sentenced for trafficking in illegal drugs at 4 grams or more, and less than 14 grams would not receive the mandatory three year sentence, depending on where they fell in the hydrocodone and oxycodone statutes. At weights below the trafficking thresholds, hydrocodone and oxycodone offenses are part of the general possession or sale/manufacture/delivery of other Schedule I and II substances for s. 893.13, F.S. Per DOC, in FY 17-18, there were 12,825 (adj.) offenders sentenced for possession of other Schedule I and II substances, with 965 (adj.) offenders sentenced to prison (mean sentence length=21.5 m, incarceration rate: 7.5% adj-7.5% unadj). Per DOC, in FY 17-18, there were 1,412 (adj.) offenders sentenced for sale/manufacture/delivery of other Schedule I and II substances, with 569 (adj.) offenders sentenced to prison (mean sentence length=32.3 m, incarceration rate: 40.3% adj-40.3% unadj).

Given how hydrocodone and oxycodone were initially recorded under trafficking in illegal drugs, it is not known how many would be eligible for resentencing, nor is it known how offenders are currently sentenced when hydrocodone and oxycodone fall below their trafficking thresholds. However, both sentence length and incarceration rates are significantly lower for offenses under s. 893.13, F.S. when compared to the trafficking in illegal drugs threshold where these drug types initially were (4 grams or more, less than 14 grams), and could impact resentencing decisions for those who are eligible.

CONFERENCE ADOPTED ESTIMATE: Negative Indeterminate

This bill also amends s. 944.275, F.S., permitting up to 20 days per month of incentive gain-time, applied retroactively for sentences imposed for offenses committed on or after October 1, 1995, with those in prison for nonviolent felonies permitted to earn enough gain-time to serve 65% of their total sentence, also applied retroactively, while violent offenders still remain at the 85% minimum.

See “Changing Percent of Sentence that Must Be Served by Nonviolent Offenders - Retroactive” Handout for a subset of the effect.

CONFERENCE ADOPTED ESTIMATE: Bed Impact

This bill also amends s. 944.47, F.S., increasing the current felonies for introducing or transmitting (Level 1, 3rd degree felony) and possessing (Level 3, 3rd degree felony) any cellular phone or other portable communication device as contraband to **Level 4, 3rd degree felonies**.

It also restructures the statute so that employees and non-employees receive different felonies for introducing contraband into a correctional facility. Non-employees will continue to be sentenced under the original statute with the enhancement of the cell phones as contraband, while employees will receive higher levels for introducing the following:

- any written/recorded communication or any currency/coin (Level 4, 3rd degree felony)
- any article of food or clothing (Level 4, 3rd degree felony)
- any intoxicating beverage (Level 5, 2nd degree felony)
- any controlled substance or any prescription/nonprescription drug having a hypnotic, stimulating, or depressing effect (Level 5, 2nd degree felony)
- introduction of contraband (firearm, weapon, or explosive) into correctional facility (Level 7, 2nd degree felony)
- any cellular phone or other portable communication device (Level 5, 3rd degree felony)

Per DOC, in FY 17-18, there were 163 (adj.) offenders sentenced under introducing contraband into or possessing contraband in a correctional facility (s. 944.47, F.S.). Of those sentenced, 53 (adj.) of these offenders were sentenced to prison (mean sentence length=26.8 m, incarceration rate: 32.5% adj.-32.2% unadj.). Within this group, there were 27 (adj.) offenders sentenced for introducing or possessing any written or recorded communication or a currency or coin, with 10 (adj.) receiving a prison sentence (mean sentence length=25.9 m, incarceration rate: 37.0% adj.-36.0% unadj.). Also, there were 2 (adj.) offenders sentenced for introducing or possessing an article of food or clothing, with 1 (adj.) receiving a prison sentence (sentence length=56.0 m, incarceration rate: 50.0% adj.-50.0% unadj.). There were 68 (adj.) offenders sentenced for introducing or possessing a controlled substance, with 23 (adj.) receiving a prison sentence (mean sentence length=37.5 m, incarceration rate: 33.8% adj.-33.3% unadj.). For introducing or possessing a firearm or weapon, 5 (adj.) offenders were sentenced, with 2 (adj.) receiving a prison sentence (mean sentence length=45.0 m, incarceration rate: 40.0% adj.-40.0% unadj.). For introducing or possessing a cell phone or portable communication device as contraband, there were 26 (adj.) offenders sentenced, with 13 (adj.) receiving a prison sentence (mean sentence length=24.6 m, incarceration rate: 50.0% adj.-50.0% unadj.). It is not known how many offenders sentenced for introducing contraband into a prison were correctional officers. It is also not known whether these offenses involved introduction, transmission, or possession, but it is likely that possession was the most common offense.

Per DOC, in FY 17-18, the incarceration rate for a Level 4, 3rd degree felony was 23.5%.

CONFERENCE ADOPTED ESTIMATE: Positive Insignificant

This bill also amends s. 948.013, F.S., s. 948.04, F.S., s. 948.05, F.S., and s. 948.06, F.S., reorganizing the definition of administrative probation, adding graduated incentives, and restructuring the details of the alternative sanctioning program. DOC does not believe that this would significantly change the actual operations of the alternative sanctioning program.

CONFERENCE ADOPTED ESTIMATE: No Impact

This bill also amends s. 948.08, F.S., expanding eligibility for the pretrial substance abuse and education intervention program, allowing people with two or fewer prior nonviolent felony convictions to also be eligible for voluntary admission; however, it gives the court discretion to deny them. Originally, one could not have had a prior felony conviction. Additionally, this bill expands eligibility for the pretrial veterans' treatment intervention program, adding "an individual who is a current or former United States Department of Defense contractor; or an individual who is a current or former military member of a foreign allied country."

Per DOC, in FY 17-18, there were 8,377 offenders admitted to pretrial intervention, with 148 of these offenders admitted for veterans' treatment intervention. It is not known how many more eligible offenders there would be under this new language, so the number of offenders diverted from prison cannot be quantified.

CONFERENCE ADOPTED ESTIMATE: Negative Indeterminate

This bill amends s. 951.22, F.S., removing the following acts of introducing contraband into detention facilities from the current Level 6, 3rd degree felony and making each a **1st degree misdemeanor**: any written or recorded communication, any currency or coin, any article of food or clothing, any tobacco products, any cigarette, any cigar, any intoxicating beverage or beverage which causes or may cause an intoxicating effect. Any narcotic and any instrumentality intended to be used as an aid for escape are also removed from the Level 6, 3rd degree felony and made **Level 4, 3rd degree felonies**. Finally, "any cellular telephone or other portable communication device as described in s. 944.47(1)(a)6, F.S." is now included as a **Level 4, 3rd degree felony**. Any firearm or dangerous weapon remains a Level 6, 3rd degree felony.

Per DOC, in FY 17-18, there were 1,015 (adj.) offenders sentenced under s. 951.22, F.S. Of those sentenced, 333 (adj.) of these offenders were sentenced to prison (mean sentence length=24.9 m, incarceration rate: 32.8% adj.-32.8% unadj.).

Per DOC, in FY 17-18, there were 163 (adj.) offenders sentenced under introducing contraband into or possessing contraband in a correctional facility (s. 944.47, F.S.). Of those sentenced, 53 (adj.) of these offenders were sentenced to prison (mean sentence length=26.8 m, incarceration rate: 32.5% adj.-32.2% unadj.). Within this group, there were 27 (adj.) offenders sentenced for introducing or possessing any written or recorded communication or any currency or coin, with 10 (adj.) receiving a prison sentence (mean sentence length=25.9 m, incarceration rate: 37.0% adj.-36.0%

unadj.). Also, there were 2 (adj.) offenders sentenced for introducing or possessing an article of food or clothing, with 1 (adj.) receiving a prison sentence (sentence length=56.0 m, incarceration rate: 50.0% adj.-50.0% unadj.). There were 6 (adj.) offenders sentenced for introducing or possessing an intoxicating beverage or beverage which causes or may cause an intoxicating effect, with none receiving a prison sentence. There were 68 (adj.) offenders sentenced for introducing or possessing a narcotic, with 23 (adj.) receiving a prison sentence (mean sentence length=27.5 m, incarceration rate: 33.8% adj.-33.3% unadj.). For introducing or possessing a cell phone or portable communication device as contraband, there were 26 (adj.) offenders sentenced, with 13 (adj.) receiving a prison sentence (mean sentence length=24.6 m, incarceration rate: 50.0% adj.-50.0% unadj.).

Currently, DOC has a ban on tobacco in correctional facilities, so it is considered contraband to introduce/possess tobacco products. However, s. 944.47, F.S. does not list it as contraband, so there is no data available on the number of offenses occurring in these facilities. However, contraband data indicates that DOC recovered 1,784 pounds of tobacco in FY 17-18. Additionally, s. 944.47, F.S. does not have any instrumentality intended to be used as an aid for escape listed under felony contraband, but DOC data for FY 17-18 show that no items of escape paraphernalia were found during this time period, with only 700 found since the year 2000.

While data can be identified for state correctional institutions for these specific offenses, a similar breakdown cannot be developed for county detention facilities. It is not known if each contraband offense contributes comparable shares of prison sentences for events occurring at county detention facilities. If the proportions were the same, the number of offenders sentenced to prison could be shifted in similar directions with the passage of this bill. Furthermore, sentencing data is not available for tobacco. Data on contraband recovery indicate a high level of demand at correctional facilities; however, it is not known how reducing this to a misdemeanor or lower level felony might impact prison sentences originating from events at county detention facilities. Therefore, the quantity of the prison bed impact cannot be determined.

In FY 17-18, the incarceration rate for a Level 4, 3rd degree felony was 23.5%.

CONFERENCE ADOPTED ESTIMATE: Negative Indeterminate

Amends s. 958.04, F.S., deleting the current requirement that an offender was younger than 21 years of age at the time sentence is imposed for a court to be allowed to sentence as a youthful offender and replacing it with “such crime was committed before the defendant turned 21 years of age.”

CONFERENCE ADOPTED ESTIMATE: No Impact

Amends s. 985.557, F.S., relating to direct filing, deleting “in the state attorney's judgment and discretion” whenever it is used under the discretionary direct file, as well

as deleting that a state attorney can file an information on a child charged with a misdemeanor if he or she had two previous “adjudications withheld” for delinquent acts. Furthermore, it removes “conspiracy to commit” from the list of crimes under discretionary direct file. It further adds to the discretionary direct filing criteria that “notwithstanding any other law, and in all cases, any child charged with a crime shall have an evidentiary hearing, after the state attorney’s filing of an information in adult court.” After listing criteria to be considered during the hearing, it states that “the adult court shall retain jurisdiction unless the court finds by a preponderance of the evidence that the factors listed...support returning the child to juvenile court.” Finally, this bill deletes the mandatory direct file that a state attorney can use on a juvenile, 16 or 17 years of age at the time the alleged offense was committed, for adult sanctions.

Per DOC, there were approximately 765 inmates admitted to the prison system in FY 17-18 who committed their crimes when they were 14-17 years of age. Per OSCA, in FY 17-18, 1,068 juveniles transferred to adult court through direct files and 100 juveniles transferred through waivers.

Given the existence of the involuntary discretionary waiver and involuntary mandatory waiver giving the state attorney different options to transfer a child to adult court (14 or older), as well as the ability to indict (child of any age), and without data on how many juveniles are sentenced to prison through each channel (direct file/waiver/indictment), the numerical impact that this bill would have on prison beds is not known.

CONFERENCE ADOPTED ESTIMATE: Negative Significant

- **Given the specific provisions of the bill, while DOC would see a reduction in juvenile inmates, DJJ would see an increase in juvenile commitments.**

Amends s. 381.0041, F.S., reducing the Level 5, 3rd degree felony to an unranked, 3rd degree felony and adding (in bold): “Any person who has human immunodeficiency virus infection, who knows he or she is infected with human immunodeficiency virus, and who has been informed that he or she may communicate this disease by donating blood, plasma, organs, skin, or other human tissue who donates blood, plasma, organs, skin, or other human tissue **for use in another person, other than a person who knows he or she is infected with human immunodeficiency virus.**” This creates an exception for donating blood, organs, etc. between different people with HIV.

Per DOC, in FY 17-18, no offenders were sentenced for these offenses.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill also amends s. 384.23, F.S. (defining sexual conduct and substantial risk of transmission) and s. 384.24(1), F.S., adding the exposure of another to human immunodeficiency virus infection (HIV) to unlawful acts committed by a person who has

been notified that he or she may communicate a disease through sexual intercourse. It also redefines the act as an “act with the intent to transmit the disease, to engage in sexual conduct that poses a substantial risk of transmission to another person when the other person is unaware that the person is a carrier of the disease, and to transmit the disease to the other person.” Furthermore, under s. 384.24(2), F.S., it adds that a “person does not act with the intent...if he or she in good faith complies with a treatment regimen prescribed by his or her health care provider or with the behavioral recommendations of his or her health care provider or public health officials to limit the risk of transmission, or if he or she offers to comply with such behavioral recommendations, but such offer is rejected by the other person with whom he or she is engaging in sexual conduct. For purposes of this section, the term "behavioral recommendations" includes, but is not limited to, the use of a prophylactic device to limit the risk of transmission of the disease. Evidence of the person's failure to comply with such a treatment regimen or such behavioral recommendations is not, in and of itself, sufficient to establish that he or she acted with the intent.” Originally, HIV was included in the second subsection, but this now deletes that part of this subsection and moves HIV into the first subsection, including it with the other diseases.

It also amends multiple penalties in s. 384.34, F.S. First, it amends s. 384.34(3), F.S., reducing the unranked, 3rd degree felony to a 1st degree misdemeanor for “any person who maliciously disseminates any false information or report concerning the existence of any sexually transmissible disease.” Also, it deletes s. 384.34(5), F.S., the unranked, 3rd degree felony for a violation of the originally defined s. 384.24(2), F.S. and the unranked, 1st degree felony for multiple violations. With s. 384.24(2), F.S. already redefined, and HIV moved to the first subsection, this has the effect of reducing all acts to 1st degree misdemeanors.

Per FDLE, in FY 17-18, there were 2 guilty convictions for a violation of s. 384.34(5), F.S. with a second or subsequent conviction. Per DOC, in FY 17-18, no offenders were sentenced for offenses under s. 384.34(3), F.S. There were 12 (adj.) offenders sentenced for the unranked, 3rd degree felony under s. 384.34(5), F.S., with one (adj.) offender sentenced to prison (sentence length=48.0 m, incarceration rate: 8.3% adj.-9.1% unadj.). Five (adj.) offenders were sentenced for the unranked, 1st degree felony, and four (adj.) were sentenced to prison (mean sentence length=53.3 m, incarceration rate: 80.0% adj.-80.0% unadj.).

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

Amends s. 775.0877, F.S., deleting “donation of blood, plasma, organs, skin, or other human tissue” from the list of offenses where a court can order an offender to undergo HIV testing. Criminal transmission of HIV for a second or subsequent event, where the

offender has undergone HIV testing and to whom positive test results have been disclosed, is an unranked, 3rd degree felony.

Per DOC, in FY 17-18, there were no offenders sentenced for criminal transmission of HIV.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

**CONFERENCE ADOPTED ESTIMATE FOR ENTIRE BILL: Bed
Impact equal to at least as many as the component parts.**

Requested by: Senate

CS/CS/SB 642

Removing Felony for Driving with a License that is Suspended, Revoked, Canceled, or Disqualified

October 1, 2019 Effective Date

The Criminal Justice Estimating Conference met on 4/22/2019 and estimated the following net impact on the inmate population over the next five years:

| a | b | c | d |
|--------------|---|--|------------------------|
| Fiscal Year | Projected Cumulative Prison Beds Required | Projected Additional Annual Prison Beds Required | FUNDS REQUIRED |
| | | | Annual Operating Costs |
| 2019-2020 | -109 | -109 | (\$398,646) |
| 2020-2021 | -261 | -152 | (\$1,353,201) |
| 2021-2022 | -337 | -76 | (\$2,187,065) |
| 2022-2023 | -381 | -44 | (\$2,625,941) |
| 2023-2024 | -398 | -17 | (\$2,849,037) |
| Total | -398 | -398 | (\$9,413,890) |

Prepared by Florida Legislature, Office of Economic and Demographic Research, April 16, 2019

FY 2017-18 full operating costs per inmate were obtained from DOC. The \$56.96 per diem (\$20,790 annual cost) is for all department facilities (excluding private institutions and approximately 150 beds in PRCs) and includes operations, health services, and education services. It does not include debt service costs. It also does not include indirect and administrative costs of \$4.31 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference.

FY 2017-18 dorm/work camp operating costs per inmate were obtained from DOC. The \$36.72 per diem (\$13,403 annual cost) includes costs such as health care, inmate personal care items, and officers assigned to dorms.

FY 2017-18 variable operating costs per inmate were obtained from DOC. The \$20.04 per diem (\$7,315 annual cost) includes costs such as health care and inmate personal care items.

FY 2006-07 capital costs per bed were based on Department of Corrections cost to build Suwanee CI (\$94,000,000 for 2,003 lawful capacity beds) as reported at the Criminal Justice Impact Conference held February 23, 2010. Capital costs in later years were increased by the change in the chained price index for state and local construction spending obtained from Global Insight, Inc.

Note: This impact statement is not intended to represent the direct appropriations impact of this bill. Rather, it provides a stand-alone estimate of the prison bed need of this particular bill. Cost data are included to allow a comparison of the impact of this bill with other proposed legislation. The actual appropriation associated with passage of this bill will differ depending on a number of factors including the existing inventory of prison beds.

CS/CS/SB 642

Changing Percent of Sentence that Must Be Served by Nonviolent Offenders - Retroactive

October 1, 2019 Effective Date

The Criminal Justice Estimating Conference met on 4/22/2019 and estimated the following net impact on the inmate population over the next five years:

| a | b | c | d |
|--------------|---|--|------------------------|
| Fiscal Year | Projected Cumulative Prison Beds Required | Projected Additional Annual Prison Beds Required | FUNDS REQUIRED |
| | | | Annual Operating Costs |
| 2019-2020 | -7,596 | -7,596 | (\$73,963,151) |
| 2020-2021 | -8,833 | -1,237 | (\$174,234,039) |
| 2021-2022 | -9,121 | -288 | (\$186,834,364) |
| 2022-2023 | -9,209 | -88 | (\$210,033,909) |
| 2023-2024 | -9,209 | 0 | (\$215,368,751) |
| Total | -9,209 | -9,209 | (\$860,434,214) |

Prepared by Florida Legislature, Office of Economic and Demographic Research, April 17, 2019

FY 2017-18 full operating costs per inmate were obtained from DOC. The \$56.96 per diem (\$20,790 annual cost) is for all department facilities (excluding private institutions and approximately 150 beds in PRCs) and includes operations, health services, and education services. It does not include debt service costs. It also does not include indirect and administrative costs of \$4.31 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference.

FY 2017-18 dorm/work camp operating costs per inmate were obtained from DOC. The \$36.72 per diem (\$13,403 annual cost) includes costs such as health care, inmate personal care items, and officers assigned to dorms.

FY 2017-18 variable operating costs per inmate were obtained from DOC. The \$20.04 per diem (\$7,315 annual cost) includes costs such as health care and inmate personal care items.

FY 2006-07 capital costs per bed were based on Department of Corrections cost to build Suwanee CI (\$94,000,000 for 2,003 lawful capacity beds) as reported at the Criminal Justice Impact Conference held February 23, 2010. Capital costs in later years were increased by the change in the chained price index for state and local construction spending obtained from Global Insight, Inc.

Note: This impact statement is not intended to represent the direct appropriations impact of this bill. Rather, it provides a stand-alone estimate of the prison bed need of this particular bill. Cost data are included to allow a comparison of the impact of this bill with other proposed legislation. The actual appropriation associated with passage of this bill will differ depending on a number of factors including the existing inventory of prison beds.