



## **HSJ-PP-02: PRETRIAL DETENTION CAP FOR FELONY CHARGES**

### **COMMITTEE RECOMMENDATION: DEFER TO LEGISLATIVE CONFERENCE**

**PROPOSED POLICY:** SUPPORT a statutory change to place a cap on the amount of time that pretrial felony offenders may be housed in county detention facilities

**BACKGROUND:** The number of inmates detained in county jails on felony offenses has increased over the past several years. For a variety of reasons, pretrial felony offenders occupy detention facility space for longer periods of time than lower-level misdemeanor offenders. As a result, more inmates are detained for longer periods of time in county jails, as opposed to state prisons, leaving fewer beds available in county jails to accommodate new offenders. This places additional pressure on counties to fund costly jail construction and expansion projects, straining counties limited fiscal resources. This policy proposal seeks a statutory change that would place a cap on the amount of time that pretrial felony offenders may be housed in county detention facilities.

Over the past four years, the Leon County Sheriff's Office (LCSO) has reported a 92% increase in the Average Length of Stay (ALOS) for a person detained in the Leon County Detention Facility, from an average of 137 days in 2019 to 263 days in 2022. Some felony offenders have been housed in the Leon County Detention Facility for several years while their cases are processed through the court system. This increase in the ALOS is due primarily to (1) an increase in the number of persons detained who are charged with felony offenses; (2) a decrease in the court clearance rate resulting from the effects of the COVID-19 pandemic on court operations; and (3) felony offenders lower likelihood of eligibility to be released on bond or to participate in jail alternative programs. As a result of this increase in the ALOS for county jail inmates, fewer beds are available to accommodate new offenders, placing pressure on counties to expand or build new jail facilities.

**ANALYSIS:** In recent years, the Florida Legislature has considered bills (e.g., SB 484 during the 2018 Legislative Session) that would authorize courts to sentence felony offenders to imprisonment in county jails for up to 24 months in certain circumstances. Legislation such as this, if enacted, would further strain the ability of county jails to meet the correctional needs of their communities.

A significant portion of Florida county jails inmate populations is comprised of felony offenders, and many of these inmates have been housed at a county jail for a prolonged period of time while awaiting sentencing. The number of inmates detained on felony offenses has increased over the past several years, while during the same period, court clearance rates have not always kept pace with detention facilities incoming caseloads. As a result, more inmates have remained detained for longer periods of time in county jails, leaving fewer beds available to accommodate new offenders.



Almost all criminal offenses in Florida are divided by severity into two categories: misdemeanors and felonies. Misdemeanor offenses are less serious than felonies and can be punishable by a term of incarceration in a county jail for not more than a year. Felonies are crimes that are more serious and are punishable by imprisonment in a state correctional facility, or state prison, for more than one year. Sec. 904.04(1), F.S. generally requires that most persons who are arrested are delivered immediately into the custody of the sheriff of the county in which the indictment, information, or affidavit is filed, meaning in practice that offenders are generally housed at a county jail upon arrest. Until an inmate is convicted and sentenced to a term of imprisonment of at least one year, however, he or she generally remains in the custody of the county sheriff, unless the inmate is eligible for release from incarceration through one of several jail alternative programs (although for various reasons, many felony offenders are not eligible to do so). As provided in Sec. 944.17(3)(a), specifically, only those persons who are convicted and sentenced in circuit court to a cumulative sentence of incarceration for 1 year or more, whether sentence is imposed in the same or separate circuits, may be received by the [Florida Department of Corrections] into the state correctional system.

There is an important distinction between the roles of county jails and state prisons with respect to the housing of felony offenders. In short, jails are designed to hold lower-level offenders for shorter periods of time, while the role of prison facilities is more focused on long-term housing and rehabilitation of more serious and often violent offenders. As described in greater detail in a 2010 report published by the National Association of Counties titled *State Prisoners in County Jails*.

Prisoners are meant to be long-term residents. Conversely, a jail's original purpose is to receive and hold individuals pending trial, conviction, or sentencing at the county level. They hold those who are awaiting pick-up from other sources (i.e., parole violators to be picked up by the state, mentally ill waiting to move to health facilities, etc.). They provide protective custody for those in contempt of court and for court witnesses. They are final points for inmates sentenced to short terms (less than one year), and jails provide temporary housing for state prisoners when state facilities are overcrowded.

The main difference is that prisons are for long-term incarceration and generally operated by the state; jails are for short-term holdings and operated at the county level. But as the inmate population has soared in recent years the function of the jail is rapidly changing. One, jails are now near, at, or over-capacity. Two, jails have had to fulfill the role of the state prison in rehabilitative methods. More and more jails are providing vocation and educational programming, psychiatric treatment, community programs, drug treatment, and alternative methods of sentencing.

As discussed earlier in this policy proposal, the average length of stay for a person detained in the Leon County Detention Facility has increased from 137 days in 2019 to 264 days as of March 2022. This increase is due in large part to the number of inmates currently housed in the Detention Facility charged with serious offenses, coupled with a lower clearance rate for criminal cases over the past two years which occurred in large part due to the COVID-19 pandemic, creating a backlog for the disposition of inmates' cases by the Circuit Court. In addition, the State Attorney and defense counsel must work together in negotiating plea



agreement to dispose of cases. On average, court records indicate that approximately 11 continuances are granted for each offender.

Under Florida law, counties are responsible for the maintenance and operation of county jails. However, the state's circuit courts, state attorneys, and public defenders, which are entities of the state's judicial branch of government, are solely responsible for the processing and disposition of felony criminal cases. As such, the length of time that felony offenders remain detained in county facilities before they are tried and sentenced depends exclusively on how quickly these offenders' cases are processed through the court system. Although these offenders are housed in county facilities before trial, county governments have comparatively little influence with respect to how many offenders will be housed in their jail, how long those offenders will be detained there, or how quickly their case can be brought to trial.

As discussed above, state prison facilities, rather than county jails, are best positioned to provide the infrastructure and services required to successfully rehabilitate felony offenders. However, nearly 300 inmates in the Leon County Detention Facility have been incarcerated for over one year awaiting trial or sentencing. As such, it may be appropriate to pursue a state legislative policy change, in partnership with various criminal justice partners including sheriffs, state attorneys, public defenders, and courts, that would place a limit on the amount of time that a person charged with a felony offense and awaiting sentencing can be detained in a county jail, after which time the state must receive that person in the state correctional system.

**FISCAL IMPACT:** If successful, the statutory change recommended in this policy proposal would reduce inmate populations in county jails statewide, reduce counties' financial obligations to support pretrial inmates' medical expenses that are not covered by Medicaid, and reduce sheriffs' operating costs relative to their detention facilities.

#### **FAC STAFF NOTES:**

- FAC 2022 Policy Conference
  - HSJ-PP-02 was recommended to be amended prior to the Legislative Conference.
  - FAC staff is going to meet with sheriff's offices, state attorneys' offices, and additional parties to address additional costs/concerns of proposal.
- **Statutes**
  - [s. 921. 188, F.S.](#) *Placement of certain state inmates in local detention facilities.*
  - [s. 951. 23, F.S.](#) *County and municipal detention facilities; definitions; administration; standards and requirements*
  - [s. 944. 17, F.S.](#) *Commitments and classification; transfers*
  - [Florida Rules of Criminal Procedure RULE 3.191. SPEEDY TRIAL](#) (Page 107)
- **Bills**
  - 2020
    - [HB 1017 – Criminal Justice](#) by Rep. Bush – Failed

- The bill revises provisions for administration of DOC; limits monetary bail to violent felony offenses; modification of sentence on ground that sentence is greater than necessary to achieve purposes of sentencing; creates Florida Innocence Inquiry Commission; requires DOC to provide certain staff with deescalation training & training in responding to incidents involving individuals who have mental illness or cognitive deficits; requires DOC to place prisoners as close as practicable to prisoner's primary residence; requires DOC to submit report concerning availability of & capacity of DOC to treat heroin & opioid abuse through evidence-based programs; requires DJJ to undertake certain pilot programs.
- 2018
  - [SB 484- Criminal Justice](#) by Sen. Bradley – Failed
    - The bill authorized a court to sentence offenders to a county jail for up to 24 months under certain circumstances for offenses committed after a specified date. It authorized the department to extend the limits of confinement to allow an inmate to participate in supervised community release, subject to certain requirements, as prescribed by the department by rule. Additionally, it authorized each county to create a supervised bond release program; It required each county that establishes a supervised bond program to submit a report annually by a certain date to the Office of Program Policy Analysis and Government Accountability (OPPAGA).

#### Guiding Principles

- **Detention related:**
  - HSJ 35. The Florida Association of Counties supports funding for capital improvements to county courthouses and other court-related facilities, including jails.
  - HSJ 50. The Florida Association of Counties supports policies that ensure that adequate safety, supervision, and facility maintenance is provided at juvenile residential assessment centers and secure detention facilities.
  - HSJ 46. The Florida Association of Counties supports policies that reduce county jail expenses, including juvenile and adult diversion programs.
- **Trial related:**
  - HSJ 43. The Florida Association of Counties supports policies preserving counties' ability to provide risk assessment pretrial release services that prevent new offenses and ensures appearance as obligated.
  - HSJ 45. The Florida Association of Counties opposes policies that restrict pretrial services to only indigent defendants

Past FAC Statements: There are no past proposals pertaining to Pretrial Detention Caps for Felony Charges.



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**ASSIGNED COMMITTEE:** HSJ

**BOARD SUPPORT:** Yes

**UNFUNDED MANDATE:**

**PROTECTIVE OF HOME RULE:**