SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 912

SPONSOR: Criminal Justice Committee and Senator Villalobos

SUBJECT: Criminal Rehabilitation

DATE: March 7, 2001 REVISED: ________ ________ ________ ________

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable/CS
2.			APJ	
3.			AP	
4.				
5.				
6.				

I. Summary:

This Committee Substitute implements most of the recommendations made in the Task Force on Self-Inflicted Crimes' January 2000 report. In brief summary, the CS:

- adds responsibilities for the DOC to assist released inmates transition into the community;
- designates certain non-secure drug treatment beds as post-release transition beds;
- expands faith-based initiatives for offenders;
- mandates and expands substance-abuse treatment for offenders;
- provides postrelease supervision for certain drug-addicted inmates;
- provides privately operated transition housing assistance programs for released inmates;
- requires various studies, including one on effective treatment alternatives for prostitution;
- expands the pilot faith-based dormitory program;
- requires the state attorney's recommendation and approval before a person can be accepted in a drug court program;
- provides chaplains at ten work release centers;
- requires two members on 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; and
- provides an appropriation of $5,206,697.

This CS substantially amends the following sections of the Florida Statutes: 20.315, 397.333, 944.026, 944.473, 944.702, 944.703, 944.704, 944.705, 944.706, 944.707, 944.803, 945.091, 948.08, 951.10 and creates s. 944.4731.

II. Present Situation:

Last year, the Legislature passed CS/SB 1266, ch. 2000-366, L.O.F, creating the Task Force on Victims of Self-Inflicted Crimes. (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 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.

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. (See Section VII of the analysis for member names.)

The task force members reviewed relevant literature, visited substance-abuse treatment programs, and held five public meetings around the state. 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.

Testimony from these speakers was summarized in the written report by the task force, which was issued in January 2001. The task force recognized the "revolving door" effect when drug addicted criminals re-offend when released from incarceration 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. (Most of the recommendations, in some form or fashion, are encompassed in CS/SB 912.)

A section-by-section breakdown of affected statutes follows.

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. Subsection (3)(c) of the law authorizes the secretary of the DOC to appoint assistant secretaries deemed necessary to accomplish the goals of the department, including, but not limited to: security and institutional operations; health

services; community corrections; administrative services; and programs. 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. 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 11 members of the public, each possessing expertise in specified areas of substance abuse enforcement or treatment.

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.

Section 944.026, F.S., Community-Based Facilities and Programs.

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

- community correctional centers (known as work release);
- community-based residential drug treatment facilities; and
- probation and restitution centers.

Eligibility for participation varies depending on the program. For the *nonsecure* community-based residential drug treatment program, participation must: be court ordered, and is restricted in law 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.

For the *secure* community-based residential drug treatment program, participation must also be court ordered and is restricted in law to those persons who have violated their terms and conditions of probation, drug offender probation or community control and whose sentence exceeds 22 months.

As of December 2000, the department had contracts with various private-for-profit and private-non-profit vendors for approximately 1,897 contracted community-based residential substance-abuse treatment beds. As noted above, and according to the department, 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 may be some inmates on post-release supervision who are being placed into these community-based residential drug treatment programs. The exact number is not available.

None of the contract providers for those 1,897 beds authorized pursuant to this section of law are private faith-based organizations. However, the department does report that it currently has a 100-bed contract for substance-abuse and transition housing with one private faith-based organization.

Section 944.473, F.S., Inmate Substance Abuse Testing Program.

Section 944.473 (2), F.S., states that the department shall place an inmate in a substance-abuse treatment program, if the inmate requests such placement and if available and appropriate. Supported by other provisions of law enacted in 1993 (s. 397.754, F.S.), which required a more concerted effort be put forward to address substance-abuse, the department on July 1, 2000 implemented Section 33-507.001, Florida Administrative Code. The new rule instituted a screening criteria to properly assess substance-abuse service needs and prioritize assignment to substance-abuse programs based upon this assessment of needs. The new rule also instituted a program to mandate that those identified take part in substance-abuse program services. The assignment to mandatory substance-abuse program services is treated in the same manner as a work assignment in that refusal will subject an inmate to disciplinary action. Prior to this new rule, inmates who refused to participate in substance-abuse treatment were not subjected to disciplinary action.

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

Sections 944.701-944.708, F.S., encompass the "Transition Assistance Program Act" enacted by the 1987 Legislature. These sections of law, among other things:

- 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 staff to assist released inmates and provide inmate placement tracking and market needs to the department.

In the 14 years since this acts creation, the department has considerably modified the operation and rules governing the transition assistance program. Section 33-601.504, Florida Administrative Code (formerly 33-7.008), has been amended numerous times over the years to reflect changes in funding, the impact of population demands, and contracting and service delivery changes. The most notable changes in the transition assistance program were:

- In 1992, due to reduced funding, the assistance gratuity was eliminated, the required 40-hour release orientation program was eliminated, the "transition assistance officer" was changed to the "designated officer," and the referral process was eliminated except for employment.

- In 1997, the rules were changed to specify that transition assistance eligibility extended to those inmates being released from work release. Prior to 1997, the department exempted from transition assistance those inmates released from work release, unless the inmate would encounter an undue hardship upon release.

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

Also in current practice, the delivery of job placement and referral services provided for in law and under contract with the Department of Labor and Employment Security, is not occurring. The 2000 Legislature eliminated the funding for this contract and consequently the contract was cancelled.

According to the department, another function required in law, the tracking of inmate placement and market needs by the Department of Labor and Employment Security, has also not been complied with in many years.

Section 944.803, F.S., Faith-based Programs for Inmates.

This section declares that the Legislature finds that faith-based programs in correctional institutions and facilities potentially can facilitate inmate adjustment, assist inmates in assuming personal responsibility, and reduce recidivism. Furthermore, the Legislature intends that the Department of Corrections and private vendors of private correctional facilities continuously do the following: 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.

Within the correctional institutions, the DOC employs approximately 105 chaplains and support staff who are responsible for addressing the religious and spiritual needs of inmates. In addition, the department began its first residential faith-based dorm at Tomoka Correctional Institution in November 1999. 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.

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

Section 945.091(1)(b), and s. 944.033, F. S., permits 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, while continuing as an inmate of the facility in which the inmate 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 department operates approximately 30 work-release centers throughout the state, housing about 2,400 inmates daily. Of the thirty work release centers operational, the department reports that there are 21 facilities that have a contracted substance-abuse program serving almost 2,500 inmates annually. According to the department, none of the contracted providers have a faith component to its substance-abuse treatment program and none of the thirty work release centers have specific chaplains assigned to its facility. Given proximity problems and resource limitations, the chaplains who minister and coordinate religious services to the inmate population at the correctional institutions do not serve those inmates serving the remainder of their sentence at a work release center.

Section 948.08, F.S., Pretrial Intervention Program.

Under this section, a person charged with a second or third degree felony purchase or possession of a controlled substance, 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 determines whether the defendant has successfully completed the program and whether the charges will be dismissed or reinstated for prosecution. The chief judge has the discretion to appoint an advisory committee for the drug court program, consisting 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. Currently, the prosecutor does not have absolute veto power in determining who is eligible for the program.

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., which was first enacted in 1923, prohibits county and municipal jails from leasing inmates to a private business or other entity. Federal law, U.S.C. 18 s.85-1761, also known as the Ashurst-Sumners Act of 1935, limits the entry of prison-made goods into the stream of commerce. The laws leave room to allow for work release, public works, production of goods for the public sector, and strictly limited private sector partnerships.

III. Effect of Proposed Changes:

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

The CS would expand the areas of program responsibility for the department to explicitly include transition and postrelease services. This program shall 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 would include the coordination, facilitation and contract management of prerelease and postreleease transition services provided by governmental and private providers, including faith-based service groups.

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

The CS would specify that of the 11 members that are currently appointed to the council from the public, two of them would be required to have professional or occupational expertise in faith-based substance-abuse-treatment services. In addition, the council would be directed to identify necessary law changes that would remove barriers to 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.

The CS would require the department to designate at least 400 of its nonsecure community-based residential substance-abuse-treatment beds as post-release transition beds by January 1, 2002. These designated beds are provided by private organizations that do not have a faith component and that are under contract with the department. In making placement decisions, the department and the contract providers would give priority consideration to inmates who are placed in some form of postrelease community supervision upon release. However, if an inmate nearing release is not required to have community supervision, 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.

Section 944.473, F.S., Inmate Substance Abuse Testing Program.

The CS removes the provision that allows inmates to opt into substance-abuse treatment on a voluntary basis and upon an inmate's request. Instead, the CS 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.

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

This section would create, prospectively, 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. Since the offenders who would be eligible for this program would not be ready for release for a few years, the impact of this provision is more long term in nature, but once fully implemented,

it will provide the necessary post-release supervision to facilitate a successful transition and participation in substance-abuse treatment.

This addiction-recovery supervision would be given to any offender convicted of a crime committed on or after July 1, 2001, if the offender had:

- 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 would set the terms and conditions of supervision, which would include payment of costs of supervision, child support and restitution, and any other court-ordered payments. The commission would also determine whether an offender violated supervision and whether the violation warranted revocation.

Contingent upon funding, each fiscal year, the department would be 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 department would be required to ensure that the offender's faith orientation, or lack thereof, will not be considered in determining admission to a faith-based program and that the program would not attempt to convert an offender toward a particular faith or religious preference.

The provider would be required to make every effort to secure suitable employment for the released offender that would provide adequate wages, a potential for advancement, and a likelihood of stable and long-term employment. The department would be required under the CS 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.

Under the CS, six months before releasing an offender, the chaplain and transition-assistance specialist would be required to initiate the prerelease screening process. They would also be 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 would be

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 would be required to assist the offender and coordinate the release of the offender with the selected provider.

If an offender requested and was approved for placement in a contracted faith-based substance-abuse transition-housing program, the specialist would be required to consult with the chaplain prior to such placement. If an offender participated in a faith-based program while incarcerated or at a community correctional center and the same faith-based provider offered a contracted substance-abuse transition-housing program, the department would be required to make every attempt to maintain this continuum of care.

Finally, this newly created section of law would specify that contracts entered into as a result of this section 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 944.701-944.708, F.S., Transition Assistance Program Act.

The CS expands the legislative intent statement in s. 944.702, F.S., to state that the support services shall include faith-based service groups on an equal basis with other private organizations.

All inmates released from the custody of the department are eligible to apply for transition assistance programs under current law in s. 944.703, F.S. This CS directs the department to give priority consideration to substance-addicted inmates to help break the cycle of drug abuse, prostitution and other self injurious criminal behavior that causes harm to families and communities.

Section 944.704, F.S., directs the department on the staff who should provide transition assistance and requires a "transition assistance officer" at the major correctional institutions. The CS renames the position to a "transition assistance specialist," clarifies that the staff person shall be at *each* correctional institution and specifies that the person may not be a correctional officer or correctional probation officer. The effect of this change will be to possibly lower the costs associated with these positions.

Under current law the officer's duties include, among other things, coordinating delivery of services. This CS clarifies that the specialist shall also coordinate services for those inmates released from work release centers. The CS also 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 shall inform the offender of program availability and assess the inmate's need and suitability for the transition-housing assistance. If an inmate is approved for placement, the specialist shall assist the inmate and coordinate the release of the inmate with the selected provider. If an inmate is considering being placed in a faith-based program, the specialist must consult with the chaplain prior to such placement.

The CS specifies that in selecting inmates who are nearing their date of release, the department shall ensure that the 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.

This CS deletes obsolete provisions in several places throughout the act that relate to job placement services mandated 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.

In current law, the department is required to provide a standardized release orientation program, basic release assistance and postrelease special services. In so doing the department is authorized to contract for such programs and services. The CS permits the department to also contact with faith-based service groups for these same services. The CS further requires the department, when selecting a provider, to consider faith-based groups on an equal basis with other private organizations.

In addition to the postrelease special services required in the CS, the department, 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.

The CS would require the DOC to have at least six faith-based dormitory programs within existing correctional institutions fully operational by March 1, 2002. These programs would be modeled after the existing dormitory program at Tomoka Correctional Institution. The department would be 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 would not attempt to convert an inmate toward a particular faith or religious preference. Participation in the program would be strictly voluntary and priority would be given to inmates having a substance-abuse problem. However, at least 80 percent of the inmates participating must be within 36 months of release. Emphasis in the dormitory program would be placed on the importance of personal responsibility, meaningful work, education, substance-abuse treatment, and peer support.

Six chaplains and a clerical-support person would be assigned to each dormitory to implement and monitor the program and to strengthen volunteer participation. The DOC would be 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 would be required to assign chaplains to community correctional centers chosen by the department. These chaplains would 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 would be required to work with the institutional transition-assistance specialist to successfully place the released inmate in one of the requested programs.

Finally, this section of the CS would reiterate that the DOC ensure that any faith component of any program authorized in this chapter would be voluntary and, an offender's faith orientation, or lack thereof, will not be considered in determining admission to a faith-based program and that the program would not attempt to convert an offender toward a particular faith or religious preference. The department would also be required to ensure that state funds would not be expended for the purpose of furthering religious indoctrination, but rather, that they would 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.

Section 945.091, F.S., Extension of the Limits of Confinement.

The CS permits inmates assigned to work release centers to apply for placement at a contracted substance-abuse transition-housing program. The transition specialist shall 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. This section of the CS reiterates that the department 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.

Section 948.08, F.S., Pretrial Intervention Program.

The CS would require the state attorney's recommendation and approval before a person could be accepted into a pretrial intervention drug court program. The CS would also specify that to be eligible for the program, a person could not be charged with a violent crime, including murder, sexual battery, robbery, carjacking, or home-invasion robbery.

Section 951.10, F.S. Leasing Prisoners to Work for Private Interests Prohibited.

The CS would clarify that the prohibition against working inmates for private entities does not prohibit county inmates from working in nonprofit and private-sector jobs.

Section 16.

This section of the CS requires the DOC to provide a comprehensive report to the Legislature and Governor by March 1, 2002, on the implementation of this legislation as follows: identify future bed needs for the substance-abuse transition-housing program and evaluate the impact of designating nonsecure, community-based residential beds for postrelease transition services; provide future projections for the expansion of faith-based dormitory programs; project future needs for the addiction-recovery supervision program; and evaluate the activities and coordination efforts of the new transition assistance requirements under the CS.

Section 17.

This section of the CS 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 as follows: 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.

Section 18.

This section of the CS requires each inmate released from incarceration by the DOC, beginning December 1, 2002, to have completed a 100-hour comprehensive transition course covering job readiness and life-management skills. This requirement would not apply to inmates released in an emergency situation. (Inmates at 18 institutions currently receive this transition course. The benefits of this course were noted in a study by the Office of Program Policy Analysis and Government Accountability. The report also recommended that the DOC expand the course to all inmates. *Review of the Department of Corrections, Report No. 00-23, December 2000*)

Section 19.

This section provides an appropriation of $5,206,697 from the General Revenue Fund to the DOC for the 2001-02 fiscal year to implement the provisions of the CS for the secular purpose of reducing recidivism through successful reintegration of released inmates into the community.

Specifically, 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 moneys may also be used to alter the physical design of a community correctional center as necessary.

The appropriated moneys will also be used to fund 60 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.

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 department and will be in addition to the minimum required 400 beds designated as transition-housing beds in section 3 of the CS. (These designated beds are 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 section also requires that the department must 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 by the CS 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.

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:

There are two clauses within the First Amendment to the United States Constitution that deal with religion. The amendment reads, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” The first clause is referred to as the Establishment Clause and the second is the Free Exercise Clause. The Supreme Court has held that both clauses are applicable to the states. *See Cantwell v. Connecticut*, 310 U.S. 296 (1940), *Everson v. Board of Education*, 330 U.S. 1 (1947).

There is a natural antagonism between a command to not establish and a command to not inhibit the practice of religion, and the meaning of these clauses has been constantly debated. However, over time they have been interpreted to require a general governmental adherence to neutrality in terms of religion, allowing the government to seek secular goals in a religiously neutral manner. *See, e.g.*, *Schempp v. U.S.*, 374 U.S. 203, 295 (1963).

The Free Exercise Clause

The Free Exercise Clause of the First Amendment 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." 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. *See, e.g., Id.* at 203, 296-97 (1963); *Gittlemacker v. Prasse*, 428 F.2d 1 (3d Cir. 1970). 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. *Reynolds v. United States*, 98 U.S. 45 (1878).

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 application of the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. Section 761.03, F.S. In *Warner v. City of Boca Raton*, 64 F. Supp.2d 1272 (S.D.Fla. 1999), the court used this standard to hold that the right to display vertical grave decorations in a public cemetery was not protected under this statute, nor was the prohibition against such display in violation of the Free Exercise Clause of the First Amendment.

The Establishment Clause

While the Free Exercise Clause requires that the government allow inmates some opportunity to practice religion, the confines of the Establishment Clause places restrictions on the government's ability to support such programs. In prohibiting the making of a "law respecting an establishment of religion," the clause was intended to protect religious liberty. *Zoarch v. Clauson,* 343 U.S. 306, 314 (1952). 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. *Everson v. Board of Education,* 330 U.S. 1 (1947). 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 over non-religion.

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." *See Bowen v. Kendrick*, 487 U.S. 589 (1988). In *Kendrick*, 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.

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. *Id.* at 2555; *Id.* at 2572 (O'Connor, J., concurring in the judgment). 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.

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," *Id.* at 2543, 2552-53 (quoting *Agostini,* at 235).

The Florida Constitution

The Florida Constitution, article I, section 3, provides: 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

The Fourth and Fifth District Courts of Appeal have recently upheld a statute against establishment clause challenges under Florida's constitution when the statute being attacked was a criminal penalty enhancement for selling drugs within 1,000 feet of a church. *Easley v. State*, 755 So.2d 692 (Fla. 4th DCA 1999), and *Rice v. State*, 754 So.2d 881 (Fla. 5th DCA 2000).

If this CS were challenged on First Amendment grounds, both federal and Florida courts would apply the various constitutional tests and principles as set forth in the cases discussed above to determine its constitutionality. The court could look to the CS's stated secular purpose of furthering criminal rehabilitation, reducing recidivism, and successfully reintegrating offenders into the community, as well as the prohibition against spending state funds for the sole purpose of furthering religious indoctrination.

In addition to its secular purpose, the CS is equal in its treatment of substance-abuse transition housing beds in that it directs the department to ensure that the number of these beds provided by private organizations with a faith component does not exceed the number of beds provided by private organizations without a faith component, so that an eligible offender has equal access to either type of transition bed. The court could also look to the provisions throughout the CS that direct the department to ensure that an offender's faith

orientation, or lack thereof, can not be considered in determining admission to a faith-based program, that the program does not attempt to convert an offender toward a particular faith or religious preference, and that the program is voluntary.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Although indeterminable, this CS should have a positive fiscal impact upon persons with substance abuse addictions who are also involved with the criminal justice system in helping to reduce their involvement with crime and assisting them in successfully transitioning into the community as wage earning citizens. Slowing the "revolving door" will, in turn, benefit all Floridians.

C. Government Sector Impact:

This CS provides an appropriation of $5,206,697 from the General Revenue Fund to the DOC for the 2001-02 fiscal year to implement the provisions of the CS for the secular purpose of reducing recidivism through successful reintegration of released inmates into the community.

It is estimated that $334,380 of this appropriation will fund a chaplain at ten community correctional centers. The moneys may also be used to alter the physical design of a community correctional center as necessary.

The appropriated moneys, at an estimated figure of $2,284,280, will also be used to fund 60 transition-assistance specialists. The cost of expanding the 100-hour comprehensive transition course at each correctional institution is not known at this time; however, the CS does not mandate the course until December 2002, so any costs associated with the course will not immediately impact the department.

In addition, $648,038 of the appropriation will be used by the DOC to fund six new 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.

Finally, $1,940,000 of the appropriation will fund nonrecurring start-up and recurring per diem costs for 400 additional substance-abuse transition-housing beds. The 400 beds will be provided by faith-based service groups under contract with the department and will be in addition to the minimum required 400 beds designated as transition-housing beds in section 3 of the CS. (These designated beds are under contract with private organizations not offering a faith component.) This appropriation will also be used for paying nonrecurring start-up costs to ensure the proper selection and training of staff and for expenses relating to facility preparation.

The mandatory supervision program under the CS is prospective, so there will probably be an insignificant impact on the supervised population and on the Parole Commission's workload for FY 2001-02. The Criminal Justice Estimating Conference has been requested to review the CS impact.

					FY 2001-02	
	Issue	**No.**	**FTE**	**Recur**	**N/R**	**Total**
Faith-Based Dormitories	Housing Unit Alterations	6			300,000	300,000
	Chaplains		6.0	173,262	27,366	200,628
	Clerical		6.0	119,792	27,618	147,410
	Total		12.0	293,054	354,984	648,038
Mentoring Programs in CCCs	Chaplains		10.0	288,770	45,610	334,380
Transition Assistance at Each Prison	Transition Specialists		60.0	2,010,620	273,660	2,284,280
Post-Transitional Housing	Housing Contracts	400		1,460,000	480,000	1,940,000
	Grand Total		82.0	$ 4,052,443	$ 1,154,254	$ 5,206,697

VI. Technical Deficiencies:

None.

VII. Related Issues:

Members of the Task Force on Self-Inflicted Crimes included the following: Marion County Sheriff, Ed Dean (chairman); State Attorney, Brad King; Public Defender, Elliot Metcalf; Winter Haven Police Chief, Dave Romine; Department of Corrections Secretary, Michael Moore; Department of Juvenile Justice Secretary, Bill Bankhead; Department of Law Enforcement Commissioner, Tim Moore; Florida Parole Commission Chairman, Jimmie Henry; the Governor's Victims Rights Coordinator, Tena Pate (vice-chairwoman); Florida Attorney General Crime-Victims Services Director, Rodney Doss; State Court Administrator, Ken Palmer; Victim-Witness Coordinator, Dave Remer; Ms. Henree Martin; Mr. Bernie DeCastro and Mr. Enrico Lamberti.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.