CS/SB 232 – Criminal Justice

This bill amends s. 941.1402(2)(a), F.S. to read as follows for when a juvenile is not entitled to a review of his or her sentence after 25 years: “if he or she has previously been convicted of committing, or of conspiracy to commit, murder if the murder offense for which the person was previously convicted was part of a separate criminal transaction or episode than the murder that resulted in the sentence under s. 775.082(1)(b)1, F.S.” The other offenses currently listed for when a juvenile is not entitled to a review are deleted.

The bill also creates s. 921.14021, F.S., stating that “a juvenile offender, as defined in s. 921.1402, F.S., who was convicted for a capital offense and sentenced under s. 775.082(1)(b)1., F.S., and who was ineligible for a sentence review hearing pursuant to s. 921.1402(2)(a)2.-10., F.S. as it existed before October 1, 2021, is entitled to a review of his or her sentence after 25 years or, if on October 1, 2021, 25 years have already passed since the sentencing, immediately.”

Furthermore, the bill creates s. 921.1403, F.S., stating that “it is the intent of the Legislature to retroactively apply this section which take effect October 1, 2021” and defining young adult offender as someone who committed an offense prior to reaching 25 years of age and establishing when he or she is eligible for a sentence review. It is initially stated that “a young adult offender is not entitled to a sentence review under this section if he or she has previously been convicted of committing, or of conspiring to commit, murder if the murder offense for which the person was previously convicted was part of a separate criminal transaction or episode than the murder that resulted in the sentence under s. 775.082(3)(a)1.,2., 3., or 4. or (b)1., F.S. or than the human trafficking for commercial sexual activity that resulted in the sentence under s. 775.082(3)(a)6, F.S.”

Two scenarios exist where he or she would be eligible. The first states the following: “A young adult offender who is convicted of an offense that is a life felony, that is punishable by a term of years not exceeding life imprisonment, or that was reclassified as a life felony and he or she is sentenced to a term of more than 20 years under s. 775.082(3)(a)1., 2., 3., 4., or 6., F.S. , is entitled to a review of his or her sentence after 20 years.” This would not apply to a person eligible for sentencing under s. 775.082(3)(a)5, F.S. or s. 775.082(3)(c), F.S. The second states that “a young adult offender who is convicted of an offense that is a felony of the first degree or that was reclassified as a felony of the first degree and who is sentenced to a term of more than 15 years under s. 775.082(3)(b)1., F.S. is entitled to a review of his or her sentence after 15 years.” The process of the sentence review is outlined, with the option of the court to modify the sentence once complete, with at least a 5 year probation term for a sentence of more than 20 years (first scenario) and at least a 3 year probation term for a sentence of more than 15 years (second scenario).

Per DOC, there are currently 7,400 inmates who are potentially eligible for sentencing review under the amended language. It is not known how the courts will respond to

those who are potentially eligible, therefore the impact on prison beds cannot be quantified. However, given the large number of inmates currently fitting this criteria, there is expected to be a significant impact.

CONFERENCE ADOPTED ESTIMATE: Negative Significant

This bill also creates s. 945.0911, F.S., establishing a conditional medical release program within the Florida Department of Corrections and stating that "an inmate is eligible for consideration for release under the conditional medical release program when the inmate, because of an existing medical or physical condition, is determined by the department to be an inmate with a debilitating illness, a permanently incapacitated inmate, or a terminally ill inmate. Notwithstanding any other law, an inmate who meets this eligibility criteria may be released from the custody of the department pursuant to this section before serving 85 percent of his or her term of imprisonment." Definitions are provided for each of these terms. "Permanently incapacitated inmate" and "terminally ill inmate" currently exist under s. 947.149, F.S., though the newly created statute replaces the requirement that death be imminent for a terminally ill inmate, adding that death "is expected within 12 months." Also, this bill creates additional eligibility for an "inmate with a debilitating illness," defined as "an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to himself or herself or to others." This expands the pool of those eligible for conditional medical release. Finally, by repealing s. 947.149, F.S., it is no longer FCOR's responsibility to determine which eligible inmates are released, but rather DOC's responsibility.

Per DOC, there are approximately 112 inmates currently fitting the criteria described in the bill. In the past, FCOR approved on average 40% of eligible inmates per calendar year under current conditional medical release (2014 through 2016). In FY 18-19, approval was at 56%, and in FY 19-20, approval was at 51%. However, with responsibilities shifting to DOC, the percentages approved for release could potentially change.

CONFERENCE ADOPTED ESTIMATE: Negative Significant

This bill also creates s. 945.0912, F.S., establishing "a conditional aging inmate release program within the department for the purpose of determining eligible inmates who are appropriate for such release, supervising the released inmates, and conducting revocation hearings as provided for in this section." An inmate becomes eligible for this program when the inmate "has reached 65 years of age and has served at least 10 years on his or her term of imprisonment. Notwithstanding any other law, an inmate who meets this criteria as prescribed in this subsection may be released from the custody of the department pursuant to this section before serving 85 percent of his or her term of imprisonment." However, an inmate may not be considered for release through the program "if he or she has ever been found guilty of,

regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent for committing" a list of offenses including an "offense classified or that was reclassified as a capital felony, life felony, or first degree felony punishable by a term of years not exceeding life imprisonment," an offense involving the killing of a human being, and those offenses serving as predicates to registration as a sexual offender. Furthermore, an inmate who is eligible for consideration as a candidate for conditional aging inmate release must be considered for this program.

Per DOC, currently there are 272 inmates potentially eligible under the criteria outlined in the bill. Furthermore, these inmates do not overlap with those potentially eligible under the creation of s. 945.0911, F.S. However, given the multiple steps involving both the consideration of additional evidence/investigations and the right of victims to be heard, as well as an initial majority decision by a panel and the final decision by the Secretary for those who are denied by the panel, it is not known how many of the potentially eligible inmates would be part of this program.

CONFERENCE ADOPTED ESTIMATE: Negative Significant

CONFERENCE ADOPTED ESTIMATE FOR ENTIRE BILL: Negative Significant

Requested by: Senate