

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1587 Inmate Reentry

SPONSOR(S): Bogdanoff and others

TIED BILLS: IDEN./SIM. BILLS: SB 2714

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Krol	Cunningham
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

House Bill 1587 requires the Department of Corrections (department) to develop and implement a reentry program that includes substance abuse or mental health treatment in the form of a 90 day in-prison treatment program, as well as a 12 month treatment program to be completed by the inmate as they are on substance abuse or mental health probation in the community during the last year of his or her prison sentence.

In order for an inmate to be eligible to participate in the reentry program, a sentencing judge must sentence an offender to the program and order conditions of supervision to be completed by the offender. The bill provides criteria that the department can consider before placing otherwise eligible inmates in the prison portion of the program.

The bill provides that 12 months spent on probation under this section as part of the reentry program will be considered as in-custody time in calculating the 85% requirement.

The fiscal impact of this bill is indeterminate. The Criminal Justice Estimating Conference has not determined the fiscal impact of this bill. See "Fiscal Comments."

The bill provides an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Chapter 397, Florida Statutes, provides for the provision of substance abuse services by state government. Part VIII provides for substance abuse programs for state inmates.

##### **In-Prison Substance Abuse Programs**

The Department of Corrections (department) screens all inmates to determine substance abuse treatment needs when they are admitted to the correctional system. Each inmate is assigned a priority for treatment based upon the severity of addiction, previous treatment, criminal history, sentencing authority's treatment recommendations, and forecasted release date. The inmate is required to participate in substance abuse treatment if a treatment slot becomes available. Unfortunately, relatively few of the inmates who need substance abuse treatment receive it.

Approximately two-thirds of inmates are identified as needing substance abuse treatment. Only 20 percent of the 25,901 inmates who were released during FY 2006-2007 with an identified need for substance abuse treatment received the needed services. As with educational programs, funding for substance abuse treatment programs has decreased radically since FY 2000-2001. In FY 2000-2001, 39,870 inmates were identified as needing treatment, with 10,547 of them receiving treatment in one of the 4,569 slots at 86 facilities. In FY 2005-2006, 56,392 inmates were identified as needing treatment, with 8,865 receiving it in one of 2,235 treatment slots at 27 facilities. Furthermore, a higher percentage of the treatment slots are in shorter-term outpatient programs, which were found to be less effective in reducing recidivism.<sup>1</sup>

##### **Mental Health Transition Services**

The department has a memorandum of agreement with the Department of Children and Family Services to ensure that inmates with severe and persistent mental illnesses have access to mental health services after release. Those inmates who are not going to be hospitalized under the Baker Act are scheduled for an appointment with a community mental health provider within 30 days of their release. The two departments have also worked together to develop a web-based database system to serve as the referral and tracking mechanism for the aftercare program.

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<sup>1</sup> Office of Program Policy Analysis and Government Accountability. *Corrections Rehabilitative Programs Effective, But Serve Only a Portion of the Eligible Population*, Report No. 07-14, (February 2007).

At least 45 days prior to release, a Mental Health Aftercare Specialist completes SSI/SSDI applications for inmates who may qualify for benefits due to diagnosis with a psychotic disorder, bipolar disorder, or major depressive disorder. In addition, all inmates who are receiving medication for a mental or physical illness receive a 30-day supply upon release. During the period from January to September 2008, 1556 inmates were referred for aftercare services and 450 SSI/SSDI applications were completed and forwarded to the Social Security Administration on behalf of inmates.<sup>2</sup>

### **Drug Offender Probation**

The department is required to develop and administer a drug offender probation program which emphasizes a combination of treatment and intensive community supervision approaches and which includes provision for supervision of offenders in accordance with a specific treatment plan.<sup>3</sup> This program generally uses graduated sanctions when offenders violate program requirements by actions such as testing positive on drug tests, missing treatment sessions, or failing to report to court.<sup>4</sup> These sanctions can include mandatory community service, extended probation, or jail stays. Probationers in this program are subject to probation revocation if they violate any conditions of their probation. This can result in an imposition of any sentence that may have originally been imposed before the offender was placed on probation.<sup>5</sup> In FY 2008-09, 10,501 offenders were on drug offender probation.<sup>6</sup>

### **Drug Courts**

The drug court concept was developed in Dade County as a response to a federal mandate to reduce the inmate population or lose federal funding. The Florida Supreme Court reported that a majority of the offenders being incarcerated due to drug-related crimes were “revolving back through the criminal justice system because of underlying problems of drug addiction.”<sup>7</sup> The Court felt that the delivery of treatment services needed to be coupled with the criminal justice system, strong judicial leadership, and partnerships to bring treatment and the criminal justice system together.<sup>8</sup> As of September 2008, more than half of all the counties and all of the judicial circuits had some form of drug court.<sup>9,10</sup>

### **Mental Health Courts**

Similar to drug courts, mental health court judges play a significant role in determining how individual cases involving defendants with mental illnesses should proceed and whether alternatives to prosecution or incarceration should be considered.<sup>11</sup> Currently mental health courts are not found in every county.

### **Effect of Proposed Changes**

The bill creates a reentry program for state inmates within part VII of chapter 397, Florida Statutes. The Department of Corrections (department) is required to implement the program. The program is for

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<sup>2</sup> Senate Criminal Justice Committee, Interim Project 2009-313, *Breaking the Cycle of Crime: The Department of Corrections and Re-entry Programming*. (October 2008).

<sup>3</sup> Section 948.20(2), F.S.

<sup>4</sup> Section 948.20(1), F.S.

<sup>5</sup> Section 948.06 (2)(e), F.S.

<sup>6</sup> Department of Corrections, Community Supervision Admissions, 2008-2009 Agency Statistics, [http://www.dc.state.fl.us/pub/annual/0809/stats/csa\\_prior.html](http://www.dc.state.fl.us/pub/annual/0809/stats/csa_prior.html). (Last accessed on March 18, 2010).

<sup>7</sup> *The Florida Drug Court System*, Publication by the Florida Supreme Court, revised January 2004, p.1.

<sup>8</sup> *Ibid.*

<sup>9</sup> Office of Program Policy Analysis and Government Accountability, *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, Report No. 09-13, (March 2009).

<sup>10</sup> *Op. Cit.*, OPPAGA Report No. 09-13 – During calendar year 2007, pre-trial diversion drug courts operated in 31 counties in 18 judicial circuits. Pre-trial diversion drug court programs admitted approximately 6,573 offenders. During calendar year 2007, post-adjudicatory drug courts operated in 26 counties in 11 judicial circuits. Post-adjudicatory drug court programs admitted 1,694 offenders.

<sup>11</sup> Transforming Florida's Mental Health System, Constructing a Comprehensive and Competent Criminal Justice/Mental Health/Substance Abuse Treatment System: Strategies for Planning, Leadership, Financing, and Service Development. (March 2007).

eligible, nonviolent, low-risk inmates who pose a minimal foreseeable risk to the public, and who have been sentenced to the program.

The reentry program will consist of a prison-based treatment program for substance abuse or mental health or co-occurring disorders for a minimum of 90 days and a community-based aftercare treatment program. The in-prison component may be operated in secure areas in or adjacent to an adult institution, a community residential facility, or a work release center.

The sentencing court must include an order for the reentry program at sentencing to alert the department of the inmate's preliminary eligibility for admission to the reentry program. When the department considers the inmate for the program, it will consider:

- The inmate's criminal history;
- The inmate's need for substance abuse or mental health treatment;
- General rehabilitative interests;
- Potential risk to the public;
- Departmental operational needs; and
- Victim's comments.

An inmate is ineligible for admission to the program if:

- The inmate was sentenced to a term of 10 years or more;
- The inmate was convicted of or pled guilty or no contest to the following offenses during their current or a previous prison sentence:
  - Any capital, life, or first degree felony;
  - Any second or third degree felony listed in s. 775.084(1)(c)1.;<sup>12</sup>
  - Any offense listed in s. 784.07,<sup>13</sup> s. 784.021,<sup>14</sup> s. 827.03,<sup>15</sup> or s. 843.01<sup>16</sup> or any offense that makes a person subject to sex offender registration under 943.0435;<sup>17</sup>
  - Any offense for which the sentence was enhanced under s. 775.087;<sup>18</sup> or
  - Any offense in another jurisdiction that would be considered a crime described in any of the statutes listed above, or would have been enhanced under s. 775.087, if it was committed in Florida.

If the inmate meets the criteria for the program, the department approves the inmate's entry into the program, and space is available, the department will provide written notification to the sentencing court, state attorney, counsel for the inmate, and any victim of the inmate's admission into the program. The bill states that admission into the program is not a right, but a matter of grace. The department may refuse to place the inmate in the reentry program.

The department can start the in-prison treatment component of the program if the reentry program is ordered by the sentencing court. Before the inmate completes the in-prison portion of the program, the department will evaluate the inmate's needs and create a postrelease treatment plan that includes substance abuse or mental health aftercare services.

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<sup>12</sup> Section 775.084(1)(c)1., F.S., lists the following offenses: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; aggravated stalking; home invasion/robbery; carjacking; or an offense which is in violation of a law of any other jurisdiction if the elements of the offense are substantially similar to the elements of any felony offense enumerated in sub-subparagraphs a.-q., or an attempt to commit any such felony offense.

<sup>13</sup> Section 784.07, F.S., provides an enhanced penalty if an assault or battery is committed against law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers.

<sup>14</sup> Section 784.021, F.S., defines aggravated assault.

<sup>15</sup> Section 827.03, F.S., defines the offenses of child abuse, aggravated child abuse, and neglect of a child.

<sup>16</sup> Section 843.01, F.S., defines resisting an officer with violence.

<sup>17</sup> Section 943.0435, F.S., provides definitions for offenders who would be required to register as a sexual offender.

<sup>18</sup> Section 775.087, F.S., reclassifies offenses based on the use or possession of a weapon during the commission of a crime.

If the inmate is unable to participate in the reentry program due to medical or other reasons, the department may determine to have the inmate examined by a qualified medical personnel or qualified nonmedical personnel appropriate for the inmate's situation. The qualified personnel shall consult with the director of the reentry program and the director will determine if the inmate can continue with treatment or be discharged from the program.

An inmate in the reentry program is subject to the rules of conduct established by the department and can have sanctions imposed, such as:

- Loss of privileges;
- Restrictions;
- Disciplinary confinement;
- Forfeiture of gain-time or the right to earn gain-time in the future;
- Alteration of release plans;
- Termination from the reentry program; or
- Other program modifications in keeping with the nature and the gravity of the program.

The department may place an inmate in the program in an administrative or protective confinement as necessary.

Following the completion of the in-prison treatment component, the inmate will be transitioned into the community on "drug offender-mental health probation" for the last 12 months of his or her sentence.

While in the community, the inmate will be subject to:

- All standards of drug offender probation; and
- Any special conditions of supervision ordered by the sentencing court, including:
  - Participation in an aftercare substance abuse or mental health program,
  - Residence in a postrelease transitional residential halfway house, or
  - Any other appropriate form of supervision or treatment.

The bill allows for the inmate's case to be transferred to the drug court for supervision for the last 12 months of his or her sentence if the county where the inmate was sentenced has a drug court and they are willing to accept the case. The drug court judge then becomes the sentencing judge for purposes of ensuring compliance with the program. The department is responsible for collecting the cost of supervision from the inmate.

The bill provides that while on probation:

- The inmate will comply with all conditions of supervision imposed and all orders of the drug court or other supervising court. Violations of any condition or order may result in revocation of supervision by the court and could result in a new sentence.
- The inmate will pay appropriate costs of supervision to the department. If financially able, the inmate will pay the costs of the substance abuse or mental health treatment. The court may impose additional conditions such as payment of restitution, court costs, and fines; community service; and compliance with other special conditions.

The bill states that time spent on probation under this section as part of the reentry program will be considered in-custody time in calculating the 85% requirement.<sup>19</sup>

The bill provides that the department will implement the reentry program to the fullest extent feasible within this section and available resources. The department is required to provide a special training to staff that is selected to serve in the reentry program.

The department may enter into performance-based contracts with qualified individuals, agencies, or corporations to supply any or all services provided in the reentry program. A contract must offer the department substantial savings. The department may establish a system of incentives within the reentry

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<sup>19</sup> Section 944.275, F.S.

program to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.

The bill prevents any inmate from having a cause of action against the department, a court, the state attorney, or a victim related to the reentry program.

The bill requires the department to develop a computerized system to track recidivism and recommitment of inmates who have participated in the reentry program. Starting October 1, 2011, the department will submit an annual report regarding the program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill allows the department to adopt rules to implement its duties under this section and to administer the reentry program.

The bill also requires the Office of Program Policy Analysis and Government Accountability to review the reentry program and report their findings to the President of the Senate and the Speaker of the House of Representatives before the commencement of the 2011 legislative session.

**B. SECTION DIRECTORY:**

Section 1. Creates 397.755, creating a reentry program.

Section 2. Requires a review and report by the Office of Program Policy Analysis and Government Accountability.

Section 3. Provides an effective date of July 1, 2010.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Qualified individuals, agencies, or corporations may contract with the department to supply any or all services provided in the reentry program. This could result in an increase in business for those entities that provide substance abuse and mental health treatment.

**D. FISCAL COMMENTS:**

The Office of the States Court Administrator (OSCA) stated there will be some impact on the court workload, but it should not be substantial. The uniform orders of supervision will need to be modified to include recommended admission into the reentry program. Both the state and the defense will be in a

position to know if an offender qualifies for reentry, and the court is not required to make any separate findings of fact. The end result of the sentencing process actually creates a type of split sentence for the offender, since the post incarceration portion of the program requires that the offender be placed in a drug treatment or mental health program for a period of one year upon release from prison. This one year period is actually part of the original incarcerative sentence imposed by the trial court. Any violation of the terms and conditions subjects the offender to a revocation and the imposition of any sentence up to the statutory maximum for the offense for which he or she was originally sentenced. OSCA stated the bill will increase the number of violations of supervision hearings if offenders are unable to successfully complete the program.

At the time of the publishing of this analysis, the Department of Corrections and the Department of Children and Families did not provide an analysis for or any fiscal determination for HB 1587.

Because the bill allows for the sentencing court judge to make a determination on which offenders can be admitted to the program, it is difficult to determine how many judges may order this type of sentence. In addition, the bill also grants discretion to the Department of Corrections (department) in who they allow to be in the program based on a number of possible criteria. Further the bill appears to allow the department to refuse every inmate who requests admission. For these reasons it is unclear how many inmates would be participating in this reentry program. Program costs would be incurred by the department. While the bill requires that no contract should be undertaken without providing the department with substantial savings, it would be difficult to determine any programming costs.

However, the bill provides that inmates in the reentry program will be able to serve the final 12 months of their sentence in the community. According to their website, the department states that in FY 2008-09, it cost \$52.00 (\$18,980 per year) a day to keep an inmate in prison and \$5.09 a day (\$1,857.85 per year) to keep an offender on probation. For one inmate to serve in the reentry program, the one year he or she would be out of prison serving his or her sentence in the community would save the department a total \$17,122.15.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill allows the department to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement its duties under the newly created section and to administer the reentry program.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 81 appears to be missing the word "treatment."

The terms "qualified medical personnel" and "qualified nonmedical personnel" are not defined by the bill or in statute.

Lines 129-130 refer to "drug offender-mental health probation." It appears that an "or" should be substituted for the "-."

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES