

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill requires certain persons to obtain professional certification in order to keep their current employment. This bill creates a substance abuse diversion program in the Department of Corrections.

Promote personal responsibility -- This bill creates a substance abuse program benefiting inmates in state prison. Inmates accepted into the program are released from prison prior to the conclusion of their prison sentence, and perhaps prior to the expiration of the minimum sentence required under current law. Offenders released from prison for participation in the program are required to pay the cost of supervision, but do not appear to be required to pay the cost of addiction treatment.

B. EFFECT OF PROPOSED CHANGES:

Chapter 397, F.S., provides for the provision of substance abuse services. Part II regulates service providers, and Part VIII provides for substance abuse programs for state inmates.

Employees of a Substance Abuse Provider

Section 397.321, F.S., requires the Department of Children and Families (DCF) to perform duties related to providing substance abuse services. Subsection (6) requires DCF to license and regulate substance abuse providers. Subsection (16) requires DCF to recognize a statewide certification process for addiction professionals. Employees of a substance abuse provider are not required to obtain certification.

DCF rules at F.A.C. 65D-30.003(12), F.S.¹, specify which organizations may grant certifications to additional professionals, and the minimum training requirements those organizations must require of a

¹ 65D-30.003. Department Licensing and Regulatory Standards.

(12) Department Recognition of Certifying Organizations for Addiction Professionals.

(a) An organization which desires recognition by the department as a certifying organization for addiction professionals shall request such approval in writing from the department. Organizations seeking approval shall be non-profit and governed by a Board of Directors that is representative of the population it intends to certify and shall include specific requirements which applicants must meet to be certified as addiction professionals. An organization seeking recognition must include in its certification protocol:

1. Six thousand hours of direct experience as a substance abuse counselor under the supervision of a qualified professional, within the 10 years preceding the application for certification;
2. Three hundred hours of specific supervision under a qualified professional in the core function areas, as described in the International Certification and Reciprocity Consortium role delineation study;
3. Contact education as follows:
 - a. For certification as a certified addiction professional, 145 hours of addiction counseling education and 125 hours of counseling education;
 - b. For certification as a certified criminal justice addiction professional, 100 hours in criminal justice education, 90 hours in addiction education, and 80 hours of counseling education;
 - c. For certification as a certified addiction prevention professional, 200 hours in prevention and early intervention education and 100 hours of addiction education; and
 - d. For all applicants for certification, 30 hours of ethics, 4 hours of HIV/AIDS, and 2 hours of domestic violence.
4. Completion of the International Certification Reciprocity Consortium written examinations based on a national role delineation study of alcohol and drug abuse counselors;
5. Case presentations which include the development of a case in writing and an oral presentation before a panel of certified counselors; and
6. Continuing education requiring a minimum of 20 continuing education units (CEUs) annually by providers approved by the certifying organization.

person seeking certification from that organization. In general, initial certification requirements include over 300 hours of classroom instruction, successful completion of an examination, and presentation of a case plan. Continuing certification requires at least 20 CEU's annually.

This bill creates s. 397.4161, F.S., within Part II of ch. 397, F.S. The bill requires that any person employed by a licensed service provider who provides clinical services to clients who are substance abuse impaired or at risk of substance abuse impairment must be certified through a department-recognized certification process as provided in s. 397.321(16), F.S. An employee provides clinical services to clients if the employee provides any combination² of the following services on a routine basis as part of their duties:

- Screening;
- Psychosocial assessment;
- Treatment planning;
- Referral;
- Services coordination and case management;
- Continuing assessment and treatment plan reviews;
- Counseling; or
- Documenting progress.

An employee providing clinical services who is not certified on the effective date of this bill may continue providing such services on the condition that such employee provide verification to the licensed services provider within 6 months after the effective date of this bill of acceptance into a department-recognized certification process; and, once accepted into a certification process, provide verification to the licensed services provider on a monthly basis of continuous participation in the certification process until certified.

This bill further limits employees to only providing clinical services in accordance with his or her level of certification.

Inmate Substance Abuse Diversion Program

Part VIII of ch. 397, F.S., provides for substance abuse programs for state inmates.

Nearly half of all persons admitted to prison have a substance abuse problem. Studies show that inmates who receive substance abuse treatment have a lower recidivism rate.

This bill creates a new program, a substance abuse diversion program for state inmates, within Part VII of ch. 397, F.S. The Department of Corrections is required to implement the program. The program is for nonviolent, low-risk inmates who pose a minimal foreseeable risk to the public, and who are identified as being in need of substance abuse treatment.

The DOC is required to screen all inmates for eligibility for the program. If an inmate is eligible, the department must seek approval of the sentencing judge.³ If the judge approves, the judge must also agree to modify the remainder of the inmate's sentence to probation, community control, or drug offender probation upon successful completion of the in-prison treatment component. Before the judge

(b) Certifying organizations which meet the requirements in paragraph (a) may request review by the department. The request shall be made in writing to the Director for Substance Abuse who shall respond in writing to the organization's chief executive officer denying or granting recognition.

² By using the word "combination", this certification requirement may only apply to employees providing two or more of these services.

³ The bill designates which judge would have to approve of an inmate's admission into the program. The lengthy description is unnecessary. The courts already have a system in place for referral of legal matters to a judge responsible for that inmate. If the bill were to merely refer to the sentencing judge, the courts would have sufficient guidance.

approves, the state attorney and the victim may comment on whether the inmate should be placed into the program. If the court does not approve within 21 days, the judge shall be deemed to have rejected the request.

Following completion of an in-prison treatment component, the inmate is placed under intensive supervision in the community, subject to special conditions of supervision, including participation in an aftercare substance abuse program. Where possible, the inmate's case must be transferred to a drug court or reentry drug court, if one is available and operating in the jurisdiction into which the inmate is released.

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

An inmate is eligible for consideration for placement in the program if the inmate is in need of substance abuse treatment; the inmate agrees to participate in the program; the department has placed the inmate in minimum or community custody status; and the inmate otherwise meets the criteria for placement as determined by the department. The criteria must include, but not be limited to, consideration of the inmate's criminal history, need for substance abuse treatment, general rehabilitative interests, potential risk to the public, and operational needs of the department.

An inmate is ineligible for consideration for placement in the program if the inmate was sentenced to a term of years of 10 years or more; the inmate has less than 18 months remaining in his or her sentence; the inmate has twice before been incarcerated in state or federal prison; or whether related to the current term of incarceration, or to a previous criminal episode, the inmate was convicted, pled guilty, or pled no contest to:

- a. Any capital, life, or first degree felony;
- b. Any second or third degree felony offense listed in s. 775.084(1)(c)1.⁴;
- c. Any second degree felony offense found in s. 893.13⁵; or
- d. Any offense in another jurisdiction that would be an offense described in a.-c. if that offense had been committed in this state.

If the inmate violates any condition of the release plan, the court may revoke the inmate's participation, and impose any authorized sentence. The inmate must pay the cost of supervision, and may also be ordered to pay restitution, court costs, and fines; perform public service; and comply other special conditions.

The Department of Corrections must provide a special training program for staff members selected to serve in the substance abuse diversion program.

The Department of Corrections may develop and enter into performance-based contracts with qualified individuals, agencies, or corporations to supply any or all services provided in the substance abuse diversion program. However, no contract may be entered into or renewed unless the contract offers a substantial savings to the department, as determined by the department. The Department of Corrections may establish a system of incentives within the substance abuse diversion program to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.

The Department of Corrections must develop a computerized system to track recidivism and recommitment of inmates who have participated in the substance abuse diversion program; and must submit an annual report of the results of the collected data to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

⁴ This is a list of violent offenses contained within the definition of a "three-time felony offender" law (commonly referred to as "three strikes").

⁵ These are drug possession offenses.

The Department of Corrections may adopt administrative rules to administer the substance abuse diversion program.

Current law requires an inmate to serve at least 85% of a sentence⁶, this bill allows an inmate to be released prior to serving 85% of his or her sentence.

The Criminal Punishment Code⁷ prescribes a mathematical formula for calculating the minimum sentence that a criminal offender must be sentenced to based on a point system.⁸ This bill allows an inmate to be released prior to expiration of the minimum sentence required by the Criminal Punishment Code.

C. SECTION DIRECTORY:

Section 1 creates s. 397.4161, F.S., creating a certification program for clinical personnel of a substance abuse program.

Section 2 provides direction to Statutory Revision.

Section 3 creates s. 397.755, F.S., creating a substance abuse diversion program within the Department of Corrections.

Section 4 provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Estimating Conference has not determined the fiscal impact of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Unknown. This bill requires that an inmate's supervision is to be transferred to a drug court if one is available. While the judges in drug court are paid for by the state, the other costs of operating a drug court program are funded by counties. Those costs include administrative staff and drug treatment program costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

⁶ Section 944.275(4)(b)3., F.S.,

⁷ Sections 921.002 - 0027, F.S.

⁸ Offenses are categorized into 10 levels, higher numbered levels result in a higher number of points. Points are also added for other offenses committed, prior criminal record, and victim injury. The points may be multiplied based on certain circumstances. The total points are used to determine a minimum sentence that a sentencing court must impose. A court may impose any sentence above the minimum, and up to the statutory maximum for the offense.

This bill requires the inmate to pay the cost of supervision when released, but does not require the inmate to pay any cost of treatment.

This bill provides the department with authority to contract with private providers for the cost of treatment. This provision requires such contract to show a cost savings, but also allows the department to determine if the contract meets the requirement of creating a cost savings.

D. FISCAL COMMENTS:

Using the eligibility criteria specified in this bill, the Department of Corrections estimates that 930 inmates in prison on December 31, 2004 would meet the eligibility criteria for the program, with 520 of these inmates having been admitted in the previous twelve months. The department anticipates that approximately the same number of inmates would be admitted into its custody during each subsequent fiscal year.⁹

The department has recommended changes to the criteria that would increase the number of eligible inmates to 1,260 current inmates, and 700 a year in the future.

The Department of Corrections cannot estimate the fiscal impact of this bill, but did provide the following estimated costs:

An adult male bed is \$39.08 per day. The department contemplates inmates admitted into this program would serve 10.5 months in a work release center for the in-prison portion, and receive another six months of outpatient treatment while on probation. The in-prison cost is higher per day, but there is a potential for long-term savings should recidivism decrease. Costs are:

Work Release Center	\$33.40/day
Drug Treatment contract	7.11/day
Per day cost for in-prison	\$40.51/day
Community Supervision	\$ 5.09/day
Drug treatment contract	\$1,342.00/six-month program

This bill will also have a workload impact on the judiciary, as additional hearings will be required. This bill will also have a workload impact on state attorneys, who must notify victims and must respond to applications for entry into the program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill has a general grant of rulemaking power. (lines 296-298)

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provisions of this bill are duplicative and not clear.

⁹ Department of Corrections analysis of HB 459, undated, received on February 14, 2005.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

n/a