

SB Draft 591-01710C-16 – Criminal Justice

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 14-15, 1,534 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 amends s. 812.014(2)(c)(1), F.S., increasing the minimum threshold property values for third degree grand theft from \$300 to \$1,000. It also amends s. 812.014(2)(d), F.S., increasing the minimum threshold property values for third degree grand theft for stealing property from a dwelling or unenclosed curtilage of a dwelling from \$100 to \$600. This bill also amends s. 812.015(8), F.S., increasing the minimum threshold property values for third degree retail theft from \$300 to \$1,000.

Per DOC, in FY 14-15, there were 12,231 (adj.) offenders sentenced under s. 812.014(2)(c)(1), F.S., with 1,370 (adj.) of these offenders sentenced to prison (mean sentence length=23.5 m, incarceration rate: 11.2% adj-11.2% unadj). There were 183 (adj.) offenders sentenced under s. 812.014(2)(d), F.S., with 37 (adj.) of these offenders sentenced to prison (mean sentence length=21.0 m, incarceration rate: 20.0% adj-20.2% unadj). Furthermore, there were 383 (adj.) offenders sentenced under s.

812.015(8), F.S., with 77 (adj.) of these offenders sentenced to prison (mean sentence length=27.7 m, incarceration rate: 20.1% adj-20.1% unadj).

The number of offenders that currently fall within the proposed changes to the s. 812.014(2)(c)(1), F.S. and s. 812.015(8), F.S. thresholds cannot be differentiated from the current thresholds. However, 37 offenders were sentenced to prison under s. 812.014(2)(d), F.S. (\$100 to \$300), which would not include these offenders within the parameters of the current bill (\$600 to \$1,000). That change alone would be a significant effect. Although the other changes to this portion of the bill cannot be quantified, there is expected to be a significant overall effect on prison beds.

This bill also creates the ability for a state attorney to establish a retail theft diversion program. However, this program would only apply to offenders that fall under the newly established minimum threshold property value of \$1,000 for 3rd degree felonies. Therefore, this would not have an additional impact on prison beds.

CONFERENCE ADOPTED ESTIMATE: Negative Significant

This bill also amends s. 893.13(6)(b), removing the 1st degree misdemeanor for possession of 20 grams or less of cannabis and making it a noncriminal infraction. Possession of more than 20 grams, but less than 2 ounces (56.7 grams) of cannabis becomes a 1st degree misdemeanor, increasing the amount necessary to constitute a 3rd degree felony to 2 ounces. Per DOC, in FY 14-15, there were 1,699 (adj.) offenders sentenced for possessing over 20 grams of marijuana, and 64 (adj.) of these offenders were sentenced to prison (mean sentence length=22.7 m, incarceration rate: 3.8% adj-3.8% unadj). The number of offenders possessing more than 20 grams and less than 2 ounces cannot be differentiated from those possessing 2 or more ounces. Also, with the upper bound for simple possession of marijuana likely being much higher than 57 grams under the current 3rd degree felony requirement in practice, it is expected that a small proportion of the 64 offenders sentenced to prison would fall within this newly established threshold.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

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 14-15, there were 55,583 (adj.) offenders sentenced for a nonviolent felony with total sentencing points between 22 and 60 points, and 13,014 (adj.) of these offenders were sentenced to prison (mean sentence length=24.6 m, incarceration rate: 23.4% adj-23.4% 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 and requests 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 and request 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**

This bill also amends s. 944.275, F.S., permitting up to 20 days per month of incentive gain-time for sentences imposed for offenses committed on or after October 1, 2016, with those in prison for nonviolent felonies permitted to earn enough gain-time to serve 65% of their total sentence, while violent offenders still remain at the 85% minimum.

See “Proposal to Change Percent of Sentence that Must Be Served by Nonviolent Offenders” Handout for a subset of the effect.

CONFERENCE ADOPTED ESTIMATE: Bed Impact

**CONFERENCE ADOPTED ESTIMATE FOR ENTIRE BILL:
Negative Significant**

Requested by: Senate

SB Draft 591-01710C-16

Proposal to Divert from Prison Drug Possession Offenders

October 1, 2016 Effective Date

The Criminal Justice Estimating Conference met on 1/29/2016 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
2016-2017	-146	-146	(\$1,417,660)	(\$34,826,617)	(\$36,244,277)	(\$36,244,277)
2017-2018	-563	-417	(\$7,063,413)	(\$15,926,538)	(\$22,989,951)	(\$59,234,228)
2018-2019	-812	-249	(\$14,013,313)	(\$8,053,098)	(\$22,066,411)	(\$81,300,638)
2019-2020	-934	-122	(\$18,222,129)	(\$3,735,765)	(\$21,957,894)	(\$103,258,532)
2020-2021	-989	-55	(\$20,570,331)	(\$2,092,710)	(\$22,663,041)	(\$125,921,573)
Total	-989	-989	(\$61,286,845)	(\$64,634,728)	(\$125,921,573)	(\$125,921,573)

Prepared by Florida Legislature, Office of Economic and Demographic Research, December 22, 2015

FY 2014-15 operating costs per inmate were obtained from DOC. The \$51.65 per diem (\$18,852 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.

SB Draft 591-01710C-16

Proposal to Divert from Prison Nonviolent Second Degree Felony Offenders

October 1, 2016 Effective Date

The Criminal Justice Estimating Conference met on 1/29/2016 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
2016-2017	-188	-188	(\$1,825,480)	(\$46,517,968)	(\$48,343,448)	(\$48,343,448)
2017-2018	-752	-564	(\$9,364,750)	(\$27,439,698)	(\$36,804,448)	(\$85,147,896)
2018-2019	-1,181	-429	(\$19,700,170)	(\$16,964,313)	(\$36,664,483)	(\$121,812,379)
2019-2020	-1,438	-257	(\$27,333,194)	(\$10,460,142)	(\$37,793,336)	(\$159,605,714)
2020-2021	-1,592	-154	(\$32,411,910)	(\$6,068,859)	(\$38,480,769)	(\$198,086,483)
Total	-1,592	-1,592	(\$90,635,503)	(\$107,450,980)	(\$198,086,483)	(\$198,086,483)

Prepared by Florida Legislature, Office of Economic and Demographic Research, December 29, 2015

FY 2014-15 operating costs per inmate were obtained from DOC. The \$51.65 per diem (\$18,852 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.

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Proposal to Change Percent of Sentence that Must Be Served by Nonviolent Offenders

October 1, 2016 Effective Date

The Criminal Justice Estimating Conference met on 1/29/2016 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
2016-2017	-701	-701	(\$6,806,710)	(\$194,422,837)	(\$201,229,547)	(\$201,229,547)
2017-2018	-3,143	-2,442	(\$38,295,850)	(\$146,409,018)	(\$184,704,868)	(\$385,934,415)
2018-2019	-5,432	-2,289	(\$87,392,113)	(\$98,287,401)	(\$185,679,514)	(\$571,613,929)
2019-2020	-6,921	-1,489	(\$128,922,085)	(\$57,802,473)	(\$186,724,558)	(\$758,338,486)
2020-2021	-7,772	-851	(\$157,171,021)	(\$23,996,408)	(\$181,167,429)	(\$939,505,915)
Total	-7,772	-7,772	(\$418,587,778)	(\$520,918,137)	(\$939,505,915)	(\$939,505,915)

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 6, 2016

FY 2014-15 operating costs per inmate were obtained from DOC. The \$51.65 per diem (\$18,852 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.