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HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS

BILL #: CS/HB 1131
RELATING TO: Criminal Rehabilitation
SPONSOR(S): Committee on State Administration and Representative(s) Barreiro
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 6 NAYS 0
 - (2) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 8 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS YEAS 11 NAYS 0
 - (4) COUNCIL FOR SMARTER GOVERNMENT YEAS 10 NAYS 1
 - (5)
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I. SUMMARY:

In November 1999, the Department of Corrections (DOC) began its first residential faith-based dorm at Tomoka Correctional Institution in Daytona Beach, Florida. It is called the Kairos Horizon Project and is available to any inmate in open population who has not had a disciplinary report within six months of entering the program.

This bill, in part,

- Expands the DOC's program responsibility for inmate transition and postrelease services;
- Requires two members of the Statewide Drug Policy Council to have expertise in faith-based substance-abuse treatment services and requires the council to make recommendations about drug court expansion.
- Designates at least 400 of the DOC's nonsecure community-based residential substance-abuse-treatment beds or probation and restitution beds as post-release transition beds.
- Expands the use of community-based residential drug treatment to include inmates who are near their date of release and who are in need of a substance-abuse-transition housing program.
- Creates the "Addiction-Recovery Supervision Program Act," which includes a mandatory post-prison release program for eligible substance abusers who, in addition to being supervised upon release, would be given an opportunity to request placement in a contracted substance-abuse transition-housing program.
- Requires the DOC to include faith-based service groups on an equal basis with other private organizations when contracting to provide services.
- By June 1, 2002, the DOC is required to have six faith-based dormitory programs that are to be modeled after the Tomoka program. Participation by inmates is voluntary.
- Requires reports from the DOC and the Legislative Committee on Intergovernmental Relations.
- Prior to release, an inmate must complete a 100-hour comprehensive transition course.

This committee substitute has an appropriation of \$5,005,514. It does not appear to have a fiscal impact on local government. Please see "Fiscal Comments."

Except for one amendment, adopted by the Crime Prevention, Corrections & Safety Committee on April 12, 2001, this committee substitute conforms this bill to the Senate's first engrossed version. See "Amendments or Committee Substitute Changes" section for further details.

See "Other Comments" section for concerns regarding this committee substitute.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Task Force on Self-Inflicted Crimes.

The Task Force on Victims of Self-Inflicted Crimes was created pursuant to chapter 2000-366, L.O.F. The task force renamed itself the Task Force on Self-Inflicted Crimes at its first meeting.

The task force was charged with studying the problems associated with victims of self-inflicted crimes and with proposing solutions for reducing the repetitious behavior causing these actions by providing programs to specifically remedy this behavior. The task force focused primarily on illegal drug use and prostitution as examples of self-inflicted crimes.¹

The task force was comprised of 15 members as follows: the Secretary of the Department of Juvenile Justice; the Secretary of the Department of Corrections; the Executive Director of the Department of Law Enforcement; the State Courts Administrator; the Governor's Victims' Rights Advocate; the Director of the Crime Victims' Services Office within the Department of Legal Affairs; a commissioner of the Florida Parole Commission; a state attorney, appointed by the Florida Prosecuting Attorneys Association; a public defender, appointed by the Public Defenders Association; a sheriff, appointed by the Florida Sheriffs Association; a police chief, appointed by the Florida Police Chiefs Association; a representative of the Florida Network of Victim/Witness Services; and three victims of self-inflicted crimes, appointed by the Governor in consultation with the President of the Senate and the Speaker of the House of Representatives.²

The task force members reviewed relevant literature, visited substance-abuse treatment programs, and held five public meetings around the state.³ Task force members heard testimony from approximately 36 speakers, including current and former substance abusers and prostitutes, local citizen groups, many treatment providers, law enforcement officials, drug court officials, the judiciary, and representatives from the Department of Corrections, the Department of Children and Families, and the Office of the State Court Administrator.⁴

¹ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 912, March 16, 2001.

² Chapter 2000-306, L.O.F.

³ Task Force on Self-Inflicted Crimes, January 18, 2001.

⁴ *Id* at 3.

Testimony from these speakers was summarized in the written report by the task force that was issued January 2001. The task force recognized the “revolving door” effect⁵ and that “breaking the cycle” requires specific efforts to identify drug users involved with the criminal justice system. The task force also indicated that once identified, drug treatment should be made a mandatory part of incarceration and/or probation for the related crime.

Recommendations approved by the task force focused primarily on funding faith-based initiatives, expanding drug court, encouraging work programs, enhancing substance-abuse treatment and education, requiring post-incarceration supervision, and increasing punishment for prostitution.

Section 20.315, F.S., Department of Corrections.

Section 20.315, F.S., provides the organizational structure for the Department of Corrections (DOC) and creates the Florida Corrections Commission. The secretary of the DOC is authorized to appoint assistant secretaries as deemed necessary to accomplish, for example, the following goals of the department:

- Security and institutional operations;
- Health services;
- Community corrections;
- Administrative services; and
- Program services.⁶

Under the current organizational framework in Chapter 20 and the goals specified in law, there is no specific mention of transition or post-release services.

Section 397.333, F.S., Statewide Drug Policy Advisory Council.

This statute prescribes the membership and duties of the Statewide Drug Policy Advisory Council, which is created within the Executive Office of the Governor.⁷ Membership includes

- Two enumerated ex officio members;
- Nine enumerated state officials;
- A member of the Florida Senate;
- A member of the House of Representatives;
- A member of the judiciary; and
- Eleven members of the public, each possessing expertise in specified areas of substance abuse enforcement or treatment.⁸

Duties of this council include studying and making recommendations for developing and implementing a state drug control strategy and funding mechanisms, ensuring that Florida has a coordinated and integrated response to the substance abuse problem, and making recommendations on law changes that would remove barriers or enhance the implementation of the state drug control strategy.⁹

⁵ This is when drug addicted criminals re-offend when released from incarceration.

⁶ See s. 20.315(3)(c), F.S.

⁷ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 912, March 16, 2001.

⁸ See s. 397.333(1), F.S.

⁹ See s. 397.333(3), F.S.

Section 944.026, F.S., Community-based facilities and programs.

Section 944.026, F.S., provides legislative authority for the DOC to develop, provide, or contract for a statewide system of community based facilities, services, and programs pertaining to the rehabilitation of offenders. The three major types of programs authorized under this section include:

- Community correctional centers;¹⁰
- Community-based residential drug treatment facilities; and
- Probation and restitution centers.¹¹

Eligibility for participation varies depending on the program.

Pursuant to s. 344.033(2), F.S., a person convicted of a sexual battery¹² is ineligible for placement in a community correctional center.

Community-based residential drug treatment facilities include nonsecure facilities and secure facilities.¹³ Participation in a nonsecure community-based residential drug treatment program must be court ordered and is restricted to those persons on probation or drug offender probation who have violated their terms and conditions, or persons placed on community control whose sentence exceeds 22 months.¹⁴ Participation in a secure community-based residential drug treatment program must also be court ordered and is restricted to those persons who have violated their terms and conditions of probation, drug offender probation, or community control and whose sentence exceeds 22 months.¹⁵

As of December 2000, the DOC had contracts with various private-for-profit and private-non-profit vendors for approximately 1,897 contracted community-based residential substance-abuse treatment beds. The vast majority of those beds are sentencing alternatives available to the court for those offenders who violate a type of community supervision such as probation. However, there might be some inmates on post-release supervision who are being placed into these community-based residential drug treatment programs.¹⁶ Of the 1,897 beds authorized pursuant to this section, none of the contract providers are private faith-based organizations. However, the DOC does report that it currently has a 100-bed contract for substance-abuse and transition housing with one private faith-based organization.¹⁷

Participants in probation and restitution centers include probationers, drug offender probationers, and community controllees, who have violated their terms or conditions of release, who may be required to reside while working, receiving treatment, or attending school, or persons on probation, drug offender probation, or community control who may be required to attend outpatient substance abuse counseling.¹⁸

¹⁰ These centers are also known as work release programs.

¹¹ See s. 944.026(1), F.S.

¹² This pertains to a person convicted of a sexual battery pursuant to s. 794.011, F.S.

¹³ See s. 944.026(1)(b), F.S.

¹⁴ See s. 944.026(1)(b)1., F.S.

¹⁵ See s. 944.026(1)(b)2., F.S.

¹⁶ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 912, March 16, 2001.

¹⁷ *Id.*; This private faith-based organization is Bridges. Bridges was funded through the appropriations bill last session, for \$365,000. It was not necessary to pass any substantive law to do this. Staff of the Senate Committee on Criminal Justice, telephone call on March 23, 2001.

¹⁸ See s. 944.026(1)(c), F.S.

The purpose of these facilities and services is to provide the court with an alternative to committing offenders to more secure state correctional institutions and to assist in the supervision of probationers, drug offender probationers, and community controllees.¹⁹

Section 944.473, F.S., Inmate substance abuse testing program.

Section 944.473 (2), F.S., states that the DOC must place an inmate in a substance-abuse treatment program, if the inmate requests such placement and if such placement is available and is appropriate. On July 1, 2000, the DOC implemented section 33-507.001, Florida Administrative Code. The new rule instituted a screening criteria, for inmates, to properly assess substance-abuse service needs, and prioritize assignment to substance-abuse programs based upon this assessment of needs. This rule also instituted a program to those identified in the screening process to take part in substance-abuse program services. The assignment to mandatory substance-abuse program services is treated in the same way as a work assignment in that refusal will subject an inmate to disciplinary action.²⁰

Sections 944.701, F.S. - 944.708, F.S., Transition Assistance Program Act.

Sections 944.701 through 944.708, F.S., set forth the "Transition Assistance Program Act." These sections of law

- Provide legislative intent to provide persons released from incarceration with certain fundamental skills;
- Require a transition assistance officer at major correctional institutions to coordinate delivery of services;
- Require the Department of Labor and Employment Security job service office nearest to the inmate's intended residence to obtain job placement and referral information; and
- Provide for staff to assist released inmates and provide inmate placement tracking and market needs to the department.

At present, the DOC is not providing a solely dedicated position at each prison to perform the transition duties enumerated in law. Rather, the DOC typically designates a classification officer, in addition to his or her regular duties, to perform the transition assistance duties.²¹

Currently, the delivery of job placement and referral services required by law and provided by contract with the Department of Labor and Employment Security, is not occurring.²² The 2000 Legislature eliminated the funding for this contract and consequently the contract was cancelled.

In addition, according to the DOC, the Department of Labor and Employment Security has not tracked inmate placement and market needs within the past few years.

¹⁹ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 912, March 16, 2001.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Section 944.803, F.S., Faith-based programs for inmates.

Section 944.803(1), F.S., states that the Legislature “finds and declares” that

faith-based programs offered in state and private correctional institutions and facilities have the potential to facilitate inmate institutional adjustment, help inmates assume personal responsibility, and reduce recidivism.

Furthermore, it is the intent of the Legislature that the DOC and private vendors operating private correctional facilities continuously

- Measure recidivism rates for inmates participating in religious programs;
- Increase the number of volunteers ministering to inmates;
- Develop community linkages with churches, synagogues, mosques, and other faith-based institutions to assist inmates in transitioning into the community; and
- Fund through inmate-welfare trust funds an adequate number of chaplains and support staff to operate faith-based programs in correctional institutions.²³

The DOC employs approximately 105 chaplains and support staff who are responsible for addressing the religious and spiritual needs of inmates within the correctional institutions. In November 1999, the DOC began its first residential faith-based dorm at Tomoka Correctional Institution, located in Daytona Beach, FL (Volusia County). It is called the Kairos Horizon Project and is available to any inmate in open population who has not had a disciplinary report within six months of entering the program.²⁴

Section 945.091, F.S., Extension of the limits of confinement; restitution by employed inmates.

Sections 945.091(1)(b) and 944.033, F. S., permit inmates to live in a community correctional center by working at paid employment, participating in an education or a training program, or voluntarily serving a public or nonprofit agency in the community. The inmate continues to live as an inmate of the facility in which he or she is confined, except during the hours of his or her employment, education, training, or service and traveling to and from approved locations. This program is commonly referred to as “work-release” and the facilities which house these inmates are referred to as either a community correctional center or a work release center.

The DOC operates approximately 30 work-release centers throughout the state, housing approximately 2,400 inmates daily. Of the 30 operational work release centers, the DOC reports that there are 21 facilities that have a contracted substance-abuse program serving almost 2,500 inmates annually. According to the DOC, the contracted providers do not have a faith-based component as part of the substance-abuse treatment program and none of the work release centers have specific chaplains assigned to the facilities. Given proximity problems and resource

²³ See s. 944.803(2), F.S.

²⁴ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 912, March 16, 2001.

limitations, the chaplains who minister and coordinate religious services at the correctional institutions do not provide services for those inmates serving the remainder of their sentence at a work release center.²⁵

Section 947.141, F.S., Violations of conditional release, control release, or conditional medical release.

Section 947.141(1), F.S., provides that if a member of the Parole Commission or duly authorized representative of the commission has reasonable grounds to believe that an offender who is on release supervision²⁶ has violated the terms and conditions of the release, that such member may have a warrant issued for the arrest of the releasee. If the offender is a sexual predator then a warrant must be issued.

Section 948.08, F.S., Pretrial intervention program.

Pursuant to s. 948.08(6)(a), F.S., a person charged with a second or third degree felony purchase or possession of a controlled substance, and who has no prior felony convictions or prior admissions into a pretrial intervention program, is eligible for admission into a drug court program for a period of not less than one year. At the end of this time period, the court must determine whether the defendant has successfully completed the program and whether the charges will be dismissed or reinstated for prosecution.²⁷ The chief judge has the discretion to appoint an advisory committee for the drug court program. The advisory committee consists of the chief judge as the chairman, the state attorney, the public defender, the program administrator, and any other persons the chief judge deems appropriate.²⁸

Section 951.10, F.S., Leasing prisoners to work for private interests prohibited.

State and federal laws limit the degree to which inmates may work and produce goods and services for the private sector. Section 951.10, F.S., prohibits county and municipal jails from leasing inmates to a private business or other entity. The Ashurst-Sumners Act of 1935, limits the entry of prison-made goods into the stream of commerce.²⁹

C. EFFECT OF PROPOSED CHANGES:

Section 20.315, F.S., Department of Corrections.

This committee substitute expands the area of program responsibility for the DOC to include transition and postrelease services. It provides for this program to have direct management and supervision of all programs that furnish transition assistance to inmates who are or who have recently been in the custody of the department. This responsibility includes the coordination, facilitation, and contract management of prerelease and postrelease transition services provided by governmental and private providers, including faith-based service groups.

Section 397.333, F.S., Statewide Drug Policy Council.

This committee substitute specifies that of the 11 members that are currently appointed to the Statewide Drug Policy Council, from the public, two are required to have professional or

²⁵ *Id.*

²⁶ This applies to an offender on release supervision under ss. 947.1405, 947.146, or 947.149, F.S.

²⁷ *See* s. 948.08(6)(b), F.S.

²⁸ *See* s. 948.08(7), F.S.

²⁹ U.S.C. 18 s.85-1761.

occupational expertise in faith-based substance-abuse-treatment services. In addition, the council is directed to identify any change in the law necessary to remove barriers to or enhance the work component of any substance-abuse-treatment program and recommend ways to expand and fund drug courts.

Section 944.026, F.S., Community-based facilities and programs.

This committee substitute expands the use of community-based residential drug treatment to include inmates who are near their date of release who are in need of a substance-abuse-transition housing program.

Additionally, this committee substitute requires the DOC by January 1, 2002, to designate at least 400 of its nonsecure community-based residential substance-abuse-treatment beds or probation and restitution beds as post-release transition beds. These designated beds must be provided by private organizations that do not have a faith component and that are under contract with the DOC. In making placement decisions, the DOC and the contract providers must give priority consideration to inmates who are placed in some form of postrelease community supervision.

However, if an inmate whose sentence expires upon his or her release from a correctional institution or a community correction center and for whom community supervision is not required, the department would still be able to consider this inmate for placement in transition housing if he or she demonstrates the need for or interest in and suitability for such placement. This committee substitute clearly states that it is not creating any right to such substance abuse service. DOC must also develop and implement procedures to identify inmates prior to release who demonstrate the need for or interest in and suitability for placement in a community-based substance-abuse-transition housing program.

Section 944.473, F.S., Inmate substance abuse testing program.

This committee substitute removes the provision that allows inmates to opt into substance-abuse treatment on a voluntary basis and upon an inmate's request, if available and appropriate. Instead, the committee substitute provides for the delivery of mandatory substance-abuse treatment when such services are available. This policy change is a codification of the current DOC rule, Section 33-507.001, Florida Administrative Code, that went into effect July 1, 2000.

This committee substitute also states that when selecting contract providers to administer substance-abuse-treatment programs, the DOC *"shall make every effort to consider qualified faith-based service groups on an equal basis with other private organizations."*

Section 944.4731, F.S., Addiction-Recovery Supervision Program.

This committee substitute creates the "Addiction-Recovery Supervision Program Act" which includes a mandatory post-prison release program for eligible substance abusers who, in addition to being supervised upon release, would be given an opportunity to request placement in a contracted substance-abuse transition-housing program.

This addiction-recovery supervision must be provided to any offender released from a state correctional facility who is convicted of a crime committed on or after July 1, 2001, if the offender has

- A history of substance-abuse or addiction;
- Participated in drug treatment;

- No current or previous convictions for a violent offense;
- No current or previous convictions for drug trafficking or drug sale;
- No current or previous convictions for a property offense, except convictions for: passing worthless checks, forgery, uttering, or counterfeiting; third-degree grand theft, excluding a firearm theft; or third-degree felony burglary of an unoccupied structure or conveyance; and
- No current or previous convictions for a traffic offense involving injury or death.

A panel of not fewer than two parole commissioners sets the terms and conditions of supervision. These terms include payment of costs of supervision, child support and restitution, and any other court-ordered payments. The parole commission also determines whether an offender violated supervision and whether the violation warranted revocation.

Contingent upon funding, each fiscal year the DOC is required to enter into contracts with multiple providers who are private organizations, *including faith-based service groups*, to operate substance-abuse transition-housing programs, including providers that

- Provide post release housing, programming, treatment, and other transitional services;
- Emphasize job placement and gainful employment for program participants;
- Provide a curriculum related to substance-abuse treatment using a cognitive-behavior model or a 12-step model of addiction recovery;
- Require a length of stay of up to 12 months; and
- Use community volunteers in operating the program to the greatest extent possible.

If the contracted provider is a faith-based service group, the DOC is required to ensure that the offender's faith orientation, or lack thereof, is not considered in determining admission to a faith-based program and that the program does not attempt to convert an offender toward a particular faith or religious preference. Nonetheless, according to the "Whereas" clauses of the bill, one of the reasons "faith-based programming" is more effective than government programs³⁰ is because "they inject an element of moral challenge and spiritual renewal."

The provider is required to make every effort to secure suitable employment for the released offender. This includes providing adequate wages, a potential for advancement, and a likelihood of stable and long-term employment. Under the committee substitute, the DOC is required to measure the success of post release job placement by reporting in its annual report, the track record, for one year, of offenders who successfully completed the program and to determine their employment status.

³⁰ Analysts have not received any research data to support or reject this assertion. The Report provided by the Task Force on Self-Inflicted Crimes only addressed testimonial and anecdotal comment.

Under the committee substitute, six months prior to releasing an offender, the chaplain and transition-assistance specialist is required to initiate the prerelease screening process. They are also required to provide a list of contracted private providers, including faith-based providers, to the offender, and facilitate the application process. The transition-assistance specialist is required to inform the offender of program availability and assess the offender's need and suitability for transition-housing assistance. If an offender is approved for placement, the specialist is required to assist the offender and coordinate the release of the offender with the selected provider.

If an offender requests and is approved for placement in a contracted faith-based substance-abuse transition-housing program, the specialist is required to consult with the chaplain prior to such placement. If an offender participates in a faith-based program while incarcerated or at a community correctional center, and the same faith-based provider offers a contracted substance-abuse transition-housing program, the DOC is required to make every attempt to maintain this continuum of care.

Contracts entered into for the operation of a substance-abuse transition-housing program, must invite innovation, minimize bureaucracy, and permit the provider to petition the DOC to waive rules that are inconsistent with the mission of the provider. Section 120.542, F.S., governs rule variance or waivers. This bill authorizes the DOC to rule-make with regard to the procedures to be used for rule waiver. The DOC rules would not have to comply with chapter 120, F.S., requirements. Chapter 120, F.S., is the Administrative Procedure Act applicable to all agencies, currently including DOC.

Section 944.701-944.708, F.S., Transition Assistance Program Act.

This committee substitute expands the legislative intent statement, in s. 944.702, F.S., to state that support services must include *faith-based service groups*, on an equal basis, with other private organizations.

The DOC must give priority consideration to substance-addicted inmates in order to help break the cycle of drug abuse, prostitution, and other self-injurious criminal behavior that causes harm to families and communities.

This committee substitute requires the DOC to provide transition assistance, as well as a "transition assistance officer" at the major correctional institutions. It renames the position to a "transition assistance specialist," clarifies that the staff person must be at each correctional institution, and specifies that the person may not be a correctional officer or correctional probation officer. The specialist also coordinates services for those inmates released from work release centers. This committee substitute expands the transition specialist's duties to include facilitating placement in a private transition-housing program, if requested by any eligible inmate. If an inmate who is nearing his or her date of release requests placement in a housing program, the specialist must inform the offender of program availability and assess the inmate's need and suitability for transition-housing assistance. If an inmate is approved for placement, the specialist must assist the inmate and coordinate the release of the inmate with the selected provider. If an inmate is considering placement in a faith-based program, the specialist must consult with the chaplain prior to such placement.

This committee substitute specifies that in selecting inmates who are nearing their date of release, the DOC must ensure that the inmate's faith orientation, or lack thereof, will not be considered in determining admission to a faith-based program and that such program does not attempt to convert an inmate toward a particular faith or religious preference.

This committee substitute deletes obsolete provisions in several places throughout the act that relate to job placement services, required in law, to be provided by the Department of Labor and Employment Security. Since there is neither funding nor a contract to deliver these services, any reference to such is eliminated.

This committee substitute permits the DOC to contract with faith-based service groups to provide a standardized release orientation program, basic release assistance, and postrelease special services. It further requires the DOC, when selecting a provider, to consider faith-based groups on an equal basis with other private organizations.

In addition to the required postrelease special services, the DOC, along with the assistance of the State Office on Homelessness, is directed to maintain and regularly update a comprehensive directory of support services offered by private organizations and faith-based service groups. The purpose of this directory is to assist in making individualized placements and referrals.

Section 944.803, F.S., Faith-based programs for inmates.

This committee substitute requires the DOC to have at least three faith-based dormitory programs, within existing correctional institutions, fully operational by March 1, 2002, and three more by June 1, 2002. These programs are to be modeled after the existing dormitory program at Tomoka Correctional Institution. The DOC is required to ensure that the inmate's faith orientation, or lack thereof, will not be considered in determining admission to a faith-based program and that the program does not attempt to convert an inmate toward a particular faith or religious preference. Participation in the program is strictly voluntary and priority is given to inmates having a substance-abuse problem. However, at least 80 percent of the inmates participating must be within 36 months of release. DOC may not remove an inmate once assigned to the program except for the purposes of population management, for inmate conduct that may subject the inmate to disciplinary confinement or loss of gain-time, for physical or mental health concerns, or for security or safety concerns.

The committee substitute provides that a chaplain and a clerical-support person be assigned to six dormitories to implement and monitor the program, and to strengthen volunteer participation. The DOC is required to report to the Governor and Legislature by January 1, 2004, on the faith-based dormitory program, including a longitudinal follow-up of inmates successfully completing the program compared to other non-participating inmates.

In addition, the DOC is required to assign chaplains to community correctional centers chosen by the DOC. These chaplains are to strengthen volunteer participation by recruiting community volunteers to assist inmates in transition, and, if requested by an inmate, placement in a mentoring program or at a contracted substance-abuse transition-housing program. The chaplain is required to work with the institutional transition-assistance specialist to successfully place the released inmate in one of the requested programs.

The DOC is also required to ensure that state funds not be expended for the purpose of furthering religious indoctrination, but rather, that they be expended for the purpose of furthering the secular goals of criminal rehabilitation, the successful reintegration of offenders into the community, and the reduction of recidivism. How the DOC is to accomplish this task is unclear.

Section 945.091, F.S., Extension of the limits of confinement.

This committee substitute permits inmates assigned to work release centers to apply for placement at a contracted substance-abuse transition-housing program. The transition specialist must inform the inmate of program availability and assess the inmate's need and suitability for transition housing

assistance. If an inmate requests and is approved for placement in a contracted faith-based substance-abuse transition-housing program, the specialist must consult the chaplain prior to such placement.

Section 947.141, F.S., Violations of conditional release, control release, or conditional medical release.

This committee substitute provides that the revocation process used for the other forms of supervision likewise apply to the newly created addiction recovery supervision.

Section 948.08, F.S., Pretrial intervention program.

This committee substitute specifies that to be eligible for the substance abuse education and treatment intervention program, a person cannot be charged with a violent crime, including

- Murder;
- Sexual battery;
- Robbery;
- Carjacking;
- Home-invasion robbery; or
- Any other crime involving violence.

It also includes, as additional eligible offenses for drug court, the solicitation for purchase of a controlled substance, obtaining a prescription by fraud, and tampering with evidence.

Section 951.10, F.S., Leasing prisoners to work for private interests prohibited.

This committee substitute clarifies that the prohibition against county prisoners being leased to work for private entities does not prohibit county inmates from working in nonprofit and private-sector jobs as otherwise authorized by law.

Department of Corrections / Report

This committee substitute requires the DOC to submit a comprehensive report to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than March 1, 2002. In its comprehensive report, the DOC must

- Identify future bed needs for the substance-abuse transition-housing program;
- Evaluate the impact of designating nonsecure, community-based residential beds for postrelease transition services;
- Provide a 5-year plan for the amount of funds needed for expanding faith-based dormitory programs;³¹
- Project future needs for the addiction-recovery supervision program; and

³¹ This requires consideration of expansion of faith-based dormitory programs without review of any data that this bill requires to be collected and reported regarding if such faith-based programs are successful.

- Evaluate the activities and coordination efforts of the new transition assistance requirements under this committee substitute.

Legislative Committee on Intergovernmental Relations / Report.

This committee substitute requires the Legislative Committee on Intergovernmental Relations to provide a detailed report to the Legislature by March 1, 2002, on the feasibility of providing effective intervention and treatment strategies for prostitutes detained in county detention facilities. In compiling this study, the committee must

- Identify and describe successful intervention and treatment strategies in Florida's county detention facilities and in other jurisdictions;
- Determine current policies and practices in county detention facilities for addressing prostitutes;
- Examine relevant scientific studies documenting any correlation between prostitution and substance abuse;
- Consider the implications of enhancing the criminal penalty for prostitution;
- Determine the number of prostitutes and their length and frequency of stay in county detention facilities; and
- Recommend any law or funding changes that will keep prostitutes from repeated incarceration and instead, will assist in their successful reentry into the community.

Transition Course.

Beginning December 1, 2002, this committee substitute requires each inmate released from incarceration, by the DOC, to complete a 100-hour comprehensive transition course. This course covers job readiness and life-management skills. This requirement does not apply to inmates released in an emergency situation.

Currently, inmates at 18 institutions receive this transition course. The benefits of this course are noted in a study conducted by the Office of Program Policy Analysis and Government Accountability (OPPAGA). The report also recommends that the DOC expand the course to all inmates.³²

Appropriations.

This committee substitute provides an appropriation of \$5,005,514 from the General Revenue Fund to the DOC, for the 2001-02 fiscal year, to implement its provisions.

³² See Review of the Department of Corrections, Report No. 00-23, December 2000.

The appropriation will fund a chaplain for at least ten community correctional centers. These chaplains will assist inmates in transition, strengthen participation of community volunteers, and serve as a liaison with community leaders.

The appropriated moneys will also be used to fund 52 transition-assistance specialists and to expand the 100-hour comprehensive transition course at each correctional institution.

In addition, the appropriation will be used by DOC to fund six additional faith-based dormitories, including six chaplain positions and six accompanying clerical-support positions, miscellaneous secular supplies necessary to operate the program, and any physical alterations at selected dormitories necessary to accommodate program needs.

Funds are provided to establish a Transition Assistance Bureau within the DOC to monitor, oversee, and provide support to transition assistance programs.

Finally, the appropriation will fund nonrecurring start-up and recurring per diem costs for 400 substance-abuse transition-housing beds. The 400 beds will be provided by faith-based service groups under contract with the DOC and will be in addition to the minimum required 400 beds designated as transition-housing beds in this committee substitute. The latter are designated beds under contract with private organizations not offering a faith component. These funds will be used for paying nonrecurring start-up costs to ensure the proper selection and training of staff and for expenses relating to facility preparation.

This committee substitute also requires that the DOC ensure that the number of transition-housing beds provided by private organizations with a faith component, do not exceed the number of transition-housing beds provided by private organizations without a faith component, so that an eligible offender has equal access to either type of transition bed.

Furthermore, the DOC is directed to ensure that state funds will not be expended for the sole purpose of furthering religious indoctrination, but rather, that state funds are expended for purposes of furthering the secular goals of criminal rehabilitation, the successful reintegration of offenders into the community, and the reduction of recidivism.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Appropriates \$5,005,514 from the General Revenue Fund to the DOC for fiscal year 2001-02.

This appropriation will fund the following initiatives:

- To provide chaplains for mentoring programs at ten community correctional centers (the appropriation may also be used to alter the physical design of a community correctional center as necessary).³³

	FY 2001-02			
	FTE	Recur	N/R	Total
Chaplains	10.0	288,770	45,610	334,380

- To provide transition-assistance specialists and services at each major correctional institution (expansion of the 100-hour comprehensive transition course at each correctional institution is not mandated until December 2002, so any costs associated with the course will not affect the DOC in fiscal year 2001-2002).³⁴

	FY 2001-02			
	FTE	Recur	N/R	Total
Transition Specialists	52.0	1,742,538	237,172	1,979,710

- *To provide six new faith-based housing units at existing correctional institutions, including chaplains and accompanying clerical-support positions, miscellaneous secular supplies to operate the program, and any physical alterations at selected dormitories necessary to accommodate program needs.*³⁵

	FY 2001-02			
	FTE	Recur	N/R	Total
Housing Unit Alterations			300,000	300,000
Chaplains	6.0	86,631	27,366	113,997
Clerical	6.0	59,896	27,618	87,514
Total	12.0	146,527	354,984	501,511

- *To contract with faith-based service groups for 400 additional substance-abuse transition-housing beds. These are in addition to the minimum required 400 beds designated as transition-housing beds, which are to be contracted with private*

³³ Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 912, March 16, 2001, at 17.

³⁴ Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 912, March 16, 2001 at 18.

³⁵ *Id.*

organizations not offering a faith component. This appropriation also includes nonrecurring start-up costs to ensure the proper selection and training of staff and for expenses relating to facility preparation:³⁶

	FY 2001-02			
	No.	Recur	N/R	Total
Housing Contracts	400	1,460,000	480,000	1,940,000

- To create a Transition Assistance Bureau within the DOC to monitor, oversee and provide support to transition assistance programs:³⁷

	FY 2001-02			
	FTE	Recur	N/R	Total
Bureau of Transition	6.0	222,506	27,408	249,914

The full annualized cost of the bill for FY 2002-03 will be \$6,019,147.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private faith-based organizations will receive state funds to provide substance-abuse transition-housing beds.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This committee substitute does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

³⁶ *Id.*

³⁷ Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 912, March 16, 2001, at 18.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This committee substitute does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This committee substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The first amendment of the United State Constitution reads, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The first amendment contains two clauses that pertain to religion. The first clause is referred to as the Establishment Clause and the second is referred to as the Free Exercise Clause. The Supreme Court has held that both clauses are applicable to the states.³⁸

There is a natural hostility between a command to not establish and a command to not inhibit the practice of religion. The meaning of these two clauses has been debated. However, over time the clauses have been interpreted to require a general governmental adherence to neutrality in terms of religion and allowing the government to seek secular goals in a religiously neutral manner.³⁹

The Free Exercise Clause

The Free Exercise Clause prohibits the state from passing laws that prohibit the "free exercise" of religion. This phrase has been interpreted to mean that the government is prohibited from enacting a law that "either forbids or prevents an individual or institution from expressing or acting upon its sincerely held 'religious' beliefs."⁴⁰ Furthermore, this clause has been cited in support of the provision of military and prison chaplain programs, based on the argument that because the recipients of these services are within government institutions, the government must provide them an opportunity to exercise their religious beliefs. However, the right to practice ones religion is not absolute, even in the free world, and must yield to the interests of society under some circumstances.⁴¹

Under Florida's "Religious Freedom Restoration Act of 1998," the standard for determining whether the government may substantially burden a person's exercise of religion is if it demonstrates that the application of the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.⁴²

The Establishment Clause

While the Free Exercise Clause requires that the government allow inmates some opportunity to practice religion, the Establishment Clause places restrictions on the government's ability to support

³⁸ See *Cantwell v. Connecticut*, 310 U.S. 296 (1940); See also *Everson v. Board of Education*, 330 U.S. 1 (1947).

³⁹ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 912, March 16, 2001.

⁴⁰ Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 912, March 16, 2001, at 14.

⁴¹ *Id.*

⁴² See s. 761.03, F.S.

such programs. In prohibiting the making of a “law respecting an establishment of religion,” the clause was intended to protect religious liberty. It has been interpreted to preclude government imposition, sponsorship or even support of religion. But it also will not allow the government to force a person to remain away from the practice of religion. The phrase “respecting the establishment of religion” has been most often interpreted to mean that government should be neutral in matters of religion, and should not prefer one religion over another, nor religion to non-religion.⁴³

In *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the Supreme Court adopted a three-part test, derived from its earlier cases, to assist it in deciding challenges to government action as an establishment of religion. In order for government action to be permissible under the Establishment Clause, it must have a secular purpose, have a primary effect that neither advances nor inhibits religion, and it must not cause excessive governmental entanglement with religion. A religious purpose or motivation does not mean the act is unconstitutional so long as there is also a bona fide secular or civic purpose, such as housing the homeless. So long as the primary affect of the government action is not to advance religion, it is constitutionally acceptable for a law to have a remote or incidental effect of advancing religion. In determining the excessiveness of the possible entanglement, the Court has considered the nature of the aid that is provided, the character and purpose of the institution receiving the aid, and resulting relationship between that institution and the government.

The Supreme Court has said, “[T]his court has never held that religious institutions are disabled by the First Amendment from participating in publicly sponsored social welfare programs.”⁴⁴ In *Bowen v. Kendrick*, 487 U.S. 589 (1988), the Court held (5-4) that it is not unconstitutional to provide federal funding to religiously affiliated institutions that provide services relating to teenage sexuality and pregnancy. In this case, Congress' goal of reducing teenage sex happened to coincide with the goals of the religious group. The Court stated that it cannot be avoided that at times religiously affiliated organizations will have the same secular goals as Congress.⁴⁵

The Supreme Court most recently examined this issue in *Mitchell v. Helms*, 120 S.Ct. 2530 (2000) (plurality opinion), in which it held that lending educational equipment and books bought with government funds to sectarian schools was not an unconstitutional violation of the Establishment Clause. The Court used a modified Lemon test, as set forth in *Agostini v. Felton*, 521 U.S. 203 (1997), to determine whether there was an establishment clause violation. The Court looked at whether the statute had a secular purpose, and whether it had the primary effect of advancing or inhibiting religion. In determining whether the statute had the effect of advancing religion, the Court looked at whether it resulted in governmental indoctrination, defined its recipients by reference to religion, or created an excessive entanglement.⁴⁶

The Court found that under the statute in question, aid was allocated on the basis of neutral, secular criteria that did not favor or disfavor religion, and was available to both religious and secular groups on a nondiscriminatory basis. In addition, the statute determined eligibility for aid in a neutral fashion. Finally, the Court found that the statute did not have an impermissible content because it required the aid to be secular, neutral, and nonideological. Accordingly, the Court found that the statute did not have the effect of advancing religion and “cannot reasonably be viewed as an endorsement of religion.”⁴⁷

⁴³ *Id.* at 15.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

The Florida Constitution

Article I, s. 3, Florida Constitution, provides that there shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.

In interpreting this provision, the Florida Supreme Court has stated:

A state cannot pass a law to aid one religion or all religions, but state action to promote the general welfare of society, apart from any religious considerations, is valid, even though religious interests may be indirectly benefited. If the primary purpose of the state action is to promote religion, that action is in violation of the First Amendment, but if a statute furthers both secular and religious ends, an examination of the means used is necessary to determine whether the state could reasonably have attained the secular end by means which do not further the promotion of religion.

Johnson v. Presbyterian Homes of Synod of Fla., Inc., 239 So.2d 256, 261 (Fla.1970) (holding constitutional a statute exempting from taxation properties owned by religious organizations, used as homes for the aged and operated not-for-profit).

Furthermore, the Florida Attorney General has opined that:

Neither the Establishment Clause of the First Amendment nor this section prohibits the maintenance of religious facilities within the confines of the county jail or the compensation from public funds of a chaplain to minister to the religious needs of the inmates; provided that such facilities and clergy are made available to all inmates regardless of religious belief, and that no one religion is given preference over another.

Op. Atty. Gen., 077-55, June 17, 1977.

B. RULE-MAKING AUTHORITY:

Section 120.542, F.S., governs rule variance or waivers. This bill authorizes the DOC to rule-make with regard to the procedures to be used for rule waiver. The DOC rules would not have to comply with chapter 120, F.S., requirements. Chapter 120, F.S., is the Administrative Procedure Act applicable to all agencies, currently including DOC.

C. OTHER COMMENTS:

This bill authorizes DOC to adopt rules that govern "rule variance" in order to accomplish "the mission of the private organization or faith-based provider." (p. 18) Section 120.542, F.S., which governs all agencies with respect to Administrative Procedures, already addresses rule variances or waivers and already authorizes agencies to adopt rules in accordance with its provisions. Section 120.542, F.S., sets forth definitions and provides standards, including publication of the petition for waiver, in the Florida Administrative Weekly, and requires a means for interested persons to provide comments on the petition. This bill provides no guidelines or requirements for

DOC when establishing its rules for waiver, and accordingly this bill may have delegated such authority without sufficient statutory guidance.⁴⁸

This bill *requires* the use of additional faith-based dormitory programs, although currently, DOC (as it did last year) already has authority to negotiate such usage, pursuant to necessary appropriations. It is unclear why this bill mandates, with specificity, that a certain number of faith-based beds be under contract; yet, use of faith-based dormitory programs is strictly voluntary with the inmate – accordingly the demand for such beds could possibly decline, if inmates fail to select such program. Additionally, this bill requires that DOC, in its report,

provide a 5-year plan for the amount of funds needed for expanding faith based dormitory programs.

This presumes expansion is warranted even without taking into consideration the data that this bill requires to be collected, with regard to such program's effectiveness. In other words, it draws conclusions in advance, which may or may not be borne out.

This bill requires that any money provided to a faith-based program be used for secular purposes only and that the DOC "shall ensure that an inmate's faith orientation, or lack thereof, will not be considered in determining admission to the program and that the program does not attempt to convert an inmate toward a particular faith or religious preference." How that can be accomplished, without very close monitoring, document review, and specific provisions in the contract as well as specified accountability measures, is unclear.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 29, 2001, the Committee on State Administration passed PCS/HB 1131 and reported it favorably as a committee substitute.

The committee substitute expands the use of community-based residential drug treatment to include inmates who are near their date of release and who are in need of a substance-abuse-transition housing program. It also designates at least 400 of the DOC's nonsecure community-based residential substance-abuse-treatment beds or probation and restitution beds as post-release transition beds, whereas the bill did not designate beds for this purpose. These beds must be provided by private organizations that do not have a faith component and that are under contract with the DOC. The bill does not provide for this.

The committee substitute requires that any offender "released from a state correctional facility" and who is convicted of a crime on or after July 1, 2001, be given addiction recovery supervision if the offender meets certain requirements. The bill required "any offender who is convicted of a crime on or after July 1, 2001." The committee substitute also requires addiction-recovery supervision for offenders that have no current or previous convictions for drug trafficking or for unlawful sale of a controlled substance. The bill did not provide this stipulation.

The committee substitute states that the length of addiction-recovery supervision may not exceed the maximum penalty imposed by the court. The bill did not provide for this.

⁴⁸ The Correctional Privatization Commission has this same type of rule waiver provision: "The commission may waive any rule, policy, or procedure of the department related to the operations standards of correctional facilities that are inconsistent with the mission of the commission to establish cost-effective, privately operated correctional facilities." s. 957.04, F.S. The Correctional Privatization Commission has come under substantial criticisms for some of its practices, including overpayment on contracts. HB 727 calls for the repeal of the Correctional Privatization Commission.

STORAGE NAME: h1131.sgc.doc

DATE: April 18, 2001

PAGE: 21

The committee substitute states that the DOC must enter into contracts with multiple providers who are private organizations. The bill requires contracts with private "nonprofit" organizations.

The committee substitute allows for the use of a cognitive behavior model as part of the substance-abuse treatment curriculum and removes the minimum length of stay requirement from the bill.

The committee substitute provides rule-making authority to the parole commission; and requires private correctional facilities to provide transition assistance for inmates nearing release from a private correctional facility. The bill did not provide for this.

The bill required the DOC to maintain and regularly update a comprehensive directory of support services offered by private organizations and faith-based service groups. The committee substitute requires both the DOC and the State Office on Homelessness to maintain this directory.

By June 1, 2002, the DOC is required to have six faith-based dormitory programs that are to be modeled after the Tomoka program. It provides that participation by inmates is voluntary. The bill requires that all six facilities be fully operational by March 1, 2002.

The committee substitute changes the effective date for chaplain assignments to community correctional centers from July 1, 2001, to October 1, 2001.

The committee substitute allows an inmate to apply for placement at a contracted substance-abuse-transition housing program while working at paid employment and residing in a facility; provides that a person who is charged with "tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud," is also eligible for admission into a pretrial substance abuse education and treatment intervention program approved by the chief judge of the circuit; and requires the DOC to evaluate the impact of designating nonsecure, community-based residential beds for postrelease transition services by March 1, 2002. The bill does not provide for this.

The bill designates an appropriation from the General Revenue Fund to the DOC in the amount of \$5,073,000. The committee substitute designates an appropriation of \$5,005,514.

The bill designates the location placement for chaplains at correctional facilities. The committee substitute only requires that chaplains be placed in at least 10 community correctional centers.

The committee substitute creates the Bureau of Transition (bureau), and requires that some of the appropriation be used to fund 52 transition-assistance specialists and six new bureau positions. The bill does not create the bureau. The bill requires funding of 60 transition-assistance specialists.

The bill requires funding for 500 substance-abuse and transitional-housing beds to be provided by faith-based service groups. The committee substitute only requires funding for 400 substance-abuse and transitional-housing beds to be provided by faith-based service groups.

The committee substitute requires that the DOC ensure that the number of transition-housing beds provided by private organizations with a faith component does not exceed the number of such beds provided by private organizations without a faith component. The bill does not provide for this.

The committee substitute adds needed cross-references and clarifying language.

One additional amendment was adopted by the Crime Prevention, Corrections & Safety Committee on April 12, 2001. The amendment provides the Department of Corrections with more flexibility (regarding the use of recurring funds) to replicate the faith-based dorm model based on the Tomoka Correctional

STORAGE NAME: h1131.sgc.doc

DATE: April 18, 2001

PAGE: 22

Institution program. With the added flexibility, the Department will be able to contract with community faith-based providers as well as augment the Department's staff within the faith-based programs.

On April 18, 2001, the Council for Smarter Government passed CS/HB 1131 and adopted one amendment. The amendment creates the "Task Force on Florida Partnerships." In addition, it defines "program" and provides for legislative intent. The bill was reported favorably with one amendment.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Heather A. Williamson, M.S.W.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Melinda Smith

Staff Director:

David De La Paz

AS FURTHER REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

Prepared by:

James P. DeBeaugrine

Staff Director:

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AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Heather Williamson, M.S.W.

Staff Director:

Don Rubottom