
Proposal: Allow law enforcement to issue notices to appear for Non-Violent, Non-Sexual Third-Degree Felonies.

Potential Statute/Rule Affected: Florida Rule of Criminal Procedure 3.125, Florida Statute 901.28, Florida Statute 901.29, Florida Statute 901.30.

Discussion: Providing law enforcement officers discretion to issue Notices to Appear (NTA) for non-violent, non-sexual third-degree felonies, as long as the requirements of Florida Rule of Criminal Procedure are otherwise met, please see below. This would allow persons to remain out of jail while their charges are pending, allowing them to continue to work. In the event a person charged via NTA by a law enforcement officer fails to attend court, a warrant would be issued for their arrest.

Florida Rule of Criminal Procedure 3.125

(b) **By Arresting Officer.** If a person is arrested for an offense declared to be a non-violent, non-sexual third degree felony (proposed edit), a misdemeanor of the first or second degree or a violation, or is arrested for violation of a municipal or county ordinance triable in the county, and demand to be taken before a judge is not made, notice to appear may be issued by the arresting officer unless:

- (1) the accused fails or refuses to sufficiently identify himself or herself or supply the required information;
- (2) the accused refuses to sign the notice to appear;
- (3) the officer has reason to believe that the continued liberty of the accused constitutes an unreasonable risk of bodily injury to the accused or others;
- (4) the accused has no ties with the jurisdiction reasonably sufficient to assure the accused's appearance or there is substantial risk that the accused will refuse to respond to the notice;
- (5) the officer has any suspicion that the accused may be wanted in any jurisdiction; or
- (6) it appears that the accused previously has failed to respond to a notice or a summons or has violated the conditions of any pretrial release program.

Further Action: If approved, will need to define non-violent, non-sexual third degree felonies eligible for NTAs.

Proposal: Amend Florida Statutes regarding diversion to mandate funding for diversion courts: Florida Statute 397.334 (Drug Court), Florida Statute 394.47892 (Mental Health Court), Florida Statute 394.47891 (Veterans Court), and Florida Statute 948.16 (Misdemeanor mental health/drug/veterans court programs). Create an oversight office of all diversion programs in the state for consistency. Oversight office to consult with subject matter experts for best practices. Recommend Legislature allocate appropriate sufficient recurring funds for implementation and operation of all the statutory diversion programs.

Potential Statute/Rule Affected: Florida Statutes 397.334, 394.47892, 394.47891, and 948.16.

Discussion: As of August 2019, there were 27 Mental Health Courts, 31 Veterans Courts, and 91 drug courts (including 54 adult, 20 juvenile, 13 family dependency, and 4 DUI courts) in operation in the State of Florida.¹ Currently, it is within the discretion of each county to fund these courts. These valuable courts offer accused persons an alternative to prison sanctions while providing them with additional assistance (i.e. mental health counseling, drug treatment) that may reduce recidivism. Mandating these courts are funded by the state will ensure all accused persons in all counties, not just the counties able to afford the diversion courts, have access to these programs. Additionally, the diversion courts currently in operation are county specific and do not operate in the same manner. Creating a statewide oversight office of diversion programs would offer consistency and allow the oversight office to consult with subject matter experts to determine the best way to reduce recidivism through diversion. The oversight office would also maintain statistics regarding the diversion courts' impact on recidivism.

Drug Court – F.S. 397.334

(1) Each county may (recommend change to “The State shall”) fund a treatment-based drug court program under which persons in the justice system assessed with a substance abuse problem will be processed in such a manner as to appropriately address the severity of the identified substance abuse problem through treatment services tailored to the individual needs of the participant...

Mental Health Court – F.S. 394.47892

(1) Each county may (recommend change to “The State shall”) fund a mental health court program under which a defendant in the justice system assessed with a mental illness shall be processed in such a manner as to appropriately address the severity of the identified mental illness through treatment services tailored to the individual needs of the participant...

Veterans Court – F.S. 394.47891

(1) The chief judge of each judicial circuit may (recommend change to “The State shall”) establish (recommend change to fund) a Military Veterans and Servicemembers Court Program under which veterans... who are charged or convicted of a criminal offense, and who suffer from a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem can be sentenced in accordance with

¹ Fcourts.org

chapter 921 in a manner that appropriately addresses the severity of the mental illness, traumatic brain injury, substance abuse disorder, or psychological problem through services tailored to the individual needs of the participant

Misdemeanor pretrial substance abuse education and treatment intervention program; misdemeanor pretrial veterans' treatment intervention program; misdemeanor pretrial mental health court program – F.S. 948.16

- References: Drug Court F.S. 397.334, Mental Health Court F.S. 394.47892, and Veteran's Court program, no statutory cite for Veteran's Court.

Further Action: Budgetary impact for diversion courts.

Proposal: Create Statute for Conditional Medical Release of Inmates in County Jails.

Potential Statute/Rule Affected: Creation of New Statute – add to Florida Statute Chapter 951

Discussion: Create a statute giving county jails/jailers the discretion to release inmates accused of non-violent/non-sexual crimes on conditional medical release. The Florida Department of Corrections is permitted, pursuant to Florida Statute 947.149 (below), to establish a conditional medical release program and release prisoners who meet the criteria. Medical costs for county inmates continue to increase, putting a burden on taxpayers. Allowing jails/jailers to release inmates accused or sentenced to non-violent, non-sexual crimes on conditional medical release would alleviate some of the financial burden.

947.149 Conditional medical release.— (suggestions for new statute in strikethrough and highlight)

(1) ~~The commission shall, in conjunction with the department,~~ **A county jail facility may** establish ~~the a~~ conditional medical release program **for pretrial detainees not in custody for a sexual or violent offense and/or inmates serving a non-prison sentence.** 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~~ **county jail facility** to be within one of the following designations:

(a) “Permanently incapacitated inmate,” which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others.

(b) “Terminally ill inmate,” which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.

(2) Notwithstanding any provision to the contrary, any person determined eligible under this section and sentenced to **in** the custody of the ~~department~~ **the county jail facility** may, ~~upon referral by the department,~~ be considered for conditional medical release ~~by the commission, in addition to any parole consideration for which the inmate may be considered,~~ **except that conditional medical release is not authorized for pretrial detainees in custody for a sexual and/or violent offense or inmates serving a prison sentence** ~~who is under sentence of death.~~ No inmate has a right to conditional medical release or to a medical evaluation to determine eligibility for such release.

(3) The authority and whether or not to grant conditional medical release and establish additional conditions of conditional medical release rests solely within the discretion of the **county jail facility** ~~commission,~~ in accordance with the provisions of this section, together with the authority to approve the release plan to include

necessary medical care and attention. The **county jail facility** ~~department~~ shall identify inmates who may be eligible for conditional medical release based upon available medical information ~~and shall refer them to the commission for consideration~~. In considering an inmate for conditional medical release, the **county jail facility** ~~commission~~ may require that additional medical evidence be produced or that additional medical examinations be conducted, and may require such other investigations to be made as may be warranted.

(4) The conditional medical release term of an inmate released on conditional medical release is for the remainder of the inmate's sentence, without diminution of sentence for good behavior. Supervision of the medical releasee must include periodic medical evaluations at intervals determined by the **county jail facility** ~~commission~~ at the time of release.

(5)(a) If it is discovered during the conditional medical release that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for conditional medical release under this section, the **county jail facility** ~~commission~~ may order that the releasee be returned to the custody of the **county jail facility** ~~department~~ for a conditional medical release revocation hearing, ~~in accordance with s. 947.141~~. If conditional medical release is revoked due to improvement in the medical or physical condition of the releasee, she or he shall serve the balance of her or his sentence with credit for the time served on conditional medical release and without forfeiture of any gain-time accrued prior to conditional medical release. If the person whose conditional medical release is revoked due to an improvement in medical or physical condition would otherwise be eligible for ~~parole~~ **release** or any other release program, the person may be considered for such release program pursuant to law.

(b) In addition to revocation of conditional medical release pursuant to paragraph (a), conditional medical release may also be revoked for violation of any condition of the release established by the **county jail facility** ~~commission~~, ~~in accordance with s. 947.141~~, and the releasee's gain-time may be forfeited ~~pursuant to s. 944.28(1)~~.

(6) **In the event an inmate is released pursuant to this section, the county jail facility shall notify the victim, and the applicable court, state attorney, and defense attorney of the release and the conditions of the inmate's release.** ~~The department and the commission shall adopt rules as necessary to implement the conditional medical release program.~~

Further Action: Further define non-sexual and/or non-violent offenses.