

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 2714

INTRODUCER: Criminal Justice Committee and Senator Rich

SUBJECT: Inmate Services

DATE: April 8, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Fav/CS
2.			GO	
3.			JA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill requires the Department of Corrections (department or DOC) to develop and implement a reentry program during the last year of sentence for non-violent inmates who have substance abuse problems. To be admitted to the program, the offender must be sentenced to a conditional split sentence – a definite term of imprisonment with the final year suspended and served on drug offender probation. In order to be released to probation, the offender must complete an in-prison program of reentry treatment for substance abuse disorders that is a minimum of 90 days. While on probation, the offender must participate in a community-based substance abuse aftercare treatment program and reentry program.

This bill creates section 397.755 of the Florida Statutes.

II. Present Situation:

Inmate Statistics and Policy Concerns¹

In Fiscal Year 2008-2009, 37,391 inmates were released from the DOC facilities, and statistics indicate that more than 12,000 will be reincarcerated within three years.² With an average cost of approximately \$20,000 per year to incarcerate one inmate³, the state can expect to spend \$240 million to incarcerate these returnees for only one year. In the past decade, Florida policymakers have acknowledged the importance of reentry services and post-release planning and transition, and various initiatives have been undertaken to improve an inmate's post-release success. However, barriers to successful reentry abound despite this commitment to address the problem. Furthermore, programs and services have been adversely impacted by recent budget reductions and budget reallocations.

Among the major issues that relate to an inmate's successful reentry into society are his or her ability to find employment and housing, to overcome substance abuse problems, and to obtain treatment for mental health problems.

Programs and Services

In May 2007, DOC revised its mission statement to include assisting offenders with reentry into society in order to reduce recidivism and to lower crime rates. Successfully reaching the department's goal of reducing recidivism from its current 32 percent rate to a 20 percent rate by 2012 could avoid \$85 million of costs annually to the correctional system. There would be additional cost savings to law enforcement agencies and the court system, and both financial and social benefits for those citizens who would not become victims of crime.

The department has established the Reentry Advisory Council to address issues of offender reentry and to assist in the formation of a statewide strategy to reduce recidivism within the correctional system. The council includes selected state agency heads, community leaders, and legislators. Its mission and overarching goal is "to develop a 5-year Re-Entry Strategic Plan to improve public safety, maximize existing resources and develop new resources by creating interdisciplinary approaches that support prisoners' successful re-integration into the community with a reduction in recidivism, and to align the Florida Department of Corrections to meet the Second Chance Act requirements."⁴ The strategic plan was completed in June 2009.⁵

The department has received two federal Prisoner Reentry Initiative grants. Targeting Lifetime Success was awarded in 2006 and operated in Broward, Palm Beach, and Dade Counties until its

¹ Much of the information contained in this portion and the subsequent portions of the Present Situation section of this bill analysis is restated from an Issue Brief by the Committee on Criminal Justice of the Florida Senate. See Comm. on Criminal Justice, Fla. Senate, *Breaking the Cycle of Crime: The Department of Corrections and Re-entry Programming* (Interim Project Report 2009-313) (Oct. 2008), available at http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-313cj.pdf (last visited on January 11, 2010). Statistical data has been updated.

² Florida Department of Corrections' Recidivism Reduction Strategic Plan, Fiscal Year 2009-2014, page 3, available at <http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf> (last viewed January 12, 2010).

³ The average per diem cost for all DOC facilities, except private facilities, is \$52. An additional \$3.54 in direct and indirect costs is not included in that amount. Department of Corrections Budget Summary (Fiscal Year 2008-2009), available at <http://www.dc.state.fl.us/pub/annual/0809/budget.html> (last viewed on January 12, 2010).

⁴ "Re-Entry Advisory Council Mission" available at <http://www.dc.state.fl.us/orginfo/reentry> (last viewed January 12, 2010).

⁵ See footnote 8.

expiration. Bridges to Success was awarded in 2007 and is still operational in Duval County. Neither of these grants was funded through the community corrections assistance funding mechanism in s. 948.51, F.S.

Federal Second Chance Act⁶

Congress passed the Second Chance Act in an attempt to help inmates make a safe and successful transition back into the community. The Act adds numerous grants and opportunities for extending reentry efforts at the state and local levels. It provides for community and faith-based organizations to deliver mentoring and transitional services to inmates returning to the community. It will also help connect inmates to mental health and substance abuse treatment, expand job training and placement services, and facilitate transitional housing and case management services. In August 2009, the department was awarded a Second Chance Act grant to partner with the City of Jacksonville in operating the Offenders About to Reenter Society (OARS) program. The OARS program provides pre-release and post-release re-entry services for inmates who are returning to Duval County.

III. Effect of Proposed Changes:

The bill requires the department to develop a two-phase reentry program targeting offenders who have substance abuse issues during the last part of their sentence. The first phase includes treatment for substance abuse issues while confined in prison. The second phase includes drug-offender probation or supervision by a drug court. During the probation or drug court phase, the offender must participate in a substance abuse aftercare treatment program and reentry program. The department is required to implement the program to the “fullest extent feasible” within the terms of the bill and available resources.

Eligibility

For an offender to be eligible to participate in the program, the sentencing judge must sentence the offender to a conditional split sentence. This conditional split sentence includes a definite term of imprisonment with the final year suspended. If the offender completes an in-prison program of reentry treatment for substance abuse disorders that is a minimum of 90 days and meets other criteria established by the department, he or she will be released to serve the suspended year of imprisonment on drug offender probation.

An inmate is disqualified from participating in the reentry program if he or she was ever convicted of or pled nolo contendere to any of the following offenses at any time:

- A capital, life, or first-degree felony.
- A sexual offense listed in s. 943.0435(1)(a)1.a.(I), F.S.⁷

⁶ Pub. Law. No. 110-199 (HR 1593), April 9, 2008.

⁷ These offenses are violations of s. 787.01, F.S. (Kidnapping; kidnapping of child under age 13), s. 787.02, F.S. (False imprisonment; false imprisonment of child under age 13), or s. 787.025(2)(c), F.S. (Luring or enticing a child), where the victim is a minor and the defendant is not the victim’s parent or guardian; s. 794.011, F.S. (Sexual battery), excluding s. 794.011(10), F.S.; s. 794.05, F.S. (Unlawful sexual activity with certain minors); s. 796.03, F.S. (Procuring person under age of 18 for prostitution); s. 796.035, F.S. (Selling or buying of minors into sex trafficking or prostitution); s. 800.04, F.S. (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 825.1025, F.S. (Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person); s. 827.071, F.S. (Sexual performance by a child); s. 847.0133, F.S. (Protection of minors; prohibition of certain acts in connection with

- A forcible felony offense that is specifically set forth in s. 776.08, except burglary under s. 810.02(4), F.S.⁸
- An offense for which the sentence was enhanced under s. 784.07, F.S. This includes assaults or batteries committed upon a law enforcement officer, a firefighter, an emergency medical care provider, and any member of another specified category of public servants.
- An offense for which the sentence was enhanced under s. 775.087, F.S. Many of these offenses would be disqualifying because they are also forcible felonies. In addition, the following offenses would be disqualifying when a firearm was possessed or used during commission of the offense: escape, aggravated stalking, trafficking in cocaine or other specified drugs, and possession of a firearm by a felon.
- A felony offense listed in s. 775.084(1)(c)1., F.S.⁹
- Violation of ss. 827.03(1) or (2), F.S. (child abuse or aggravated child abuse).
- Violation of ss. 825.102(1) or (2), F.S. (abuse or aggravated abuse of an elderly person or disabled adult).
- Violation of s. 843.01 (resisting officer with violence).
- Any offense in another jurisdiction which would be an offense described above if the offense had been committed in this state.

Operation of the program

The department is responsible for establishing criteria for participation in the program. As such, it must review the offender's criminal history, need for substance abuse treatment, general rehabilitative interests, and the potential risk that he or she poses to the public. The department may also consider its operational needs. The bill gives the department authority to adopt rules to implement its provisions.

If the department determines that the offender meets statutory and department eligibility criteria, it must obtain the offender's written consent to participate in the program. The consent must indicate that the offender accepts the responsibilities of the program and understands the consequences of not completing it. After giving consent, the offender will be required to complete a treatment program for substance abuse disorders that lasts a minimum of 90 days. Upon successful program completion, the offender will be released to serve the last year of the conditional split sentence in accordance with the probation order that was entered at sentencing.

obscenity); s. 847.0135, F.S. (Computer pornography; traveling to meet minor), excluding s. 847.0135(6), F.S.; s. 847.0137, F.S. (Transmission of pornography by electronic device or equipment prohibited); s. 847.0138, F.S. (Transmission of material harmful to minors to a minor by electronic device or equipment prohibited); s. 847.0145, F.S. (Selling or buying of minors); or s. 985.701(1), F.S. (Sexual misconduct).

⁸ These offenses that are specifically set forth in s. 810.02(4), F.S., are treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; and unlawful throwing, placing, or discharging of a destructive device or bomb. The statute also includes "any other felony which involves the use or threat of physical force or violence against any individual" within the forcible felony definition, but these unspecified offenses would not be disqualifying as a forcible felony for purposes of the bill.

⁹ The offenses are: 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.

Prior to release, the department must evaluate the offender's needs for community placement and develop a post-release treatment plan. The plan must include substance abuse aftercare services and reentry services in accordance with the probation order that was entered by the sentencing court as part of the conditional split sentence.

The probation order must include the standard conditions of drug offender probation found in s. 948.20, F.S., and the standard condition requiring the offender to pay costs of supervision, court costs, and fines if able to do so. As in all community supervision cases, the court may also include any special conditions of probation. Examples of special conditions that could be included in the probation order are participation in an aftercare substance abuse program, residence in a post-release transitional residential halfway house, and participation in community service.

The probation order must also authorize transfer of the offender's supervision to the drug court in the county where the offender was sentenced. If the drug court enters a written order accepting the transfer, the drug court judge is deemed to be the sentencing judge for purposes of ensuring compliance with the conditions of probation, revoking the probation order, and resentencing the offender. If the county does not have a drug court, or if the drug court does not accept the offender, the department will supervise the offender in accordance with the order of probation.

The offender will continue to be eligible for award of gain time while on probation. Willful violation of a condition of probation could result in revocation of probation and return to prison to serve the remaining year of the sentence. If returned to prison, the offender will also forfeit any gain time that was accrued during the first part of the sentence and must serve that time in addition to the year. This differs from the standard situation in which a violation of probation could result in resentencing to the maximum sentence allowed for the offense. Limiting resentencing to the remaining year of the sentence plus any lost gain time would remove a disincentive to participation in the program because it would not be possible for a technical violation of probation to result in a significantly increased prison sentence. The offender would be eligible to earn gain time while completing the incarcerative sentence.

Private Contractors

The bill authorizes the department to develop and enter into performance-based contracts with private individuals or entities to provide services required by the reentry program if the contract offers substantial savings to the department. The department is also authorized to develop an incentive system for private-employers.

Evaluation Reports

The department is required to develop a computerized system to track recidivism and recommitment of program participants. Beginning on October 1, 2013, it must annually submit a report of the results to the Governor, President of the Senate, and Speaker of the House.

The bill also requires the Office of Program Policy Analysis and Government Accountability to review the program and report its findings to the Governor, the President, and the Speaker before the beginning of the 2013 Legislative Session.

Effective Date

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

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill would not have a direct and measurable fiscal impact on the private sector. However, it could result in a positive fiscal impact if inmates who have participated in the program become more productively employed and law abiding than they otherwise would have been.

C. Government Sector Impact:

The bill would require the department to provide a minimum of 90 days of substance abuse reentry treatment to participating inmates while they are in prison. The costs of providing this treatment would depend on the number of inmates who participate in the program, and whether the department is required to provide services to more inmates than are currently in treatment programs.

Any additional costs for providing treatment programs would be offset, and perhaps outweighed, by savings incurred from the reduced cost of supervising a participating offender on probation (an average of \$5.09 a day) rather than housing him or her in prison (an average of \$42.31 per day for adult male inmates and more for adult females and youthful offenders).

Because of the many variables involved, it is not possible to determine whether the bill as a whole would have a positive or negative fiscal impact. However, there does not appear to be a potential for it to have a significant negative impact.

VI. Technical Deficiencies:

The list of disqualifying offenses incorrectly lists s. 785.087, F.S., which does not exist. The correct reference is s. 775.087, F.S. In the same paragraph, the term “offense for which the sentence was enhanced” should be changed to “offense which was reclassified” to conform with the language of the referenced statutes.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 7, 2010:

- Clarifies that the reentry program is a “conditional split sentence” – a definite term of imprisonment with the final year suspended and served on drug offender probation if the offender completes the in-prison substance abuse program and meets DOC-specified criteria.
- Specifies that the offender cannot be released to probation before serving 85 percent of the unsuspended prison sentence.
- Provides that violation of probation can result in return to prison to serve the remaining year of the sentence. If returned to prison, the offender will also forfeit any gain time that was accrued during the first part of the sentence and must serve that time in addition to the year.
- Removes the requirement for mental health treatment.

B. Amendments:

None.