

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: SB 1222

INTRODUCER: Senator Brandes

SUBJECT: Inmate Reentry Program

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 1222 creates a reentry program for “nonviolent, low-risk inmates who pose a minimal foreseeable risk to the public.” An inmate is recommended for the reentry program through a preliminary eligibility finding in the sentencing order and the Department of Corrections (DOC) administers the program. An offender that is sentenced to the reentry program as part of his or her sentence must serve a term of imprisonment that includes completion of 90-days participation in an in-prison treatment program for substance abuse, mental health, or co-occurring disorders. The term of imprisonment and in-prison treatment are followed by a community-based aftercare treatment program.

Upon receiving an inmate with such recommendation, the DOC must screen the inmate to determine if he or she actually qualifies for admission into the reentry program based upon rules for admission and eligibility as promulgated by the DOC. The bill enumerates specified offenses that deem an inmate ineligible for participation in the reentry program. The bill authorizes the DOC to refuse to place an inmate in the reentry program for specified reasons.

The inmate’s in-prison treatment is to begin as soon as being admitted into the reentry program.

Following completion of the in-prison treatment program, the bill provides that an inmate must be immediately transitioned into the community on drug offender or mental health probation for the last 24 months of his or her sentence. A violation of any condition or order of the inmate’s supervision may result in revocation of supervision by the court and imposition of any sentence authorized under the law, with credit given for the time already served in prison.

The bill authorizes an inmate to be transferred to a drug court or mental health court if the county has such a specialty court and the court is willing to accept the case.

The bill expressly provides that the act does not create or confer any right to any inmate regarding placement into the reentry program or any right to early release under supervision of any type.

The DOC must develop a computerized system to track data on the recidivism and recommitment of inmates who have participated in the reentry program and must report to the Governor, President of the Senate, and Speaker of the House on the recidivism and recommitment findings. The bill also requires the Office of Program and Policy Analysis and Government Accountability to review the reentry program and report its findings to the President of the Senate and Speaker of the House.

The DOC reports that the bill will have a negative indeterminate fiscal impact on the agency as additional resources will be needed to develop and implement an integrated co-occurring program. The OPPAGA reports that it will be able to handle the reporting provisions of the bill within existing resources. See Section V. Fiscal Impact.

The bill is effective July 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

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.

- *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

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

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

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

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

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

Extension on Confinement

Additionally, the DOC is authorized to modify imprisonment sentences through granting an extension on the limits of confinement, which includes the work release program. Specifically, s. 945.091(1), F.S., provides that when a reasonable belief exists that an inmate will adhere to conditions placed upon him or her, the DOC may allow an inmate to leave the confines of a physical facility unaccompanied for a specified period of time to:

- Visit a:
 - Dying relative or attend a funeral of a relative;
 - Specified location to arrange for employment or for a suitable residence for use upon release;
 - Specified place to aide in the successful transition back into the community;
 - Specifically designated location for any other compelling reason;²⁰
- Work at paid employment (Work Release);
- Participate in an educational or training program;
- Voluntarily serve a public or nonprofit agency or faith-based service group in the community; or

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.

¹⁸ DOC SB 1222 Analysis, p. 2.

¹⁹ *Id.*

²⁰ An inmate released from the custody of a facility under this subsection must return to the same or another facility as designated by the DOC. Section 945.091(1)(a), F.S.

- Participate in a residential or nonresidential rehabilitative program.²¹

The DOC must perform an investigation to determine whether the inmate is suitable for consideration of extension of his or her confinement prior to being approved for one of the provisions described above.²²

Work Release

An inmate who is approved for participation in work release must be in community custody status²³ and be within two or three years of their release date, depending on their job assignment.²⁴ This form of release occurs while the inmate continues as an inmate of the institution or facility in which the inmate is confined. The only time in which the inmate is released unaccompanied is during the hours of his or her employment, education, training, or service and traveling to and from such approved activity. An inmate is permitted to travel to and from the place of employment, education, or training by walking, bicycling, or using public transportation or transportation that is provided by a family member or employer.²⁵ Certain inmates are prohibited from participating in work release.²⁶

Inmates participating in work release must save part of their earnings for when they are released, in order to pay toward victim restitution as well as room and board. More than 3,000 inmates participate in Florida's work release programs annually, with about 3.5 percent of the prison population enrolled at any given time.²⁷

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.²⁸ An inmate is not eligible to

²¹ Section 945.091(1)(c), F.S. The treatment program must be operated by a public or private nonprofit agency, including faith-based service groups, with which the DOC has contracted for the treatment of such inmate. The provisions of ss. 216.311 and 287.057, F.S., must apply to all contracts considered under this provision. The DOC must ensure each agency provides appropriate supervision of inmates participating in such program.

²² Section 945.091(1), F.S.

²³ Custody level is used to determine an inmate's placement in appropriate facilities and programming and is associated with the level of risk that an inmate poses to staff and inmates. Community custody applies to inmates eligible for placement at a community residential facility. DOC, *Inmate Orientation Handbook: Reception Center Processing*, p. 8, (Revised December 2, 2016), available at <http://www.dc.state.fl.us/pub/files/Inmate%20Orientation%20Handbook.pdf> (last visited February 3, 2018).

²⁴ DOC, *Frequently Asked Questions*, available at <http://www.dc.state.fl.us/oth/faq.html> (last visited January 14, 2018). See also R. 33-601.602, F.A.C.

²⁵ Section 945.091(1)(b), F.S.

²⁶ Such inmates include, but are not limited to, those that have a current or prior conviction for a sex offense; murder or attempted murder; aggravated manslaughter of an elderly or disabled person or a child; attempted manslaughter of an elderly or disabled person or a child; aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic; attempted aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic; and murder of an unborn child or attempted murder of an unborn child. Rule 33-601.602, F.A.C.

²⁷ *Supra* at note 24.

²⁸ 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

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.²⁹

III. Effect of Proposed Changes:

The bill creates a reentry program for “nonviolent, low-risk inmates who pose a minimal foreseeable risk to the public.” The reentry program is ordered by the court at sentencing and administered by the DOC.

The reentry program consists of a term of imprisonment that includes at least 90-days of an in-prison treatment program for substance abuse, mental health, or co-occurring disorders. The term of imprisonment and in-prison treatment are followed by a community-based aftercare treatment program. The reentry program must be intensive and may require a work-release component.

The bill authorizes the DOC to operate the in-prison treatment program in secure areas within or adjacent to an adult institution, a community residential facility,³⁰ or a work release center. The DOC must provide a special training program for staff members selected to serve in the reentry program.

Eligibility

The sentencing court must include a recommendation for an inmate’s participation in the reentry program to alert the DOC to screen the inmate to determine the inmate’s preliminary eligibility for the reentry program. Upon receiving an inmate with such recommendation, the DOC must screen the inmate to determine if he or she actually qualifies for admission into the reentry program. The DOC may consider a number of factors related to an inmate when determining whether the inmate is appropriate for admission into the reentry program, including:

- Criminal history;
- Need for substance abuse or mental health treatment;
- General rehabilitative interests;
- Potential risk to the public;
- Comments from the victim; and
- The DOC’s operational needs.

An inmate is eligible for admission to the reentry program if he or she:

- Is sentenced to a term of less than ten years;
- Has not ever been convicted of or pled guilty or no contest to:
 - 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.;³¹

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.

²⁹ Section 944.275(4)(f), F.S.

³⁰ Section 944.206, F.S., provides that the DOC must develop, provide, or contract for a statewide system of community-based facilities, services, and programs dealing with the rehabilitation of offenders, which includes community-based residential facilities. The section goes on to provide what services these facilities must include.

³¹ 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;

- 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.;³²
- Any offense for which the sentence was enhanced under s. 775.087, F.S.;³³ 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.
- Is in need of substance abuse or mental health treatment;
- Is ordered to the reentry program as part of his or her sentence;
- Has been placed in community or minimum custody status³⁴ by the DOC; and
- Otherwise meets the edibility criteria proscribed in rule by the DOC for the reentry program.

Admission Into the Reentry Program

If the inmate is deemed eligible based on the above-described criteria and the DOC has space in the program, the DOC must send written notification of the inmate's admission into the reentry program to the sentencing court, the state attorney, defense counsel, and any victim of the crime committed by the inmate. The bill authorizes the DOC to refuse to place an inmate in the reentry program for good cause as determined by the DOC.

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.

³² 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.

³³ 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.

³⁴ Community custody” applies to inmates eligible for placement at a community residential facility and “minimum custody” applies to inmates who are eligible for outside work assignments but not for placement in a community residential facility. Community and minimum custody are the two lowest custody levels within the DOC. DOC, *Inmate Orientation Handbook: Reception Center Processing*, p. 8, (Revised December 2, 2016), available at <http://www.dc.state.fl.us/pub/files/Inmate%20Orientation%20Handbook.pdf> (last visited February 3, 2018).

The inmate's in-prison treatment begins as soon as being admitted into the reentry program. An inmate in the reentry program must comply with the conditions of the program as established by the DOC. If the inmate violates a condition, he or she may experience 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 reentry program, or other program modifications dependent upon the severity of the violation. Additionally, the bill authorizes the DOC to place an inmate that is a participant in the reentry program in administrative or protective confinement, as it deems necessary.

If, after placement in the reentry program, an inmate 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 inmate's situation. After consultation with the qualified personnel that evaluated the inmate, the director of the reentry program must determine if the inmate will continue with treatment or if the inmate will be discharged from the reentry program.

Before an inmate completes the in-prison treatment program the DOC must evaluate the inmate's needs and develop a postrelease treatment plan that includes substance or mental health aftercare services.

Drug Offender or Mental Health Probation Portion of Sentence

Following completion of the in-prison treatment program, an inmate must be immediately transitioned into the community on drug offender or mental health probation for the last 24 months of his or her sentence. An inmate in the community on the supervision portion of the reentry program 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 authorizes an inmate to be transferred to a drug court³⁵ or mental health court³⁶ for the last 24 months of inmate's sentence if the county has such a specialty court and the court is willing to accept the case. If such a transfer occurs, the drug or mental health court judge is deemed the sentencing judge for purposes of ensuring compliance with this act. The bill requires the inmate comply with all conditions of probation and orders from the drug court or other supervising court.

A violation of any condition or order of the inmate's supervision may result in revocation of supervision by the court and imposition of any sentence authorized under the law, with credit given for the time already served in prison.

³⁵ Section 397.334(1), F.S., authorizes counties to fund a treatment-based drug court program that allows persons in the justice system with substance abuse problems be provided with the proper treatment tailored to his or her specific needs.

³⁶ Section 394.47892(1), F.S., authorizes counties to fund a mental health court program that allows persons in the justice system with a mental illness to be provided with the proper treatment tailored to his or her specific needs.

The bill requires the DOC to collect the cost of supervision, as appropriate, from the inmate. An inmate who is financially able must also pay all costs of substance abuse or mental health treatment. The court may impose on the inmate additional conditions requiring payment of restitution, court costs, and fines; community service; or compliance with other special conditions.

The bill also provides that any time spent on probation as part of the reentry program shall be considered in-custody time in calculating the 85 percent requirement of s. 944.275, F.S.

The DOC is authorized to enter into performance-based contracts with qualified individuals, agencies, or corporations to supply any or all services provided through the reentry 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 reentry program to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.

The bill expressly provides that the act does not create or confer any right to any inmate regarding placement into the reentry program or any right to early release under supervision of any type. An inmate has no cause of action against the DOC, a court, the state attorney, or a victim for any action taken related to the administration of the reentry program.

The DOC must develop a computerized system to track data on the recidivism and recommitment of inmates who have participated in the reentry program.

The bill also provides two reporting requirements, specifically that:

- The DOC must, 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; and
- The OPPAGA must review the reentry program under s. 397.755, F.S., and report its findings to the President of the Senate and the Speaker of the House of Representatives before the commencement of the 2019 Legislative Session.

The bill provides rulemaking authority to the DOC.

The bill is effective on July 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 through the reentry 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 will be needed to develop and implement an integrated co-occurring program.³⁷ 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.³⁸ Lastly, the DOC reports that there may be technology impact to include programming changes to create the new reentry program as well as technology updates to current programs and possible impact to the admissions and release calculator. The technology costs are estimated by the DOC to total \$25,500.³⁹

The OPPAGA reports that it will be able to handle the reporting provisions of the bill within existing resources.⁴⁰

VI. Technical Deficiencies:

Lines 99-104 require the sentencing court to include a recommendation for the inmate's participation in the reentry program to alert the DOC as to the *inmate's preliminary eligibility* when it screens incoming inmates to "determine their preliminary eligibility." The bill is unclear if with the judge's recommendation for an inmate's participation in the reentry program that an inmate is *preliminary eligible* for the reentry program or if the DOC determines the inmate's *preliminary eligibility* for the reentry program.

³⁷ DOC SB 1222 Analysis, p. 6.

³⁸ *Id.*

³⁹ DOC SB 1222 Analysis, p. 7.

⁴⁰ OPPAGA, *SB 1222 Analysis* (December 15, 2017).

Lines 146-149 provides that the DOC should provide *any victim of the crime committed by the inmate* notification of the inmate's admission into the reentry program. This provision creates confusion as to what crime the bill is referencing.

Lines 159-167 provides that an inmate in the reentry program can be discharged from the program for medical or other reasons. The bill does not specify what will happen to an inmate once he or she is discharged from the reentry program.

Lines 154-155 specifies that an inmate's in-prison treatment begins upon admission into the reentry program. And lines 179-182 requires that an inmate is immediately transferred to probation upon completion of the in-prison treatment program *for the last 24 months* of his or her sentence. The bill does not provide what happens to an inmate who completes his or her in-prison treatment but has *more than 24 months* left on his or her sentence.

Lines 170-173 provides an inmate is subject to the rules of conduct the DOC establishes for the reentry program and allows an inmate to be terminated from the program for violation of such rules. The bill does not specify what will happen to an inmate once he or she is terminated from the reentry program.

Line 181 references *drug offender-mental health probation* and then line 184 provides for *drug offender or mental health probation*. Line 181 should be corrected to reference drug offender or mental health probation.

Lines 190-197 allows an inmate's case to be transferred to drug court or mental health court for the *last 24 months* of the inmate's sentence. The bill then specifies that the *drug court judge is deemed the sentencing judge for purposes of ensuring compliance with this section*. There are numerous problems with this sentence including that:

- The bill does not specify if the mental health court judge is deemed the sentencing judge for an inmate whose case is transferred to mental health court.
- By referencing *section* in this provision, the bill is making the drug court judge in charge of compliance with the entire sentence of the inmate since section refers to the new section of law created by the bill (s. 397.755, F.S.). Thus removing the sentencing judge completely. It is also unclear who ensures compliance during the rest of an inmate's sentence since an inmate can only be transferred to a drug court for the last 24 months of his or her sentence.
- By specifying this, the bill now is silent on who ensures compliance of the program if an inmate's case is not transferred to a drug court.
- By referencing *section* in this provision, and the bill only allowing an inmate's case to be transferred for the last 24 months of his or her sentence, it is unclear who ensures compliance during this portion of time.

VII. Related Issues:

A court is the only entity with the authority to impose a sentence on a criminal defendant. The DOC only has the authority to implement and ensure compliance with a sentence that a court has imposed on a defendant. The bill attempts to create a new programming option that provides for more intensive treatment for specified defendants. However, the bill creates confusion as to whether the reentry program is a portion of the sentence ordered by the court or whether the

DOC has discretion to choose to implement the program (see lines 98-99 where it states “the court must include a recommendation for an inmate’s participation” and line 133 where the bill states that the “reentry program is ordered as part of the inmate’s sentence”).

Additionally, the bill seems to allow the DOC to choose which type of probation to place the defendant on upon successful completion of the in-prison program. Both of these provisions could implicate an improper delegation of authority.

VIII. Statutes Affected:

This bill creates section 397.755 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.