

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 459 CS                      Substance Abuse Services  
**SPONSOR(S):** Bogdanoff and Others  
**TIED BILLS:** None                      **IDEN./SIM. BILLS:** SB 1676

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>6 Y, 1 N, w/CS</u>	<u>Bond</u>	<u>Kramer</u>
2) <u>Future of Florida's Families Committee</u>	<u>5 Y, 2 N, w/CS</u>	<u>Davis</u>	<u>Collins</u>
3) <u>Health Care Appropriations Committee</u>	<u></u>	<u>Ekholm</u>	<u>Massengale</u>
4) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

House Bill 459 CS requires the Department of Corrections to develop and implement a substance abuse reentry program. If the sentencing judge approves an inmate's admission into the program, and the inmate completes at least a 90-day in-prison program, the inmate will be released early from prison on the condition that the inmate comply with further treatment and with other requirements set by the court. This early release may provide for release prior to any minimum mandatory term required by law, and will provide for release prior to serving 85 percent of the sentence.

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

The effective date of the bill is July 1, 2005.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government**—The bill creates a substance abuse reentry program in the Department of Corrections. This bill also requires that an inmate's supervision is to be transferred to a drug court. The state attorneys must notify victims and must respond to applications for entry into the program.

**Promote personal responsibility**—The 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.

#### B. EFFECT OF PROPOSED CHANGES:

Chapter 397, Florida Statutes, provides for the provision of substance abuse services by state government. Part VIII 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.

The bill creates a new program—a substance abuse reentry program for state inmates—within part VII of chapter 397, Florida Statutes. The Department of Corrections (DOC) 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.

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. If the judge approves, the inmate is sent to an in-prison treatment program. If the inmate successfully completes the in-prison program, then the inmate is brought before the sentencing judge for early release and modification of the remainder of the inmate's prison sentence to drug offender probation. Before the judge 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 30 days of the date the notice was mailed by DOC, the judge shall be deemed to have rejected the request. The sentencing judge may extend this time period, and may require the inmate to personally appear.

The substance abuse reentry 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 and last for a minimum of 90 days.

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 section 775.084(1)(c)1, Florida Statutes.<sup>1</sup>
- c. Any offense in another jurisdiction that would be an offense described in a.-b. 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 the cost of treatment, restitution, court costs, and fines; perform public service; and comply with other special conditions.

The sentencing county must have a drug court, and once the drug court accepts the inmate for supervision, the inmate must be released to drug court supervision and judicial supervision will be transferred from the sentencing judge to the drug court judge.

The Department of Corrections must provide a special training program for staff members selected to serve in the substance abuse reentry 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 reentry 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 reentry 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 reentry program, and it 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. The Office of Program Policy Analysis and Government Accountability must review the program and issue a report for the 2009 legislative session.

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

Current law requires an inmate to serve at least 85 percent of a sentence;<sup>2</sup> this bill allows an inmate to be released prior to serving 85 percent of his or her sentence. The Criminal Punishment Code<sup>3</sup> prescribes a mathematical formula for calculating the minimum sentence that a court must impose on the offender, based on a point system.<sup>4</sup> 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 section 397.755, Florida Statutes, creating a substance abuse reentry program within the Department of Corrections.

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<sup>1</sup> This is a list of violent offenses contained within the definition of a "three-time felony offender" law (referred to as "three strikes").

<sup>2</sup> Section 944.275(4)(b)3., F.S.,

<sup>3</sup> Sections 921.002 - .0027, F.S.

<sup>4</sup> 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.

**Section 2.** Provides an effective date.

## 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. 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:

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, DOC estimates that 1,260 inmates in prison on December 31, 2004, would meet the eligibility criteria for the program. The department anticipates that approximately 930 inmates that meet the eligibility criteria would be admitted into its custody during each subsequent fiscal year.<sup>5</sup>

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 lower total cost as compared to incarceration for the entire sentence. There is also a potential for long-term savings should recidivism decrease. Costs are as follows:

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

<sup>5</sup> Department of Corrections analysis of HB 459, undated, received on February 14, 2005.

This bill will have a workload impact on the judiciary as additional hearings will be required. This bill will 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:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

This bill authorizes the Department of Corrections to adopt rules to administer the substance abuse reentry program.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### **Comments from the Future of Florida's Families Committee:**

- The criteria for determining "minimal foreseeable risk" may not take into account the length of an inmate's sentence. Therefore, it may be hard to differentiate, for purposes of eligibility for placement in the substance abuse reentry program, between an inmate that has been sentenced to nine years in prison versus an inmate who has been sentenced to three years in prison. Concerns have been expressed that dangerous criminals may be released back into society.
- Section 944.275(4)(b)3., Florida Statutes, is not amended in this bill; however, the bill changes the 85% minimum requirement that an inmate must serve.
- Sections 921.002 - 921.0027, Florida Statutes, are not amended by this bill; however, the bill changes the Criminal Punishment Code.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 23, 2005, the Criminal Justice Committee adopted one amendment to this bill. The amendment removed the sections that would have required employees of a substance abuse provider to be certified by a national certification organization.

As to the portions of the bill regarding early release for certain inmates, the amendment removed duplicative sections, ordered the bill's provisions in a logical sequence, and clarified numerous provisions. Substantively, the amendment:

- Changes the references to the program from a "diversion" program to a "reentry" program.
- Changes the criteria to allow an inmate convicted of a second degree drug felony to qualify.
- Changes the time period for a judge's reply from 21 days from receipt by the judge to 30 days from date of mailing by the Department of Corrections. Additionally, allows a judge to extend the time for reply if the judge would like to receive evidence.
- Requires financially able inmates to pay the cost of treatment.
- Requires that inmates are released only into drug offender probation.
- Requires the Office of Program Policy Analysis and Government Accountability to review the program and issue a report for the 2009 legislative session.

The bill was then reported favorably with a committee substitute.

On March 9, 2005, the Future of Florida's Families Committee adopted two amendments to this bill. Amendment #1 creates a minimum 90-day period for the length of a substance abuse prison treatment program. Amendment #2 requires the sentencing county to have a drug court in order for the inmate to be eligible for the program.

The bill was then reported favorably with a committee substitute.