

CS/HB 7125 – Administration of Justice

This bill creates s. 16.557, F.S., adding communications with a crime stoppers organization regarding alleged criminal activity to privileged communication and protected information, so that the communication and the reporting person's identity cannot be disclosed, except pursuant to criminal discovery or as part of the initial act of providing information to a crime stoppers organization. It also adds an **unranked, 3rd degree felony** for "a person who discloses a privileged communication or protected information or any information concerning a privileged communication or protected information."

In FY 17-18, the incarceration rate for an unranked, 3rd degree felony was 8.7%.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR HB 1315: Positive Insignificant

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.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642 and CS/HB 7125: Negative Insignificant

This bill also amends s. 322.34, F.S., adding a person "who does not have a driver license or driving privilege but is under suspension or revocation equivalent status" to those eligible for penalties for driving with a license that is suspended, revoked, canceled, or disqualified. It also reduces the number of those eligible for the unranked, 3rd degree felony for a third or subsequent conviction by, noting that it only applies "if the current violation of this section or the most recent prior violation of the section are related to driving while license canceled, suspended, revoked, or suspension or revocation equivalent status resulting from a violation of:

1. Driving under the influence;
2. Refusal to submit to a urine, breath-alcohol, or blood alcohol test;

3. A traffic offense causing death or serious bodily injury; or
4. Fleeing or eluding.”

Per DOC, in FY 17-18, there were 4,433 (adj.) offenders sentenced for felony driving while license suspended, revoked, canceled, or disqualified, with 339 (adj.) of these offenders sentenced to prison (mean sentence length=23.6 m, incarceration rate: 7.7% adj-7.7% unadj). It is not known how many of those sentenced to prison would and would not be eligible under the new criteria listed above. However, a 2008 OPPAGA report stated that 44.5% of those incarcerated had a prior suspension related to driving under the influence or DUI/vehicular manslaughter/homicide. Without a more detailed breakdown, it cannot be determined whether these were also during the most recent prior offense or current offense, nor can it be determined what proportion of the remaining 55.5% were also related to the above criteria. Finally, it is not known how many additional offenders there will be under the definition of who does not have a driver license or driving privilege, but is under suspension or revocation equivalent status.

EDR RECOMMENDATION: Negative Significant

This bill 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 “or for any period that is mutually agreed upon and specified in the contract”)

- 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 deletes that language and states that these violations would be prosecuted in accordance with the thresholds for the newly created felonies.

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.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR

CS/CS/SB 642 and CS/HB 7125: 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.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642 and CS/HB 7125: 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.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642 and CS/HB 7125: 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.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642 and CS/HB 7125: 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.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642 and CS/HB 7125: 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.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642: 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.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642 and CS/HB 7125: Positive 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.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642: 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.).

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642: 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. Furthermore, it specifies that grand theft of a fire extinguisher must include the following: “at the time of the taking, was installed in any building for the purpose of fire prevention and control. This subparagraph does not apply to a fire extinguisher taken from the inventory at a point-of-sale business.”

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). There were 4 (adj.) offenders sentenced for grand theft of a fire extinguisher, but nobody received a prison sentence. 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. Also, it is not known how many of those sentenced for grand theft of a fire extinguisher would no longer be sentenced under the new language.

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.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642: 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 the person 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%.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642: 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.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642: 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.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642 and CS/HB 7125: 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.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642: Negative 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.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642 and CS/HB 7125: Negative Insignificant

This bill also amends s. 893.135(1)(c)2, F.S., increasing the thresholds for trafficking in hydrocodone:

- 28 grams or more, less than 50 grams – Level 7, 1st degree felony; 3 year mandatory minimum
- 50 grams or more, less than 100 grams – Level 7, 1st degree felony; 7 year mandatory minimum

- 100 grams or more, less than 300 grams – Level 8, 1st degree felony; 15 year mandatory minimum
- 300 grams or more, less than 30 kilograms – Level 9, 1st degree felony; 25 year mandatory minimum

Under current law:

- 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

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.

Currently, if the weight is below 14 grams of hydrocodone, an offender would be subject to the penalties under possession or sale, manufacture, and delivery (s. 893.13, F.S.). By removing 14 grams or more, but less than 28 grams from the trafficking statute, anything less than 28 grams would now be subject to those penalties. However, hydrocodone offenses are not differentiated for s. 893.13, F.S. They are part of the general possession or sale/manufacture/delivery of other Schedule I and II substances. 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). It is not known if incarceration rates and sentence length for hydrocodone is treated differently than other substances captured in this data, but an examination of overlaps in sentence points did show scenarios where similar point totals scored both higher and lower sentences when comparing possession or sale/manufacture/delivery other Schedule I and II drugs to trafficking in hydrocodone. However, even if only the lower sentence length was applied

to comparable hydrocodone trafficking offenses, there would be an insufficient number of offenders to reach significance.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/HB 7125: Negative Insignificant

This bill also amends s. 944.40, F.S., adding “released on furlough from” to the Level 6, 2nd degree felony for a prisoner escaping or attempting to escape from “any prison, jail, private correctional facility, road camp, or other penal institution, whether operated by the state, a county, or a municipality, or operated under a contract with the state, a county, or a municipality.”

Per DOC, in FY 17-18, there were 224 (adj.) offenders sentenced under s. 944.40, F.S., with 116 (adj.) offenders sentenced to prison (mean sentence length=35.2 m, incarceration rate: 51.8% adj-51.7% unadj). However, this type of escape is a rare event, so it is not expected to significantly impact the prison population.

EDR RECOMMENDATION: Positive Insignificant

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%.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642: Positive Insignificant

This bill also amends s. 948.001, F.S., 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.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642: 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.

Per DOC, in FY 17-18, there were 8,377 offenders admitted to pretrial 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.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642 and CS/HB 7125: **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%.

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642: **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.”

EDR FINAL ESTIMATE BASED ON ADOPTED IMPACT FOR CS/CS/SB 642: **No Impact**

Amends s. 985.557, F.S., deleting 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 659 inmates admitted to the prison system in FY 17-18 who committed their crimes when they were 16 or 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.

EDR RECOMMENDATION: 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.

EDR RECOMMENDATION FOR ENTIRE BILL: Negative Significant

Requested by: House