

CS/SB 1504 – Sentencing

This bill creates s. 322.3041, F.S., retroactively applying a prior change to statute for offenders currently incarcerated under the previous statutory language and creating a process whereby they are resentenced under current statute. On October 1, 2019, s. 322.34, F.S. was amended, 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. Additionally, it reduced 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.”

Prior to this change, anyone charged with a third or subsequent offense would be eligible for this felony. At the time this change in language only affected offenders sentenced after that date. This bill would retroactively apply this change in statute to all offenders currently incarcerated under that felony, establishing that those determined to not be felony offenders under this new language must be resentenced, and “be treated as if he or she had been convicted of a misdemeanor violation. “

Per DOC, on June 30, 2019, there were 390 people incarcerated under s. 322.34, F.S. However, is not known how many of these would be eligible for resentencing given the criteria above. Furthermore, an unknown number of these offenders were charged under the second Level 1, 3rd degree felony in s. 322.34, F.S. regarding habitual traffic offenders, though there is likely significant overlap with those not eligible for resentencing under the recently changed language.

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 suspensions 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. However, the group of potentially eligible inmates is large enough that this section of the bill could have a significant impact on the prison population.

CONFERENCE ADOPTED ESTIMATE: Negative Significant

This bill also creates s. 943.0587, F.S., establishing a process whereby a person can petition a court to expunge a criminal history record for a conviction under s. 322.34,

F.S. prior to the change in language on October 1, 2019. In explaining this process, the bill states that a petitioner's sworn statement must be that he or she "satisfies the eligibility requirements for expunction...and...is eligible for expunction to the best of his or her knowledge." An **unranked, 3rd degree felony (Level 1 by default)** is created for "a person who knowingly provides false information on such sworn statement."

Language exists for expunction of criminal history records under s. 943.0585, F.S. with a Level 1, 3rd degree felony applied to a sworn statement in a similar way. Per DOC, in FY 18-19, there were no new commitments to prison under this felony.

CONFERENCE ADOPTED ESTIMATE: Positive Insignificant

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

Requested by: Senate