

## **HB 641 – Criminal Justice (Identical CS/SB 290)**

This bill amends multiple statutes. First, it amends s. 775.082, F.S., diverting from prison specific offenders convicted of possession of a controlled substance. If sentencing points are 60 or fewer, the court must sentence the offender to a nonstate prison sanction unless the court makes written findings that a nonstate prison sanction could present a danger to the public. The fiscal handout assumes that 50% of eligible inmates will be diverted.

**See “Proposal to Divert from Prison Drug Possession Offenders” Handout for a subset of the effect.**

### **CONFERENCE ADOPTED ESTIMATE: **Bed Impact****

Additionally, the bill further amends s. 775.082, F.S., in order to permit a defendant to request that the sentencing court depart from a mandatory term of imprisonment. The state attorney may file an objection to the motion. The court may grant the motion to depart if the court finds by a preponderance of the evidence that the defendant has not previously received a departure and does not have a previous conviction for the same offense, and the offense is not a forcible felony, did not involve physical injury, and did not involve a victim who is a minor. This departure mechanism is excluded for designated repeat, habitual, and career criminals.

Per DOC, in FY 15-16, 1,237 inmates were admitted to prison who received mandatory minimum sentences that could be impacted by this bill language. However, there is no data available to determine what type of sentences offenders with mandatory minimums might receive once they are no longer subject to a required sentencing option.

### **CONFERENCE ADOPTED ESTIMATE: **Negative Indeterminate****

This bill also amends s. 921.00241, F.S., permitting nonstate prison sanctions for certain nonviolent second degree felonies under the current prison diversion program. This would give the courts discretion to determine on an individual basis whether a defendant is amenable to a sentence other than prison. Nonviolent second degree crimes include: dealing in stolen property, sale of small amounts of drugs, etc. Since the guidelines points are relatively low, this would exclude anyone with a substantial criminal history. The statute also excludes anyone with a prior violent felony. The fiscal handout assumes that 50% of eligible inmates will be diverted.

See “Proposal to Divert from Prison Nonviolent Second Degree Felony Offenders” Handout for a subset of the effect.

### **CONFERENCE ADOPTED ESTIMATE: **Bed Impact****

This bill also amends s. 921.0026, F.S., restoring a mitigation that was removed several years ago, allowing a judge to reduce a sentence based upon a defendant requiring specialized treatment for addiction, and allowing a judge to reduce a sentence when the defendant’s offense is a nonviolent felony and the total sentencing points are 60 points or fewer.

The available data does not have the information necessary to determine which offenders entering prison might require specialized treatment for addiction. Per DOC, in FY 15-16, there were 54,444 (adj.) offenders sentenced for a nonviolent felony with total sentencing points between 22 and 60 points, and 12,929 (adj.) of these offenders were sentenced to prison (mean sentence length=26.1 m, incarceration rate: 23.8% adj-23.8% unadj). However, it cannot be determined what sentencing patterns judges might adopt with this new factor at their disposal.

### **CONFERENCE ADOPTED ESTIMATE: **Negative Indeterminate****

This bill also amends s. 948.01, F.S., requiring the court to place certain defendants into the drug court program, residential drug treatment, or drug offender probation if the total sentence points are 60 points or fewer, the offense is a nonviolent third degree felony, the defendant is amenable to substance abuse treatment, and the defendant’s criminal behavior is related to substance abuse or addiction.

The available data does not have the information necessary to determine which offenders entering prison might be amenable to substance abuse treatment, nor can it be determined if an offender’s criminal behavior was related to substance abuse or addiction.

### **CONFERENCE ADOPTED ESTIMATE: **Negative Indeterminate****

**CONFERENCE ADOPTED ESTIMATE FOR ENTIRE BILL: **At least as many as the Bed Impact Adopted under the Drug and Nonviolent Second Degree Diversion Amendments****

**Requested by: House & Senate**

# HB 641 (Identical CS/SB 290)

## Proposal to Divert from Prison Drug Possession Offenders

October 1, 2017 Effective Date

The Criminal Justice Estimating Conference met on 3/2/2017 and estimated the following net impact on the inmate population over the next five years:

a	b	c	FUNDS REQUIRED			
Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2017-2018	-155	-155	(\$468,720)	(\$35,718,480)	(\$36,187,200)	(\$36,187,200)
2018-2019	-570	-415	(\$2,238,438)	(\$15,721,160)	(\$17,959,598)	(\$54,146,798)
2019-2020	-815	-245	(\$7,565,655)	(\$8,295,336)	(\$15,860,991)	(\$70,007,789)
2020-2021	-941	-126	(\$8,973,768)	(\$4,048,920)	(\$13,022,688)	(\$83,030,477)
2021-2022	-1,001	-60	(\$9,827,925)	(\$2,075,070)	(\$11,902,995)	(\$94,933,472)
<b>Total</b>	<b>-1,001</b>	<b>-1,001</b>	<b>(\$29,074,506)</b>	<b>(\$65,858,966)</b>	<b>(\$94,933,472)</b>	<b>(\$94,933,472)</b>

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 10, 2017

FY 2015-16 operating costs per inmate were obtained from DOC. The \$53.49 per diem (\$19,524 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 \$3.34 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference.

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.**

# HB 641 (Identical CS/SB 290)

## Proposal to Divert from Prison Nonviolent Second Degree Felony Offenders

October 1, 2017 Effective Date

The Criminal Justice Estimating Conference met on 3/2/2017 and estimated the following net impact on the inmate population over the next five years:

a	b	c	FUNDS REQUIRED			
Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2017-2018	-247	-247	(\$746,928)	(\$59,781,456)	(\$60,528,384)	(\$60,528,384)
2018-2019	-954	-707	(\$3,708,088)	(\$34,779,056)	(\$38,487,144)	(\$99,015,528)
2019-2020	-1,496	-542	(\$14,111,375)	(\$21,528,372)	(\$35,639,747)	(\$134,655,275)
2020-2021	-1,823	-327	(\$33,851,960)	(\$13,766,328)	(\$47,618,288)	(\$182,273,563)
2021-2022	-2,027	-204	(\$36,501,375)	(\$9,960,336)	(\$46,461,711)	(\$228,735,274)
<b>Total</b>	<b>-2,027</b>	<b>-2,027</b>	(\$88,919,726)	(\$139,815,548)	(\$228,735,274)	(\$228,735,274)

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 10, 2017

FY 2015-16 operating costs per inmate were obtained from DOC. The \$53.49 per diem (\$19,524 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 \$3.34 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference.

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