

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 Budget Subcommittee on Criminal and Civil Justice Appropriations

BILL: CS/SB 448

INTRODUCER: Criminal Justice Committee and Senator Bogdanoff

SUBJECT: Inmate Reentry

DATE: December 8, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Fav/CS
2.	Sneed	Sadberry	BJA	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill requires the Department of Corrections (department) to develop and administer a nonviolent offender reentry program. Non-violent offenders with substance abuse issues could be eligible to participate in the program with court-approval after serving at least one-half of their sentence. Upon completion, the court would reduce the incarcerative portion of the original sentence and re-sentence the offender to drug offender probation. The program is intended to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same deterrent effect, to rehabilitate the offender, and to reduce recidivism.

The bill creates a new section of the Florida Statutes.

II. Present Situation:

Reentry Programs for Nonviolent Offenders

The department reports that 26.5 percent of the inmates admitted to prison during Fiscal Year 2009-2010 had been convicted of a drug crime.¹ Almost two-thirds of Florida inmates who enter prison for any crime also have a substance abuse problem, and more than 80 percent of those who could benefit from treatment are released without it.² The lack of treatment is largely due to funding constraints.

The Florida TaxWatch Government Cost Savings Task Force found that “significant savings could be achieved if certain offenders were allowed to receive treatment outside of the confines of prison during the last portion of their prison sentence” and observed that “research shows that programs in the community produce twice the impact on recidivism as the same program behind the walls.”³

The department currently provides the following reentry programming to a segment of the inmate population:

- Substance abuse treatment programs;
- Educational and academic programs;
- Career and technical education programs; and
- Faith and character-based programs.⁴

Correctional Integrated Needs Assessment System

The department assesses inmates and places them into programs using the Correctional Integrated Needs Assessment System (CINAS), which is based on the “Risk-Needs-Responsivity (RNR)” principle. The RNR principle refers to predicting which inmates have a higher probability of recidivating, and providing appropriate programming and services to higher risk inmates based on their level of need. The services would be focused on “criminogenic needs,” which are factors associated with recidivism that can be changed such as lack of education, substance abuse, criminal thinking, and lack of marketable job skills. High risk offenders have multiple risk factors, and the department provides a range of services and interventions to target the specific crime producing characteristics.

The department reports that CINAS allows it to develop and implement programs that increase the likelihood of successful reentry. It also reports that use of the RNR principle and CINAS “avoids focusing resources on individuals ill-equipped to handle specific behavior problems, and

¹ Fla. Dep’t of Corrections, *Inmate Admissions*, http://www.dc.state.fl.us/pub/annual/0910/stats/im_admis.html (last visited November 10, 2011).

² Office of Program Policy Analysis and Governmental Accountability (OPPAGA), *Corrections Rehabilitative Programs Effective, But Serve Only a Portion of the Eligible Population*, Report No. 07-14 (February 2007), p. 6.

³ Florida TaxWatch, *Report and Recommendation of the Florida TaxWatch Government Cost Savings Task Force for Fiscal Year 2012-13*, available at <http://www.floridataxwatch.org/resources/pdf/Report%20GCSTF%20for%20FY2012-13.pdf> (last visited November 10, 2011).

⁴ Florida Department of Corrections, *Recidivism Reduction Strategic Plan Fiscal Year 2009-2014*, available at <http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf> (last visited November 10, 2011).

ensures the most appropriate treatment-setting possible is being assigned, based on an inmate's characteristics.”

CINAS is administered to an inmate when he or she is received at the initial parent institution and again after 42 months, with updates conducted every 6 months thereafter to evaluate the inmate's progress and ensure enrollment in needed programs.⁵

100-Hour Transition Training Program

In addition to other programming, the department must provide a 100-Hour Transition Training Program to inmates who are within 12 months of their release.⁶ This program offers inmates training in life management skills, job readiness, and changing criminal thinking.⁷

Drug Offender Probation

The department is also required to develop and administer a drug offender probation program that emphasizes a combination of treatment and intensive community supervision approaches and provides for supervision of offenders in accordance with a specific treatment plan.⁸ This program generally uses graduated sanctions when offenders violate program requirements by actions such as testing positive on drug tests, missing treatment sessions, or failing to report to court.⁹ These sanctions can include mandatory community service, extended probation, or jail stays. Probationers in this program are subject to probation revocation if they violate any conditions of their probation. This can result in an imposition of any sentence that may have originally been imposed before the offender was placed on probation.¹⁰ In FY 2009-10, 9,928 offenders were admitted to drug offender probation.¹¹

III. Effect of Proposed Changes:

The bill requires the department to develop and administer a nonviolent offender reentry program in a secure area within an institution or adjacent to an adult institution. This program is intended to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same deterrent effect, rehabilitate the offender, and reduce recidivism.

A “nonviolent offender” is defined as an offender:

- whose primary offense is a third-degree felony;
- who has never been convicted of a forcible felony as defined in s. 776.08, F.S.,¹²

⁵ Florida Department of Corrections, Analysis of SB 448.

⁶ Section 944.7065, F.S.

⁷ Florida Department of Corrections Re-Entry Programs and Education, <http://www.dc.state.fl.us/orginfo/reentry.html> (last visited November 10, 2011).

⁸ Section 948.20(1), F.S.

⁹ *Id.*

¹⁰ Section 948.06(2)(e), F.S.

¹¹ Florida Department of Corrections, *Community Supervision Admissions, 2009-2010 Agency Statistics*, available at http://www.dc.state.fl.us/pub/annual/0910/stats/csa_month.html (last visited November 10, 2011).

¹² The offenses included within the definition of “forcible felony” are treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated

- who has never been convicted of any offense that requires registration as a sexual offender pursuant to s. 943.0435, F.S.¹³; and
- who is not sentenced as a habitual felony offender under s. 775.084(1), F.S.¹⁴

In order to participate in the reentry program, a nonviolent offender must have served at least one-half of his or her original sentence and have been identified as having a need for substance abuse treatment. The department is required to screen potential program participants, and reports that 276 inmates currently meet the basic eligibility criteria for the program. Another 676 inmates would meet program criteria in the second year.¹⁵

If the offender meets the eligibility screening criteria, the department must consider other factors in deciding whether to actually select him or her for the program. These factors are the offender's criminal history and the possible rehabilitative benefits that substance abuse treatment, educational programming, vocational training, and other rehabilitative programming might have on the offender.

If the department selects a nonviolent offender to participate in the program and space is available, it must request the sentencing court to approve the offender's participation in the reentry program. The department must also notify the state attorney that the offender is being considered for placement in the reentry program. The notice must:

- Explain to the state attorney that a proposed reduced period of incarceration, followed by participation in substance abuse treatment and other rehabilitative programming, could produce the same deterrent effect otherwise expected from a lengthy incarceration; and
- State that the state attorney may notify the sentencing court in writing of any objection to placing the offender in a reentry program within 14 days of receiving the notice from the department.

stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

¹³ The offenses that require registration as a sexual offender and that are not also a forcible felony are: luring and enticing a child (s. 787.025, F.S.); unlawful sexual activity with certain minors (s. 794.05, F.S.); procuring person under the age of 18 for the purposes of prostitution (s. 796.03, F.S.); selling or buying of minors into sex trafficking or prostitution (s. 796.035, F.S.); lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age (s. 800.04, 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.); protection of minors with reference to certain acts in connection with obscenity (s. 847.0133, F.S.); computer pornography (s. 847.0135), except subsection (6) (owners or operators of computer services liable); transmission of pornography by electronic device or equipment (s. 847.0137, F.S.); transmission of material harmful to minors to a minor by electronic device or equipment (s. 847.0138, F.S.); selling or buying of minors (s. 847.0145, F.S.); and sexual misconduct by a Department of Juvenile Justice employee or provider with a juvenile offender (s. 985.701, F.S.).

¹⁴ A court may sentence an offender as a habitual felony offender if: (1) the offender has previously been convicted of two or more felonies in Florida; (2) the felony was committed while the offender was under sentence for a prior conviction of a felony; (3) the felony for which the offender is being sentenced is not a violation of s. 893.13, F.S., that is related to the purchase or possession of a controlled substance; and (4) one of the two prior felony convictions is not a violation of s. 893.13, F.S., that is related to the purchase or possession of a controlled substance.

¹⁵ Florida Department of Corrections, Analysis of SB 448. However, this number is based upon criteria in the bill before it was amended to excluded habitual felony offenders.

The sentencing court is required to notify the department whether it approves or disapproves placing the offender into the reentry program within 28 days after it receives the department's request. Failure to notify the department within the 28-day period constitutes approval to place the offender into the reentry program.

The bill requires the non-violent offender reentry program to include the following components:

- Prison-based substance abuse treatment;
- General education development and adult basic education courses;
- Vocational training;
- Training in decision-making and personal development; and
- Other rehabilitation programs.

The bill also requires the department to take the following specific actions with respect to each offender in the reentry program:

- The offender must undergo a full substance abuse assessment to determine his or her substance abuse treatment needs;
- The offender must have an educational assessment, using the Test of Adult Basic Education or any other testing instrument approved by the Department of Education; and
- The offender must be enrolled in an adult education program designed to help the offender obtain a high school diploma if one has not already been obtained.
- Assessments of the offender's vocational skills and future career education must be performed as needed, and periodic reevaluations must be made to assess each offender's progress.

If a nonviolent offender becomes unmanageable while in the program, the bill authorizes the department to revoke the offender's gain-time and place the offender in disciplinary confinement in accordance with department rule. Time during which the offender is unable to participate in the reentry program is not credited toward program completion. The offender can be readmitted to the reentry program after completing the ordered discipline unless:

- The offender commits or threatens to commit a violent act;
- The department determines that the offender is unable to participate in the reentry program due to the offender's medical condition;
- The offender's sentence is modified or expires;
- The department reassigns the offender's classification status; or
- The department determines that removing the offender from the reentry program is in the best interest of the offender or the security of the institution.

The bill specifically states that it does not create a right for any offender to be placed in the program or to placement or early release under supervision. No offender can have a cause of action against the department, a court, or the state attorney related to the reentry program.

A minimum of 120 days is required to complete the program, and any portion of the offender's sentence that was served before placement in a reentry program will not count toward program completion.

The bill requires the department to submit a report to the court describing the offender's performance in the program at least 30 days before his or her scheduled program completion date. If the offender's performance was satisfactory, the court must issue an order modifying the sentence imposed and place the offender on drug offender probation subject to the offender's successful completion of the remainder of the reentry program.¹⁶ Drug offender probation may include placement in a community residential or nonresidential substance abuse treatment facility. If an offender intends to reside in a county that has established a post-adjudicatory drug court program as described in s. 397.334, F.S., he or she may be required to successfully complete the post-adjudicatory drug court program as a condition of drug offender probation.

If the nonviolent offender violates the conditions of drug offender probation, the court can revoke probation and impose any sentence that it might have originally imposed.

In addition to the above requirements, the bill also requires the department to:

- Implement the reentry program to the fullest extent feasible within available resources.
- Submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the extent of implementation of the reentry program and outlining future goals and any recommendation the department has for future legislative action.
- Develop a system for tracking recidivism, including, but not limited to, rearrests and recommitment of nonviolent offenders who successfully complete the reentry program, and report the recidivism rate in its annual report of the program.
- Adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer the reentry program. These include rules of conduct for program participants, including sanctions that are appropriate to the nature and gravity of a violation of the rules.

The bill permits the department to:

- Enter into performance-based contracts with qualified individuals, agencies, or corporations for the provision of any or all of the services for the reentry program.
- Establish a system of incentives within the reentry program which the department may use to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.

¹⁶ The bill provides that the term of drug offender probation may include placement in a community residential or nonresidential substance abuse treatment facility under the jurisdiction of the department or the Department of Children and Family Services or any public or private entity providing such services.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provision of the bill stating that an offender may not have a cause of action related to the reentry program under the section cannot preclude a cause of action based upon constitutional grounds.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Because participation in the bill's nonviolent offender re-entry program hinges on an offenders' eligibility, the department's selection, limited availability of drug treatment slots, and judicial approval, the precise impact of the bill is unknown. However, the bill will likely result in cost savings to the state.

VI. Technical Deficiencies:

It is unclear whether the bill's specific provisions for removing an inmate from the supervised reentry program would prevent the department from applying more subjective criteria that it currently uses for removal from a community release program.

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 November 17, 2011:

- Amends the definition of “non-violent offender” to clarify that the primary offense must be a third-degree felony, and that the offender must never have been convicted of a forcible felony or any offense that requires registration as a sexual offender.
- Further amends the definition of “non-violent offender” to exclude persons who are sentenced as a habitual felony offender.
- Clarifies that the department is not required to place an offender in the program if he or she meets basic eligibility requirements and space is available, but must select any participants from among those who meet basic eligibility requirements.

- B. **Amendments:**

None.