

9The 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 Committee on Criminal Justice

BILL: CS/SB 1222

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Sentencing

DATE: February 7, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1222 creates a probationary split sentence for substance use and mental health offenders. An offender must be a nonviolent offender that is in need of substance use or mental health treatment and does not pose a danger to the community. The bill enumerates specified offenses that deem an offender ineligible for a split sentence for substance use and mental health.

The bill requires the following conditions to be part of a probationary split sentence for substance use or mental health offenders:

- A term of imprisonment, which must include an in-prison treatment program for substance use, mental health or co-occurring disorders that is a minimum of 90-days of in-custody treatment and is administered by the DOC at a DOC facility;
- A 24 month term of probation that consists of:
 - Either drug offender or mental health probation, as determined by the court at sentencing;
 - Any special conditions of probation ordered by the sentencing court; and
 - Any recommendations made by the DOC in the postrelease treatment plan for substance use or mental health aftercare services.

The bill authorizes the DOC to refuse to place an offender in the in-prison treatment program for specified reasons. Following completion of the in-prison treatment program, the bill provides that an offender must be immediately transitioned into the community on drug offender or mental health probation for the last 24 months of his or her sentence.

The DOC must develop a computerized system to track data on the recidivism and recommitment of offenders who have receive such a sentence report the findings to the Governor, President of the Senate, and Speaker of the House of Representatives.

The DOC reports that the bill will have a negative indeterminate fiscal impact on the department. Section V. Fiscal Impact.

The bill is effective October 1, 2018.

II. Present Situation:

The Criminal Punishment Code¹ (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.² The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence as determined by the Code to the statutory maximum for the primary offense. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is five years.³

The sentence imposed by the sentencing judge reflects the length of actual time to be served, lessened only by the application of gain-time,⁴ and may not be reduced in an amount that results in the defendant serving less than 85 percent of his or her term of imprisonment.⁵

Sentencing Options

The Florida Supreme Court has identified six statutory sentencing options in Florida, including a:

- Term of imprisonment, which may be served in jail or prison;
- True split sentence, which consists of a total period of confinement with a portion of the confinement period suspended and the defendant placed on probation for that suspended portion;
- Probationary split sentence, which consists of a period of confinement, none of which is suspended, followed by a period of probation;⁶
- *Villery* sentence, which consists of a period of probation preceded by a period of confinement imposed as a special condition;
- Sentence of supervision, which consists of probation or community control; and
- Reverse split sentence, which consists of a period of probation followed by a period of incarceration.⁷

¹ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

² Section 921.0022, F.S.

³ Section 775.082, F.S.

⁴ Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.

⁵ Section 921.002(1), F.S.

⁶ Section 948.012, F.S., provides the authority for this type of split sentence.

⁷ *Gibson v. Florida Department of Corrections*, 885 So.2d 376, 381 (Fla. 2004).

There are also existing statutes that allow a court to modify a sentence to probation terms for a youthful offender⁸ upon completion of specified in-prison programming.⁹

Substance Abuse Services for Inmates

Chapter 397, F.S., provides comprehensive laws for the provision of substance abuse services to citizens throughout Florida, including licensure of substance abuse service providers and inmate substance abuse programs.

Substance use programming within the Department of Corrections (DOC) institutions seeks to treat participants with histories of dependency by focusing on changing the behaviors that led to the addiction.¹⁰ The DOC has developed Correctional Substance Abuse Programs at its institutions and community-based sites throughout the state.¹¹ The programs' principle objectives are to identify substance users, assess the severity of their drug problems, and provide the appropriate services.¹² The Department of Children and Families license all in-prison substance abuse programs.¹³ The Bureau of Programs within the DOC is responsible for the coordination and delivery of substance abuse program services for individuals incarcerated in a state correction facility.¹⁴

Determining the Appropriate Services for Inmates

All inmates are screened at reception and assessed and placed into programs using the Correctional Integrated Needs Assessment System (CINAS).¹⁵ The CINAS is based on the Risk-Needs-Responsivity Principle (RNR). The RNR principle refers to predicting which inmates have a higher probability of recidivating, and treating the criminogenic needs of those higher risk inmates with appropriate programming and services based on their level of need.¹⁶ Inmates identified during the assessment as being in need of treatment or services become mandated program participants and are placed on the DOC's centralized statewide automated priority list for placement in a program.¹⁷

⁸ A "youthful offender" is a person who is younger than 21 at the time of sentencing, who has not been found guilty or plead to a capital or life felony and has not previously been sentenced as a youthful offender. The court can sentence a person as a youthful offender or the Department of Corrections (DOC) can classify a person as a youthful offender.

⁹ See ss. 958.04(2)(d) and 958.045(6), F.S.

¹⁰ DOC, *Division of Development, Bureau of Programs*, available at <http://www.dc.state.fl.us/orginfo/development/programs.html> (last visited on February 3, 2018).

¹¹ DOC, Bureau of Programs, *Substance Abuse Treatment, Annual Report, Fiscal Year 2015-2016*, p. 1, available at <http://www.dc.state.fl.us/pub/subabuse/inmates/15-16-IP-AR.pdf> (last visited February 3, 2018) (hereinafter cited as "Substance Abuse Annual Report").

¹² *Id.*

¹³ Licensure is conducted in accordance with ch. 397, F.S., and R. 65D-30.003, F.A.C.

¹⁴ Substance Abuse Annual Report at p. 6.

¹⁵ DOC, *Agency Analysis for SB 1222*, p. 2, January 18, 2018 (on file with the Senate Criminal Justice Committee) (hereinafter cited as "DOC SB 1222 Analysis").

¹⁶ DOC reports that criminogenic needs are those factors that are associated with recidivism that can be changed (e.g. lack of education, substance abuse, criminal thinking, lack of marketable job skills, etc.). Offenders are not higher risk because they have a particular risk factor, but, rather, because they have multiple risk factors. Accordingly, a range of services and interventions is provided that target the specific crime producing needs of offenders who are higher risk. *Id.*

¹⁷ Substance Abuse Annual Report, p. 6.

The CINAS is administered to inmates again at 42 months from release. Additionally, the DOC conducts updates every six months thereafter to evaluate the inmate's progress and ensure enrollment in needed programs. The DOC's use of the CINAS allows for development and implementation of programs that increase the likelihood of successful transition. The DOC matches factors that influence an inmate's responsiveness to different types of services with programs that are proven to be effective within an inmate population. This involves selecting services that are matched to the offender's learning characteristics and then to the offender's stage of change readiness.¹⁸

Additionally, the CINAS allows for a flow of information between the DOC's Office of Community Corrections and Office of Institutions. For instance, when an inmate is received at a Reception Center, the staff has access to detailed information about prior supervision history. Likewise, if an inmate is released to community supervision, probation officers will have access to an offender's incarceration history and relevant release information. The DOC reports that this information is to be used to better serve the offender and prepare them for successful transition back into the community.¹⁹

Drug Offender and Mental Health Probation

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose.²⁰ Specifically, drug offender probation is a form of intensive supervision that emphasizes treatment of drug offenders in accordance with individualized treatment plans administered by probation officers with reduced caseloads.²¹ means a form of specialized supervision that emphasizes mental health treatment and working with treatment providers to focus on underlying mental health disorders and compliance with a prescribed psychotropic medication regimen in accordance with individualized treatment plans. Whereas, mental health probation is supervised by officers with reduced caseloads who are sensitive to the unique needs of individuals with mental health disorders, and who will work in tandem with community mental health case managers assigned to the defendant.²²

Gain-time

Gain-time awards, which result in deductions to the court-ordered sentences of specified eligible inmates, are used to encourage satisfactory prisoner behavior or to provide incentives for prisoners to participate in productive activities while incarcerated.²³ An inmate is not eligible to earn or receive gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.²⁴

¹⁸ DOC SB 1222 Analysis, p. 2.

¹⁹ *Id.*

²⁰ Section 948.001(8), F.S.

²¹ Section 948.001(4), F.S.

²² Section 948.001(5), F.S.

²³ Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further provides that an inmate serving a life sentence is not able to earn gain-time. Additionally, an inmate serving the portion of his or her sentence that is included in an imposed mandatory minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

²⁴ Section 944.275(4)(f), F.S.

III. Effect of Proposed Changes:

The bill creates a probationary split sentence for substance use or mental health offenders.

Eligibility

An offender must be a nonviolent offender that is in need of substance use or mental health treatment and does not pose a danger to the community. The bill defines a “nonviolent offender” to mean an offender that has never been convicted of, or plead guilty or no contest to, the commission of, an attempt to commit, or a conspiracy to commit any of the following:

- Any capital, life, or first degree felony;
- Any second degree or third degree felony offense listed in s. 775.084(1)(c)1., F.S.;²⁵
- Aggravated assault as described in s. 784.021, F.S.;
- Assault or battery of a law enforcement officer and other specified persons as described in s. 784.07, F.S.;
- Abuse, aggravated abuse, and neglect of a child as described in s. 827.03, F.S.;
- Resisting an officer with violence as described in s. 843.01, F.S.;
- Any offense that requires a person to register as a sex offender under s. 943.0435, F.S.;²⁶
 - Any offense for which the sentence was enhanced under s. 775.087, F.S.;²⁷ or
 - Any offense committed in another jurisdiction which would be an offense described above or would have been enhanced as described above, if committed in this state.

²⁵ The offenses enumerated in s. 775.084(1)(c)1., F.S., include: 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 s. 775.082(1)(c)1., F.S., or an attempt to commit any such felony offense.

²⁶ Section 943.0435, F.S., includes the following offenses: sexual misconduct by a covered person (s. 393.135(2), F.S.); sexual misconduct by an employee (s. 394.4593(2), F.S.); kidnapping (s. 787.01, F.S.), false imprisonment (s. 787.02, F.S.), or luring or enticing a child (s. 787.025(2)(c), F.S.), where the victim is a minor; human trafficking (s. 787.06(3)(b), (d), (f), or (g), F.S., or former s. 787.06(3)(h), F.S.); sexual battery (s. 794.011, F.S., excluding s. 794.011(10), F.S.); unlawful sexual activity with certain minors (s. 794.05, F.S.); former procuring person under age of 18 for prostitution (s. 796.03, F.S. (2014)); former selling or buying of minors into prostitution (s. 796.035, F.S. (2014)); lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age (s. 800.04, F.S.); video voyeurism (s. 810.145(8), F.S.); lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person (s. 825.1025, F.S.); sexual performance by a child (s. 827.071, F.S.); prohibition of certain acts in connection with obscenity (s. 847.0133, F.S.); computer pornography (s. 847.0135, F.S., excluding s. 847.0135(6), F.S.); transmission of pornography by electronic device or equipment prohibited (s. 847.0137, F.S.); transmission of material harmful to minors to a minor by electronic device or equipment prohibited (s. 847.0138, F.S.); selling or buying of minors (s. 847.0145, F.S.); prohibited activities/RICO (s. 895.03, F.S., if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in s. 943.0435(1)(h)1.a.(I), F.S., or at least one offense listed in s. 943.0435(1)(h)1.a.(I), F.S., with sexual intent or motive); sexual misconduct prohibited (s. 916.1075(2), F.S.); or sexual misconduct prohibited (s. 985.701(1), F.S.); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in s. 943.0435(1)(h)1.a.(I), F.S.

²⁷ Section 775.087, F.S., provides for the reclassification of an offense based on the possession or use of a weapon when such use or possession is not an element of the underlying offense.

Sentencing Requirements

The bill requires the following conditions to be part of a probationary split sentence for substance use or mental health offenders:

- A term of imprisonment, which must include an in-prison treatment program for substance use, mental health or co-occurring disorders that is a minimum of 90-days of in-custody treatment and is administered by the DOC at a DOC facility;
- A 24 month term of probation that consists of:
 - Either drug offender or mental health probation, as determined by the court at sentencing;
 - Any special conditions of probation ordered by the sentencing court; and
 - Any recommendations made by the DOC in the postrelease treatment plan for substance use or mental health aftercare services.

The court must also specify that if the DOC finds that the offender is ineligible or not appropriate for placement in an in-prison treatment program for a specified reason or any other reason the DOC deems as good cause the offender must serve the remainder of his or her imprisonment at a DOC facility.

The sentencing court may order a presentencing investigation report for any offender that the court believes may be sentenced to a probationary split sentence. The presentencing report will provide the court with the appropriate information to make a determination at sentencing of whether the offender is better suited for drug offender or mental health probation.

Department of Corrections Duties

The DOC is required to administer the in-prison treatment program provide a special training program for staff members selected to implement the in-prison treatment program. The DOC may enter into performance-based contracts with qualified individuals, agencies, or corporations to supply any or all services provided through the in-prison treatment program. The bill prohibits the DOC from entering into a contract or renewing a contract for the purpose of providing services required under the act unless the contract offers a substantial savings to the DOC. Additionally, the DOC may establish a system of incentives within the in-prison treatment program to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.

The DOC must send written notification of the offender's admission into the in-prison treatment program to the sentencing court, the state attorney, defense counsel, and any victim of the crime committed by the offender. Before an offender completes the in-prison treatment program the DOC must evaluate the offender's needs and develop a postrelease treatment plan that includes substance or mental health aftercare services.

The bill provides rulemaking authority to the DOC to implement the in-prison treatment program. The DOC can refuse to place an offender in the in-prison treatment program if, after evaluating the offender for custody and classification status, the DOC determines that the offender does not meet the criteria for the in-prison treatment program as proscribed by rule. The DOC must notify the sentencing court, the state attorney, defense counsel, of this and that the rest of the offender's sentence will be served in a DOC facility.

If, after placement in the in-prison treatment program, the offender appears to be unable to participate due to medical or other reasons, he or she must be examined by qualified medical personnel or qualified nonmedical personnel appropriate for the offender's situation. After consultation with the qualified personnel that evaluated the offender, the director of the in-prison treatment program must determine if the offender will continue with treatment or if the offender will be discharged from the program. If the offender is discharged from the in-prison treatment program the remaining portion of his or her sentence will be served in a DOC facility.

If an offender, after placement in the in-prison treatment program, appears to be unable to participate due to disruptive behavior or violations of any of the rules promulgated by the DOC, the director must determine if the offender will continue in treatment or discharged from the program. If the offender is discharged from the in-prison treatment program the remaining portion of his or her sentence will be served in a DOC facility.

If an offender violates any rules, the DOC may impose sanctions including the loss of privileges, imposition of restrictions or disciplinary confinement, forfeiture of gain-time or the right to earn gain-time in the future, alteration of release plans, termination from the in-prison treatment program, or other program modifications dependent upon the severity of the violation. Additionally, the bill authorizes the DOC to place an offender that is a participant in the in-prison treatment program in administrative or protective confinement, as it deems necessary.

Drug Offender or Mental Health Probation Portion of Sentence

Upon completion of the term of imprisonment, an offender must be transitioned into the community on drug offender or mental health probation for the last 24 months of his or her sentence. An offender on probation is subject to:

- All standard terms of drug offender or mental health probation; and
- Any special condition of supervision ordered by the sentencing court, which may include:
 - 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 requires the DOC to collect the cost of supervision, as appropriate, from the offender. An offender who is financially able must also pay all costs of substance abuse or mental health treatment. The court may impose on the offender additional conditions such as requiring payment of restitution, court costs, and fines; community service; or compliance with other special conditions.

If an offender violates any condition of probation or order the court may revoke the offender's probation and impose any sentence authorized by law.

The DOC must develop a computerized system to track data on the recidivism and recommitment of offenders who have sentenced to a probationary split sentence.

The bill also requires the DOC to, on October 1 of every year, beginning on October 1, 2019, submit an annual report to the Governor, the President of the Senate, and the Speaker of the

House of Representatives of the results of the recidivism and recommitment data collected by the DOC pursuant to the act.

The bill is effective on October 1, 2018.

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 authorizes the DOC to contract with qualified individuals, agencies, or corporations to supply any or all services provided for the in-prison treatment program. To the extent that this increases revenues of for-profit companies that offer these services, the bill will likely have a positive fiscal impact on such entities.

C. Government Sector Impact:

The DOC reports that the bill will have a negative indeterminate fiscal impact on the agency as additional resources may be needed to implement the in-prison treatment program.²⁸ The DOC further reports that there will likely be a need for increased contracted services funding to achieve the requirement of special training provided for in the bill as well as the need to obtain additional procurements or modifications of current contracts for comprehensive medical services, mental health care and substance use treatment.²⁹

VI. Technical Deficiencies:

None.

²⁸ DOC SB 1222 Analysis, p. 6.

²⁹ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 948.0121 of the Florida Statutes.

IX. 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 February 6, 2018:

The committee substitute:

- Creates a split sentencing option for substance use or mental health offenders which includes a period of incarceration, an in-prison treatment program, and either drug offender or mental health probation;
- Specifies eligibility criteria for an offender to be sentenced under this split sentencing option; and
- Requires the DOC to develop a computerized system to tract recidivism data for these offenders and provide an annual report to the Governor and the Legislature.

- B. **Amendments:**

None.