

By Senator Brandes

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1                   A bill to be entitled  
2       An act relating to sentencing; creating s. 948.0121,  
3       F.S.; defining terms; creating a probationary split  
4       sentence for substance use and mental health offenders  
5       in accordance with s. 948.012, F.S.; authorizing a  
6       court to sentence an offender to a probationary split  
7       sentence; specifying requirements an offender must  
8       meet to be eligible to receive a probationary split  
9       sentence; requiring that an eligible offender be a  
10      nonviolent offender; defining the term "nonviolent  
11      offender"; providing minimum sentencing requirements  
12      for a probationary split sentence; providing an  
13      exception to the court's order of a probationary split  
14      sentence; authorizing the sentencing court to have the  
15      Department of Corrections provide a presentence  
16      investigation report in accordance with s. 921.231,  
17      F.S., to provide the court with certain information to  
18      determine the type of probation most appropriate for  
19      the offender; requiring the department to perform  
20      specified duties; authorizing the department to enter  
21      into certain contracts; requiring the department to  
22      provide written notification to specified parties upon  
23      the offender's admission into an in-prison treatment  
24      program; providing that the department may find that  
25      an offender is not eligible to participate in an in-  
26      prison treatment program under certain circumstances;  
27      requiring written notification from the department to  
28      certain parties if an offender is terminated from or  
29      prevented from entering an in-prison treatment

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30 program; requiring that an offender be transitioned to  
31 probation upon the completion of his or her term of  
32 imprisonment; requiring an offender to comply with  
33 specified terms of drug offender or mental health  
34 probation; requiring the offender to pay specified  
35 costs associated with his or her probation; providing  
36 that certain violations may result in revocation of  
37 probation by the court and imposition of any sentence  
38 authorized by law; requiring the department to develop  
39 a computerized system to track certain data; requiring  
40 the department, on a certain date and annually  
41 thereafter, to submit an annual report to the Governor  
42 and the Legislature; requiring the department to adopt  
43 certain rules; providing an effective date.

44  
45 Be It Enacted by the Legislature of the State of Florida:

46  
47 Section 1. Section 948.0121, Florida Statutes, is created  
48 to read:

49 948.0121 Probationary split sentences for substance use or  
50 mental health offenders.-

51 (1) DEFINITIONS.-As used in this section, the term:

52 (a) "Department" means the Department of Corrections.

53 (b) "Offender" means a person found guilty of a felony  
54 offense and who receives a probationary split sentence for  
55 substance use or mental health offenders as prescribed in this  
56 section.

57 (2) CREATION.-A probationary split sentence for substance  
58 use or mental health offenders is established in accordance with

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59 s. 948.012. A court may sentence an offender to a probationary  
60 split sentence in accordance with this section.

61 (3) ELIGIBILITY.—For an offender to receive a probationary  
62 split sentence under this section, he or she must be a  
63 nonviolent offender who is in need of substance use or mental  
64 health treatment and who does not pose a danger to the  
65 community. As used in this subsection, the term “nonviolent  
66 offender” means an offender who has never been convicted of, or  
67 pled guilty or no contest to, the commission of, an attempt to  
68 commit, or a conspiracy to commit, any of the following:

69 (a) A capital, life, or first degree felony.

70 (b) A second degree felony or third degree felony listed in  
71 s. 775.084(1)(c)1.

72 (c) A violation of s. 784.021, s. 784.07, s. 827.03, or s.  
73 843.01, or any offense that requires a person to register as a  
74 sex offender in accordance with s. 943.0435.

75 (d) An offense for which the sentence was enhanced under s.  
76 775.087.

77 (e) An offense in another jurisdiction which would be an  
78 offense described in this subsection, or which would have been  
79 enhanced under s. 775.087, if that offense had been committed in  
80 this state.

81 (4) SENTENCING REQUIREMENTS.—As a condition of a  
82 probationary split sentence for substance use or mental health  
83 offenders, the court must order that the offender, at a minimum,  
84 serve:

85 (a) A term of imprisonment which must include an in-prison  
86 treatment program for substance use, mental health, or co-  
87 occurring disorders which is a minimum of 90 days in-custody

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88 treatment and is administered by the department at a department  
89 facility;

90 (b) The remainder of his or her imprisonment in a  
91 department facility if the department finds that the offender is  
92 ineligible or not appropriate for placement in an in-custody  
93 treatment program for the reasons prescribed in subsection (7),  
94 or for any other reason the department deems as good cause; and

95 (c) A term of probation of 24 months that consists of:

96 1. Either drug offender or mental health probation, to be  
97 determined by the court at the time of sentencing;

98 2. Any special conditions of probation ordered by the  
99 sentencing court; and

100 3. Any recommendations made by the department in a  
101 postrelease treatment plan for substance use or mental health  
102 aftercare services.

103 (5) PRESENTENCE INVESTIGATION REPORT.—The court may order  
104 the department to conduct a presentence investigation report in  
105 accordance with s. 921.231 for any offender who the court  
106 believes may be sentenced under this section to provide the  
107 court with appropriate information to make a determination at  
108 the time of sentencing of whether drug offender or mental health  
109 probation is most appropriate for the offender.

110 (6) DEPARTMENT DUTIES.—The department:

111 (a) Shall administer treatment programs that comply with  
112 the type of treatment required in this section.

113 (b) May develop and enter into performance-based contracts  
114 with qualified individuals, agencies, or corporations to provide  
115 any or all services necessary for the in-custody treatment  
116 program. Such contracts may not be entered into or renewed

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117 unless they offer a substantial savings to the department. The  
118 department may establish a system of incentives in an in-custody  
119 treatment program to promote offender participation in  
120 rehabilitative programs and the orderly operation of  
121 institutions and facilities.

122 (c) Shall provide a special training program for staff  
123 members selected to administer or implement an in-custody  
124 treatment program.

125 (d) Shall evaluate the offender's needs and develop a  
126 postrelease treatment plan that includes substance use or mental  
127 health aftercare services.

128 (7) IN-PRISON TREATMENT.—

129 (a) The department shall give written notification of the  
130 offender's admission into an in-prison treatment program portion  
131 of the probationary split sentence to the sentencing court, the  
132 state attorney, the defense counsel for the offender, and any  
133 victim of the offense committed by the offender.

134 (b) If, after evaluating an offender for custody and  
135 classification status, the department determines at any point  
136 during the term of imprisonment that an offender sentenced under  
137 this section does not meet the criteria for placement in an in-  
138 prison treatment program portion of the probationary split  
139 sentence, as determined in rule by the department, or that space  
140 is not available for the offender's placement in an in-prison  
141 treatment program, the department must immediately notify the  
142 court, the state attorney, and the defense counsel that this  
143 portion of the sentence is served in accordance with paragraph  
144 (4) (b).

145 (c) If, after placement in an in-prison treatment program,

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146 an offender is unable to participate due to medical concerns or  
147 other reasons, he or she must be examined by qualified medical  
148 personnel or qualified nonmedical personnel appropriate for the  
149 offender's situation, as determined by the department. The  
150 qualified personnel shall consult with the director of the in-  
151 prison treatment program, and the director shall determine  
152 whether the offender will continue with treatment or be  
153 discharged from the program. If the director discharges the  
154 offender from the treatment program, the department must  
155 immediately notify the court, the state attorney, and the  
156 defense counsel that this portion of the sentence is served in  
157 accordance with paragraph (4) (b) .

158 (d) If, after placement in an in-prison treatment program,  
159 an offender is unable to participate due to disruptive behavior  
160 or violations of any of the rules the department adopts to  
161 implement this section, the director shall determine whether the  
162 offender will continue with treatment or be discharged from the  
163 program. If the director discharges the offender from the  
164 treatment program, the department must immediately notify the  
165 court, the state attorney, and the defense counsel that this  
166 portion of the sentence is served in accordance with paragraph  
167 (4) (b) .

168 (e) An offender participating in an in-prison treatment  
169 program portion of his or her imprisonment must comply with any  
170 additional requirements placed on the participants by the  
171 department in rule. If an offender violates any of the rules, he  
172 or she may have sanctions imposed, including loss of privileges,  
173 restrictions, disciplinary confinement, forfeiture of gain-time  
174 or the right to earn gain-time in the future, alteration of

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175 release plans, termination from the in-prison treatment program,  
176 or other program modifications in keeping with the nature and  
177 gravity of the program violation. The department may place an  
178 inmate participating in an in-prison treatment program in  
179 administrative or protective confinement, as necessary.

180 (8) DRUG OFFENDER OR MENTAL HEALTH PROBATION.—

181 (a) Upon completion of the term of imprisonment ordered by  
182 the court, the offender shall be transitioned into the community  
183 to begin his or her drug offender or mental health probation for  
184 a term of 24 months, as ordered by the court at the time of  
185 sentencing in accordance with subsection (4).

186 (b) An offender on drug offender or mental health probation  
187 following a probationary split sentence imposed pursuant to this  
188 section must comply with all standard conditions of drug  
189 offender or mental health probation and any special condition of  
190 probation ordered by the sentencing court, including  
191 participation in an aftercare substance abuse or mental health  
192 program, residence in a postrelease transitional residential  
193 halfway house, or any other appropriate form of supervision or  
194 treatment.

195 (c) While on probation pursuant to this subsection, the  
196 offender shall pay all appropriate costs of probation to the  
197 department. An offender who is determined to be financially able  
198 shall also pay all costs of substance abuse or mental health  
199 treatment. The court may impose on the offender additional  
200 conditions requiring payment of restitution, court costs, fines,  
201 community service, or compliance with other special conditions.

202 (d) An offender's violation of any condition or order may  
203 result in revocation of probation by the court and imposition of

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204 any sentence authorized under the law, with credit given for the  
205 time already served in prison.

206 (9) REPORTING.—The department shall develop a computerized  
207 system to track data on the recidivism and recommitment of  
208 offenders who have been sentenced to a probationary split  
209 sentence for substance use or mental health offenders. On  
210 October 1, 2019, and on each October 1 thereafter, the  
211 department shall submit an annual report of the results of the  
212 collected data to the Governor, the President of the Senate, and  
213 the Speaker of the House of Representatives.

214 (10) RULEMAKING.—The department shall adopt rules pursuant  
215 to ss. 120.536(1) and 120.54 to administer this section.

216 Section 2. This act shall take effect October 1, 2019.