

By Senator Wise

5-755A-05

See HB 459

1                                   A bill to be entitled  
2           An act relating to substance abuse services;  
3           creating s. 397.4161, F.S.; providing for  
4           certification of certain substance abuse  
5           services employees who provide certain client  
6           services; providing a directive to the Division  
7           of Statutory Revision; creating s. 397.755,  
8           F.S.; directing the Department of Corrections  
9           to create a substance abuse diversion program;  
10          providing eligibility criteria for the program;  
11          requiring judicial approval for entry to the  
12          program; requiring notice to the state attorney  
13          and the inmate's counsel; providing a time  
14          limit for the judge to respond; directing the  
15          department to prepare a postrelease treatment  
16          plan; requiring the department to notify the  
17          judge before releasing the inmate into the  
18          community; requiring the inmate to abide by the  
19          order of supervision and the rules of the  
20          department; directing the department to provide  
21          special training to employees working in the  
22          program; authorizing the department to develop  
23          performance-based contracts to supply services  
24          to the program; permitting the department to  
25          establish a system of incentives to promote  
26          participation in rehabilitative programs;  
27          providing that this act does not confer any  
28          right to placement in the substance abuse  
29          diversion program; directing the department to  
30          track recidivism and recommitment of inmates  
31          who have participated in the program; requiring

1 a report to the Governor and Legislature;  
2 authorizing rulemaking; providing an effective  
3 date.

4  
5 Be It Enacted by the Legislature of the State of Florida:

6  
7 Section 1. Section 397.4161, Florida Statutes, is  
8 created to read:

9 397.4161 Substance abuse services; clinical personnel  
10 certification.--

11 (1) Persons employed by licensed service providers who  
12 provide clinical services to clients who are substance abuse  
13 impaired or at risk of substance abuse impairment shall be  
14 certified through a department-recognized certification  
15 process as provided in s. 397.321(16). This subsection applies  
16 to employees who provide any combination of the following  
17 services on a routine basis as part of their duties:

- 18 (a) Screening;  
19 (b) Psychosocial assessment;  
20 (c) Treatment planning;  
21 (d) Referral;  
22 (e) Services coordination and case management;  
23 (f) Continuing assessment and treatment plan reviews;  
24 (g) Counseling; or  
25 (h) Documenting progress.

26 (2) Persons providing clinical services who are not  
27 certified on the effective date of this act may continue  
28 providing such services on the condition that they:

- 29 (a) Provide verification to the licensed services  
30 provider within 6 months after the effective date of this act  
31

1 of acceptance into a department-recognized certification  
2 process; and

3 (b) Once accepted into a certification process,  
4 provide verification to the licensed services provider on a  
5 monthly basis of continuous participation in the certification  
6 process until certified.

7 (3) Affected employees may provide clinical services  
8 in accordance with their level of certification.

9 Section 2. The Division of Statutory Revision is  
10 directed to substitute the date on which this act takes effect  
11 for the phrase "the effective date of this act" wherever it  
12 occurs in section 397.4161, Florida Statutes, when preparing  
13 that section for publication in the next edition of the  
14 Florida Statutes.

15 Section 3. Section 397.755, Florida Statutes, is  
16 created to read:

17 397.755 Substance abuse diversion program.--

18 (1)(a) The department shall develop and implement a  
19 substance abuse diversion program for inmates. The program  
20 shall provide a mechanism by which an eligible, nonviolent,  
21 low-risk inmate who poses a minimal foreseeable risk to the  
22 public, and who has been identified as being in need of  
23 substance abuse treatment, may be diverted into a substance  
24 abuse diversion program.

25 (b) If an inmate is determined to be eligible for the  
26 substance abuse diversion program, the department shall  
27 contact the judge who must approve the inmate's placement into  
28 the program. The judge must also agree to modify the remainder  
29 of the inmate's sentence to probation, community control, or  
30 drug offender probation upon successful completion of the  
31 in-prison treatment component.

1           (c) Following completion of the in-prison treatment  
2 component, the inmate shall be placed under intensive  
3 supervision in the community. While in the community, the  
4 inmate shall be subject to special conditions of supervision,  
5 including, but not limited to, participation in an aftercare  
6 substance abuse program. Whenever possible, the inmate's case  
7 shall be transferred to a drug court or reentry drug court, if  
8 one is available and operating in the jurisdiction into which  
9 the inmate is released.

10           (2) As used in this section, the term "judge" means  
11 the inmate's sentencing judge or, if unavailable, a judge  
12 designated by the chief judge in the circuit from which the  
13 inmate was sentenced.

14           (3) The department's substance abuse diversion program  
15 shall consist of a prison-based substance abuse treatment  
16 program and a community-based aftercare treatment program.

17           (a) The substance abuse diversion program must be  
18 specifically designed to be intensive and may have a  
19 work-release component as part of the program. The in-prison  
20 component may be operated in secure areas in or adjacent to an  
21 adult institution, a community residential center, or a  
22 work-release center.

23           (b) An inmate who completes the in-prison treatment  
24 component shall have his or her prison sentence modified to  
25 probation, community control, or drug offender probation. The  
26 inmate shall have special conditions attached to the  
27 probation, community control, or drug offender probation  
28 requiring the inmate to participate in an aftercare substance  
29 abuse program.

30           (4) Before an inmate may participate in the substance  
31 abuse diversion program, the inmate must:

1           (a) Be determined to be eligible by the department  
2 using the criteria set forth in this section.

3           (b) Consent to participate in both the prison and  
4 community-based components.

5           (c) Have no limitations that would preclude  
6 participation in the rehabilitation efforts of the program.

7           (d) Be approved by the inmate's judge to participate  
8 in the program. If the judge agrees to the inmate's  
9 participation, the judge shall agree to modify the inmate's  
10 remaining sentence upon successful completion of the in-prison  
11 treatment component.

12           (5) The department shall determine if an inmate is  
13 eligible for the substance abuse diversion program. An inmate  
14 must be screened at the reception center for program  
15 eligibility. The department shall also continuously screen all  
16 inmates incarcerated in department institutions and facilities  
17 for eligibility to participate in the substance abuse  
18 diversion program. A sentencing court may recommend to the  
19 department that an inmate be considered for admission to the  
20 diversion program.

21           (a) When screening for inclusion in the substance  
22 abuse diversion program, the department may consider the  
23 inmate's criminal history, need for substance abuse treatment,  
24 general rehabilitative interests, and potential risk to the  
25 public. The department may also consider the operational needs  
26 of the department and the victim's comments.

27           (b) An inmate is ineligible for consideration for  
28 placement in the program unless all of the following criteria  
29 are met:

30           1. Is identified as being in need of substance abuse  
31 treatment.

- 1           2. Is serving a sentence or combined sentence of 10  
2 years or less.
- 3           3. Agrees to participate in the in-prison treatment  
4 component.
- 5           4. Is minimum or community custody status.
- 6           5. Has at least 18 months remaining in his or her  
7 sentence.
- 8           6. Has no prior conviction, as defined in s. 772.12,  
9 or prior commitment to prison in any jurisdiction and is not  
10 currently serving a commitment to prison for committing or  
11 attempting to commit any of the following offenses:
- 12           a. Any capital felony.
- 13           b. Any first degree felony offense.
- 14           c. Any second or third degree felony offense listed in  
15 s. 775.084(1)(c).
- 16           d. Any second degree felony offense listed in s.  
17 893.13.
- 18           e. Any offense in another jurisdiction that would be a  
19 felony listed in sub-subparagraphs a.-d. if that offense had  
20 been committed in this state.
- 21           7. Is serving no more than a second commitment to  
22 prison.
- 23           (6)(a) If an inmate meets the criteria for program  
24 admission and space is available, the department shall submit  
25 a written notification to the judge regarding the inmate's  
26 eligibility for the substance abuse diversion program. The  
27 court shall approve or disapprove participation in the  
28 program.
- 29           (b) If the judge agrees to the inmate's participation,  
30 the judge shall agree to modify the remainder of the inmate's  
31 prison sentence to probation, community control, or drug

1 offender probation after the inmate successfully completes the  
2 in-prison treatment component. A modified order must include  
3 special conditions of supervision requiring the inmate to  
4 participate in an aftercare substance abuse program. The order  
5 may also include participation in a drug court or reentry drug  
6 court program if one is operating in the jurisdiction into  
7 which the inmate will be released. If a drug court or reentry  
8 drug court is operational, the judge is encouraged to transfer  
9 the inmate's case to one of those courts. The judge retains  
10 the sole authority to modify the inmate's original sentence.

11 (7)(a) At the time the department submits its written  
12 notification to the judge to place an inmate in the substance  
13 abuse diversion program, the department shall deliver a copy  
14 of the notification to the state attorney and the inmate's  
15 counsel.

16 (b) The state attorney may submit comments to the  
17 court with a recommendation regarding the inmate's placement  
18 in the program.

19 (c) The state attorney shall notify the victim, if  
20 any, that the inmate is being considered for placement in a  
21 substance abuse diversion program.

22 (d) The state attorney shall notify the court, the  
23 department, and the inmate's counsel of his or her  
24 recommendation within 14 days after receiving a copy of the  
25 department's written notification to place the inmate in the  
26 substance abuse diversion program. The state attorney's  
27 response must be in writing.

28 (8)(a) The court shall notify the department, the  
29 state attorney, and the inmate's counsel in writing of its  
30 decision regarding the inmate within 21 days after receipt of  
31 the department's notification.

1           (b) Failure of the court to notify the department  
2 within 21 days shall be deemed to be a denial of the inmate's  
3 placement in the substance abuse diversion program and  
4 subsequent modification of sentence. An inmate who is not  
5 approved for participation in the program shall remain in the  
6 prison population as assigned by the department.

7           (9) An eligible inmate who is approved to participate  
8 in the substance abuse diversion program, and for whom the  
9 court has agreed in writing to modify the inmate's sentence  
10 upon successful completion of the in-prison treatment  
11 component, may enter the program, contingent upon available  
12 program space. An inmate's agreement to participate in the  
13 substance abuse diversion program constitutes consent to the  
14 special conditions of supervision effective when the inmate is  
15 discharged into the community.

16           (10) The portion of the inmate's sentence served prior  
17 to entering the diversion program does not count toward  
18 program completion.

19           (11) If, after placement in the diversion program, the  
20 inmate appears unable to participate due to medical or other  
21 reasons, he or she must be examined by qualified medical  
22 personnel or qualified nonmedical personnel appropriate for  
23 the inmate's situation, as determined by the department. The  
24 qualified personnel shall consult with the director of the  
25 substance abuse diversion program, and the director shall  
26 determine if the inmate may continue with treatment or if the  
27 inmate must be discharged from the program.

28           (12) Before the inmate completes the in-prison  
29 treatment component, the department shall evaluate the  
30 inmate's needs and develop a postrelease treatment plan that  
31 includes substance abuse aftercare services.



1           (13) When the inmate successfully completes the  
2 in-prison treatment component, the department shall notify the  
3 court of the inmate's successful completion of the program.  
4 Thereafter, the court shall issue an order modifying the  
5 inmate's sentence. The modified order shall convert the  
6 remainder of the inmate's prison sentence to a period of  
7 probation, community control, or drug offender probation, if  
8 eligible, with special conditions, including, but not limited  
9 to, participation in substance abuse treatment and aftercare.

10           (14) If it is available in the jurisdiction into which  
11 the inmate will be released, the court may:

12           (a) Order the inmate to reside in a postrelease  
13 transitional residential halfway house.

14           (b) Transfer the inmate's case to a drug court or  
15 reentry drug court for supervision.

16           (15)(a) The inmate shall comply with all conditions of  
17 supervision imposed by the modified order. Violation of any  
18 condition may result in revocation of supervision by the court  
19 and imposition of any sentence authorized under the law. While  
20 on probation, community control, or drug offender probation,  
21 the inmate shall pay the cost of supervision to the state and  
22 may have additional conditions requiring payment of  
23 restitution, court costs, and fines; public service; and  
24 compliance with other special conditions.

25           (b) An inmate in the substance abuse diversion program  
26 is subject to the rules of conduct established by the  
27 department and may have sanctions imposed, including loss of  
28 privileges, restrictions, disciplinary confinement, and the  
29 forfeiture of gain-time or the right to earn gain-time in the  
30 future, alteration of release plans, termination from the  
31 substance abuse diversion program, or other program

1 modifications in keeping with the nature and gravity of the  
2 program violation. The department may place an inmate in the  
3 substance abuse diversion program in an administrative or  
4 protective confinement, as necessary.

5 (16) The department shall implement the substance  
6 abuse diversion program to the fullest extent feasible within  
7 the terms of this section and available resources.

8 (17) The department shall provide a special training  
9 program for staff members selected to serve in the substance  
10 abuse diversion program.

11 (18) The department may develop and enter into  
12 performance-based contracts with qualified individuals,  
13 agencies, or corporations to supply any or all services  
14 provided in the substance abuse diversion program. However, no  
15 contract shall be entered into or renewed unless the contract  
16 offers a substantial savings to the department, as determined  
17 by the department.

18 (19) The department may establish a system of  
19 incentives within the substance abuse diversion program to  
20 promote participation in rehabilitative programs and the  
21 orderly operation of institutions and facilities.

22 (20) This section does not create or confer any right  
23 to any inmate to placement in the substance abuse diversion  
24 program or any right to placement or early release under  
25 supervision of any type.

26 (21) The department shall develop a computerized  
27 system to track recidivism and recommitment of inmates who  
28 have participated in the substance abuse diversion program.  
29 The department shall submit an annual report of the results of  
30 the collected data to the Governor, the President of the  
31 Senate, and the Speaker of the House of Representatives.

1           (22) The department may adopt rules pursuant to ss.  
2 120.536(1) and 120.54 to implement this section and to  
3 administer the substance abuse diversion program.  
4           Section 4. This act shall take effect July 1, 2005.  
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