The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL:	CS/SB 1334
INTRODUCER:	Criminal Justice Committee, Senator Bogdanoff and others
SUBJECT:	Sentencing of Inmates
DATE:	April 22, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Fav/CS**
2.	Boland	Maclure	JU	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill removes the minimum mandatory sentences for drug trafficking in the Florida Statutes. It also changes the method for calculating the weight of a controlled substance when it is a component in a prescription drug. This increases the amount of pills or tablets of a prescription drug that are required to trigger a minimum mandatory sentence.

This bill also expands the scope of the current community work release program administered by the Department of Corrections (department) pursuant to s. 945.091, F.S., to create a supervised reentry program. It would allow the department to place an inmate in paid employment, or in suitable programs approved by the department, while he or she lives in a department-approved residence within the community. The bill expresses the Legislature's intent that eligible inmates enter this program at least six months before their sentence expires.

The bill also creates a new section of statute authorizing the department to develop and administer a nonviolent offender reentry program separate from the supervised reentry program. This program is intended to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same effect, to rehabilitate the offender, and to reduce recidivism.

In addition, the bill changes the minimum time that must be served on an adjudged sentence after application of any gain time. The minimum time is increased for violent offenders, maintained at the same level for non-violent offenders with a prior felony conviction, and reduced for non-violent offenders without a prior felony conviction.

This bill substantially amends sections 893.135, 945.091, and 944.275, Florida Statutes, and creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Sentencing and Minimum Mandatory Sentences

Criminal Punishment Code

The Criminal Punishment Code (Code)[1] is Florida's framework for determining permissible sentencing ranges for non-capital felonies. Non-capital felonies sentenced under the Code receive an offense severity level ranking from Level 1 to Level 10. Points are assigned and accrue based upon the level assigned. Points may also be assigned and accrue for other factors, and there may also be multiplying factors. Total sentence points are entered into a mathematical calculation to determine the lowest permissible sentence. The permissible sentencing range is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S., for the primary offense and any additional offenses before the court for sentencing. The court is permitted to impose sentences concurrently or consecutively. The Code requires a minimum mandatory sentence to be imposed, unless the lowest permissible sentence scored is greater than the mandatory.

The Code includes a list of 'mitigating' factors. If a mitigating factor is found by the sentencing court, the court may decrease an offender's sentence below the lowest permissible sentence. A minimum mandatory sentence is not subject to these mitigating factors.[2]

Drug Trafficking Minimum Mandatory Sentences

Florida's drug trafficking laws, found in s. 893.135, F.S., contain minimum mandatory terms of imprisonment. Each controlled substance has a different threshold to trigger felony trafficking charges and requires increasingly significant sentences for a greater volume of a controlled substance.

The trafficking offenses involve the knowing possession, purchase, sale, manufacture, delivery, or importation into Florida of certain controlled substances within specified weight ranges. A notable feature is that prosecutors are only required to prove knowing possession, not possession with intent to sell or distribute.

The table below lists the controlled substances in s. 893.135, F.S., along with their associated minimum mandatory sentences for particular amounts.

[1] Sections 921.002 - 921.0027, F.S.
[2] *See e.g., State v. Vanderhoff*, 14 So.3d 1185, 1189 (Fla. 5th DCA 2009).

CANNABIS		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
>25 and < 2000 pounds or ≥300 and ≤ 2000 plants	3 years	$25,000
≥2000 and < 10,000 pounds or ≥ 2000 and ≤10,000 plants	7 years	$50,000
≥10,000 pounds or ≥ 10,000 plants	15 years	$200,000
COCAINE		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
≥28 and < 200 grams	3 years	$50,000
≥200 and < 400 grams	7 years	$100,000
≥400 grams and <150 kilograms	15 years	$250,000
≥150 kilograms	Life	
MORPHINE, OPIUM, OXYCODONE, HYDROCODONE, HYDROMORPHONE, HEROIN and FLUNITRAZEPAM		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
≥4 and <14 grams	3 years	$50,000
≥14 and <28 grams	15 years	$100,000
≥28 grams and <30 kilograms	25 years	$500,000
≥30 kilograms	Life	
PHENCYCLIDINE		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
≥28 and <200 grams	3 years	$50,000
≥200 and <400 grams	7 years	$100,000
≥400 grams	15 years	$250,000
METHAQUALONE		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
≥200 and <5 kilograms	3 years	$50,000
≥5 and <25 kilograms	7 years	$100,000
≥25 kilograms	15 years	$250,000
AMPHETAMINE AND METHAMPHETAMINE		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
≥14 and <28 grams	3 years	$50,000
≥28 and <200 grams	7 years	$100,000
≥200 grams	15 years	$250,000
GAMMA-HYDROXYBUTYRIC ACID (GHB), GAMMA-BUTYROLACTONE (GBL) and 1,4-BUTANEDIOL		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
≥1 and <5 kilograms	3 years	$50,000
≥5 and <10 kilograms	7 years	$100,000

≥10 kilograms	15 years	$250,000
PHENETHYLAMINES[3]		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
≥10 and <200 grams	3 years	$50,000
≥200 and <400 grams	7 years	$100,000
≥400 grams	15 years	$250,000
LYSERGIC ACID DIETHYLAMIDE (LSD)[4]		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
≥1 and <5 grams	3 years	$50,000
≥5 and <7 grams	7 years	$100,000
≥ 7 grams	15 years	$500,000

Florida law authorizes a sentence below the mandatory in two instances: when the defendant is sentenced as a youthful offender;[5] or when the primary offense is a Level 7 or Level 8 trafficking offense, and the judge approves the state's motion to reduce or suspend the defendant's sentence based upon the defendant providing substantial assistance.[6]

Convictions for a violation of s. 893.135, F.S., are almost always the result of a plea rather than a trial. Although a prosecutor may charge a trafficking offense, the case may be dropped or the original trafficking charge may be dropped or dropped in exchange for a plea to a trafficking charge with a lesser mandatory, a non-mandatory drug charge (attempted trafficking[7] or some other non-mandatory drug charge), or another non-mandatory charge.

A person sentenced to a mandatory minimum term of imprisonment under s. 893.135, F.S., is not eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 947.149, F.S., prior to serving the mandatory minimum term of imprisonment.[8]

The following chart reflects the admissions to prison for the past two fiscal years where the primary offense of the inmate consists of a drug trafficking mandatory sentence.[9]

[3] These are described in s. 893.03(1)(a) or (c), F.S.
[4] Section 893.03(1)(c), F.S., lists LSD as a Schedule I drug.
[5] Section 958.04, F.S. *See State v. Dishman*, 5 So.3d 773 (Fla. 4th DCA 2009), and *Inman v. State*, 842 So.2d 862 (Fla. 2d DCA 2003).
[6] Section 893.135(4), F.S. This mitigation cannot occur without the State's motion. *State v. Agerton*, 523 So.2d 1241 (Fla. 5th DCA 1988), *rev. den.*, 531 So.2d 1352 (Fla.1988).
[7] Attempted trafficking does not call for a mandatory sentence, though conspiracy to traffic does. ss. 777.04 and 893.135(5), F.S. *See Suarez v. State*, 635 So. 2d 154 (Fla. 2d DCA 1994) and *Chudeausz v. State*, 508 So.2d 418 (Fla. 5th DCA 1987).
[8] Section 893.135(3), F.S.
[9] Fla. Dep't of Corrections, Analysis of SB 1334 (on file with the Senate Committee on Judiciary).

Table of Admission Year by Mandatory Minimum Period						
Admission Year	***Mandatory Minimum (Years)***					
	3	**7**	**15**	**25**	**Life**	**Total**
FY 2008-09	1395	130	232	105	1	1863
FY 2009-10	1485	100	313	140	3	2041
Total	2880	230	545	245	4	3904

Policy Debate over Minimum Mandatory Sentencing for Drug Trafficking
Much attention has been given to the policy and societal implication of minimum mandatory sentences for certain drug offenses. There seem to be two primary concerns: (1) a concern about the policy of restricting judicial discretion in sentencing, with specific attention focused on particular cases in which application of a minimum mandatory has led to unjust results; and (2) a concern that unlawful possession or purchase of relatively small numbers of tablets or pills containing certain painkillers, like hydrocodone, may result in trafficking penalties, including mandatories. A thorough discussion of these and other issues relating to minimum mandatories for drug offenses is found in Florida Senate Interim Report 2010-109, "A Policy Analysis of Minimum Mandatory Sentencing for Drug Traffickers."[10]

Calculation of Weight of Mixtures
It is common for controlled substances to be mixed with other substances. Section 893.02(15), F.S., defines the term "mixture" as "any physical combination of two or more substances." An illegal drug such as cocaine may be mixed with other powders to increase its volume (and profitability), and a pharmaceutical drug such as hydrocodone may be mixed with a non-controlled substance to increase its effectiveness. It can be difficult to determine the exact weight of a controlled substance in a mixture unless the controlled substance is a prescription drug listed in the United States Food and Drug Administration's National Drug Code Database.[11]

Section 893.135(6), F.S., provides that for purposes of applying a minimum mandatory sentence for drug trafficking, the weight of the controlled substance is determined by weighing the entire mixture. In other words, the weight used is the combined weight of the controlled substance and any other substances in the mixture. If there is more than one mixture containing the same controlled substance, the weight is calculated by aggregating the total weight of each mixture. The statute applies to all controlled substances under the drug trafficking statute, including prescription medications.

Many prescription medications include a combination of a controlled substance and a non-controlled substance. For example, Lortab combines hydrocodone and acetaminophen. For purposes of the drug trafficking statute, a Lortab tablet that contains 7.5 mg of hydrocodone and 500 mg of acetaminophen weighs 507.5 mg plus the weight of any inactive ingredients.

[10] Fla. Senate Committee on Criminal Justice Interim Report, *A Policy Analysis of Minimum Mandatory Sentencing for Drug Traffickers*, *available at* http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-109cj.pdf (last visited April 18, 2011).
[11] U.S. Dep't of Health and Human Services, *National Drug Codes Directory*, *available at* http://www.accessdata.fda.gov/scripts/cder/ndc/default.cfm (last visited April 18, 2011).

Therefore, unlawful possession of this type of Lortab tablet can result in conviction for trafficking in illegal drugs with the following minimum mandatory sentences:[12]

LORTAB (7.5 mg hydrocodone, 500 mg acetaminophen)		
Amount Possessed	***Mandatory Prison Term***	***Mandatory Fine***
8 tablets	3 years	$ 50,000
28 tablets	15 years	$100,000
56 tablets	30 years	$500,000

Typical instructions for taking Lortab are to take 1-2 tablets every 4-6 hours as needed for pain, not to exceed 6 tablets each day.

Unlawful possession of hydrocodone of less than the amount required to trigger a minimum mandatory sentence is a third degree felony with a maximum sentence of 5 years imprisonment, but the court can sentence the offender to less than 5 years or to a non-prison sanction.

Reentry Programs for Nonviolent Offenders

The department reports that 26.5 percent of the inmates admitted to prison during Fiscal Year 2009-2010 had been convicted of a drug crime.[13] Almost two-thirds of Florida inmates who enter prison for any crime also have a substance abuse problem, and more than 80 percent of those who could benefit from treatment are released without it.[14] The lack of treatment is largely due to funding constraints.

The Florida TaxWatch Government Cost Savings Task Force found that "significant savings could be achieved if certain offenders were allowed to receive treatment outside of the confines of prison during the last portion of their prison sentence" and observed that "research shows that programs in the community produce twice the impact on recidivism as the same program behind the walls."[15]

The department currently provides the following reentry programming to inmates:

- Substance abuse treatment programs;
- Educational and academic programs;
- Career and technical education programs; and
- Faith and character-based programs.[16]

[12] Because the actual physical weight of the tablet is not readily available, this table only considers the weights of the active ingredients in each tablet. The actual weight for purposes of the drug trafficking statute would be slightly higher and may be enough for fewer tablets to trigger the minimum mandatory sentence.
[13] Fla. Dep't of Corrections, *Inmate Admissions*, http://www.dc.state.fl.us/pub/annual/0910/stats/im_admis.html (last visited April 18, 2011).
[14] Office of Program Policy Analysis and Governmental Accountability (OPPAGA), *Corrections Rehabilitative Programs Effective, But Serve Only a Portion of the Eligible Population*, Report No. 07-14 (February 2007), p. 6.
[15] Florida Taxwatch, *Report and Recommendation of the Florida TaxWatch Government Cost Savings Task Force for Fiscal Year 2011-12* (December 2010), http://www.floridataxwatch.org/resources/pdf/12082010GCTSF.pdf (last visited April 18, 2011).
[16] Walter A. McNeil. Fla. Dep't of Corrections, *Recidivism Reduction Strategic Plan Fiscal Year 2009-2014*, http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf (last visited April 18, 2011).

Correctional Integrated Needs Assessment System

The department assesses inmates and places them into programs using the Correctional Integrated Needs Assessment System (CINAS), which is based on the "Risk-Needs-Responsivity (RNR)" principle. The RNR principle refers to predicting which inmates have a higher probability of recidivating, and providing appropriate programming and services to higher risk inmates based on their level of need. The services would be focused on "criminogenic needs," which are factors associated with recidivism that can be changed such as lack of education, substance abuse, criminal thinking, and lack of marketable job skills. High risk offenders have multiple risk factors, and the department provides a range of services and interventions to target the specific crime producing characteristics.[17]

The department reports that CINAS allows it to develop and implement programs that increase the likelihood of successful reentry. It also reports that use of the RNR principle and CINAS "avoids focusing resources on individuals ill-equipped to handle specific behavior problems, and ensures the most appropriate treatment-setting possible is being assigned, based on an inmate's characteristics."[18]

The CINAS is administered to an inmate when he or she is received at the initial parent institution and again after 42 months, with updates conducted every 6 months thereafter to evaluate the inmate's progress and ensure enrollment in needed programs.[19]

Required Transition Training Program

In addition to other programming, the department must provide a 100-Hour Transition Training Program to inmates who are within 12 months of their release.[20] This program offers inmates training in the following:

- Job readiness and life management skills, including goal setting;
- Problem solving and decision making;
- Communication;
- Values clarification;
- Living a healthy lifestyle;
- Family issues;
- Seeking and keeping a job;
- Continuing education;
- Community reentry; and
- Legal responsibilities.[21]

An issue brief prepared by the Senate Criminal Justice Committee in 2008 observed that, due to funding constraints, in most cases the transition course was viewed by the inmates on video along with self-study from a textbook. This was less effective than the former method in which

[17] Fla. Dep't of Corrections, Analysis of SB 1334 (on file with the Senate Committee on Judiciary).
[18] *Id.*
[19] *Id.*
[20] Section 944.7065, F.S.
[21] *Supra* note 16.

the course was taught by an instructor who interacted with the inmates in a classroom setting, particularly since many inmates had minimal reading skills. At the time of the issue brief, the department was attempting to reduce the deficiency by developing a workbook designed for self-study and written at a lower reading level.[22]

Drug Offender Probation

The department is also required to develop and administer a drug offender probation program that emphasizes a combination of treatment and intensive community supervision approaches and provides for supervision of offenders in accordance with a specific treatment plan.[23] This program generally uses graduated sanctions when offenders violate program requirements by actions such as testing positive on drug tests, missing treatment sessions, or failing to report to court.[24] These sanctions can include mandatory community service, extended probation, or jail stays. Probationers in this program are subject to probation revocation if they violate any conditions of their probation. This can result in an imposition of any sentence that may have originally been imposed before the offender was placed on probation.[25] In FY 2009-10, 9,928 offenders were on drug offender probation.[26]

Extension of the Limits of Confinement

Section 945.091, F.S., gives the department authority to extend the limits of an inmate's confinement for certain purposes. Some types of extension of the limits of confinement, such as community work release, are integral to the department's reentry programming. The department makes the determination of whether it is appropriate to extend the limits of confinement for a particular inmate. Extension may be granted to:

- Allow a trusted inmate to go to a specifically designated place or places for a specified period of time for the purpose of: (1) visiting a dying relative or attending a relative's funeral; (2) arranging for post-release employment or residence; (3) aiding the inmate's rehabilitation and successful transition back into the community; or (4) another compelling reason in the public interest (s. 945.091(1)(a), F.S.).
- Allow an inmate to work at paid employment, participate in an education or training program, or volunteer with a public or nonprofit agency or faith-based service group in the community while still being confined by the department when not involved in any of the activities (s. 945.091(1)(b), F.S.).
- Allow an inmate to participate in a residential or nonresidential rehabilitative program operated by a public or private nonprofit agency, including faith-based service groups, with which the department has contracted (s. 945.091(1)(c), F.S.).

[22] Florida Senate Committee on Criminal Justice, *Breaking The Cycle Of Crime: The Department Of Corrections And Re-Entry Programming*, Issue Brief 2009-313, 2 (October 2008), *available at* http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-313cj.pdf (last visited April 18, 2011).
[23] Section 948.20(1), F.S.
[24] *Id*.
[25] Section 948.06(2)(e), F.S.
[26] Fla. Dep't of Corrections, *Community Supervision Admissions*, 2008-2009 Agency Statistics, *available at* http://www.dc.state.fl.us/pub/annual/0809/stats/csa_prior.html (last visited April 18, 2011).

- Allow an inmate with college-level aptitude to attend classes at a local community college or university (s. 945.091(2), F.S.).

There are three statutory disqualifications from participation in extension of the limits of confinement: (1) an inmate who has been convicted of sexual battery under s. 794.011, F.S., is ineligible for any type of extension of limits of confinement;[27] (2) an inmate who has been convicted of escape under s. 944.40, F.S., is ineligible for any work release program;[28] and (3) an inmate who has been convicted of committing or attempting to commit murder, manslaughter, sexual battery, robbery, arson, aggravated assault, aggravated battery, kidnapping, escape, breaking and entering with intent to commit a felony, or aircraft piracy is ineligible to attend classes at any state community college or university that is part of the State University System.[29]

Work Release

As of February 28, 2011, the department had 33 community work release facilities ranging in size from 15 inmates at Shisa House East to 271 inmates at the Largo Residential Re-Entry Center.[30] These facilities are located in areas where the inmate will have access to places of employment. They do not have secure perimeters, but inmates are required to remain at the facility except when they are working or traveling to or from their place of employment. There are additional reasons for which an inmate may be allowed to leave the facility for a limited time to go to a designated place, such as participating in an Alcoholics Anonymous meeting.

Inmates have participated in some form of work release since the inception of community corrections centers in 1971. The table below reflects that while the number of participants in work release programs has grown, the percentage of participants relative to the total inmate population has shrunk. It can also be seen that both the number of participants and the participation ratio have increased in recent years.[31]

[27] Section 945.091(3), F.S.
[28] Section 945.092, F.S.
[29] Section 945.091(5), F.S. Florida Senate Committee on Criminal Justice Interim Project Report 2004-127 (Jan. 2004), *A Review of the Department of Corrections' Inmate Work Release Law*, *available at* http://archive.flsenate.gov/data/publications/2004/senate/reports/interim_reports/pdf/2004-127cj.pdf (last visited April 18, 2011).
[30] Fla. Dep't of Corrections, *End-of-Month Florida Prison Populations by Facility February 2011*, *available at* http://www.dc.state.fl.us/pub/pop/facility/index.html (last visited April 18, 2011). One of the 33 centers, the Suncoast Work Release Center for male inmates, has not housed inmates in recent months.
[31] The table reflects the total inmate population and the number of inmates in community correctional centers/work release centers as of June 30 of the cited year, except as noted. Inmates who work at a facility in a support capacity but do not participate in a work release program are included. The data was compiled from Department of Corrections' Annual Reports and the department's end-of-month population figures.

DATE	INMATES IN WORK RELEASE FACILITIES	TOTAL INMATE POPULATION	PERCENTAGE IN WORK RELEASE FACILITIES
1974	1168	11205	10.4%
1976	1819	16716	10.9%
1980	1831	19617	9.3%
1995	2616	61478	4.3%
2000	2309	71233	3.2%
2005	2630	84901	3.1%
2010	3857	102232	3.8%
28 Feb 2011	3729	101833	3.7%

The department has adopted additional eligibility requirements for program participation as permitted by s. 945.091(3), F.S. These requirements include further disqualifying criteria, such as having been terminated from community work release, a center work assignment, or a transition program for disciplinary reasons during the current confinement.[32] An inmate must be in the department's custody for at least 60 days prior to placement in paid employment, and participation by most inmates is limited to the last 14 months of confinement.[33]

Department personnel help the community work release inmate establish a plan for disbursement of earnings based upon the inmates' needs, responsibilities, and financial obligations. Key components of the earnings disbursement plan include the following based upon the inmate's net income:

- At least 10 percent must be placed in savings to be disbursed upon release.
- At least 10 percent must go toward support of any dependents.
- At least 10 percent must go toward any victim restitution.
- 55 percent must be paid to the department for subsistence, but the amount may not exceed the actual cost of the inmate's incarceration.[34]

Expansion of work release programs is one of the measures recommended in the Report and Recommendation of the Florida TaxWatch Government Cost Savings Task Force for Fiscal Year 2011-12.[35]

[32] The disqualifiers are set forth in Rule 33-601.602(2)(a), F.A.C.
[33] Rule 33-601.602(2)(b), F.A.C. Section 945.091(1)(b)1., F.S., requires that an inmate be within the last 36 months of his or her confinement to participate in a work release program.
[34] The full criteria for disposition of earnings are set forth in Rule 33-601.602(11), F.A.C.
[35] *Supra* note 15.

Gain-time[36]

Gain-time is authorized in s. 944.275, F.S., and is a means by which eligible inmates can earn a reduction in the sentence that was imposed by the court. Current forms of gain-time are based upon the department's assessment that the inmate has behaved satisfactorily and engaged in constructive activities. As such, gain-time is a tool by which the department can encourage good behavior and motivate inmates to participate in programs and work assignments. Inmates who are serving life sentences or certain minimum mandatory sentences are not eligible for gain-time during the portion of time that the mandatory sentences are in effect.

Incentive gain-time is awarded to inmates for institutional adjustment, work, and participation in programs. The awards are made on a monthly basis as earned unless prohibited by law. The award amount varies in relation to the inmate's rated performance and adjustment, and the maximum amount awardable each month depends upon the offense date.

- An award of up to 10 days per month of incentive gain-time may be applied to the sentences imposed for an offense committed on or after October 1, 1995. This gain-time is earned until the tentative release date reaches the date equal to 85 percent of the sentence imposed. At that point, gain-time no longer is applied to reduce the sentence.
- An award of up to either 20 or 25 days per month of incentive gain-time may be applied to the sentences imposed for an offense committed on or after January 1, 1994, but before October 1, 1995. The maximum amount depends upon the level of the offense under the revised sentencing guidelines.[37]
- An award of up to 20 days per month of incentive gain-time may be applied to the sentences imposed for an offense committed prior to January 1, 1994.

Meritorious gain-time may be considered for an inmate who commits an outstanding deed. The maximum award is 60 days. Examples of outstanding deeds are saving a life or assisting in recapturing an escaped inmate, or in some manner performing an outstanding service.

Educational achievement gain-time in the amount of 60 days may be awarded to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program. Inmates whose offense was committed on or after October 1, 1995, are not eligible for this one-time award.

Education gain-time may be awarded to an inmate who satisfactorily completes the Mandatory Literacy Program. This is a one-time award of six days per commitment.

[36] Information in this section of the analysis is derived from Fla. Dep't of Corrections, *Frequently Asked Questions Regarding Gaintime*, *available at* http://www.dc.state.fl.us/oth/inmates/gaintime.html#1 (last visited April 18, 2011). Additional information regarding the history of Florida's sentencing laws and policies can be found at Fla. Dep't of Corrections, *Historical Summary of Sentencing and Policy in Florida*, *available at* http://www.dc.state.fl.us/pub/history/ (last visited April 18, 2011).

[37] Section 921.0012, F.S.

85-percent requirement: Section 944.275(4)(b)3., F.S., requires that every inmate sentenced for an offense committed on or after October 31, 1995, must serve at least 85 percent of the sentence imposed by the sentencing judge. This provision is reiterated in s. 921.002(1)(e), F.S., a part of the Criminal Punishment Code.

Some offenders are required to serve more than the 85-percent minimum. For example, s. 775.082(9), F.S., provides that a "prison releasee reoffender" must serve 100 percent of his or her sentence for a specified offense that was committed within 3 years of release from incarceration for a felony in this state or another jurisdiction.[38] Because 100 percent of the sentence must be served, gain-time cannot be applied to reduce the sentence of a prison releasee reoffender.

III. Effect of Proposed Changes:

Section 1: Minimum Mandatory Sentences

Section 1 of the bill removes the minimum mandatory sentence requirements for trafficking of controlled substances listed above. (See the table of controlled substances in the "Present Situation" section of this bill analysis.) The penalty for trafficking in each substance will still remain a first-degree felony, which is punishable by up to 30 years in prison and up to a $10,000 fine, in addition to the fines associated with the differing thresholds of drug volume.

The bill also amends s. 893.135(3), F.S., to remove language that prohibits a person convicted of a drug trafficking offense from being eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 947.149, F.S., prior to serving the mandatory minimum term of imprisonment.

In addition, the bill allows a judge (upon motion of the state attorney) to defer a sentence or withhold the sentence or adjudication of guilt of a person convicted of a drug trafficking offense if the judge finds the defendant rendered substantial assistance.

Calculation of Weight of Mixtures

The bill amends s. 893.135(6), F.S., to change the method of calculating the weight of a controlled substance when it is part of a mixture that constitutes a prescription drug. If the amount of the controlled substance in the prescription drug can be determined using the National Drug Code, the weight of other substances will not be considered. Therefore, the weight of hydrocodone in a Lortab tablet containing 7.5 mg of hydrocodone and 500 mg of acetaminophen would be calculated as 7.5 mg rather than 507.5 mg plus the weight of inactive ingredients in the tablet. The requirement to aggregate the weights of separate mixtures containing the same controlled substance is unaffected by the bill.

[38] The specified offenses are: treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; arson; kidnapping; aggravated assault with a deadly weapon; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; any felony that involves the use or threat of physical force or violence against an individual; armed burglary; burglary of an occupied structure or dwelling; or any felony violation of s. 790.07, s. 800.04, s. 827.03, or s. 827.071.

This amendment dramatically changes the number of tablets of a prescription drug that can trigger minimum mandatory sentences for drug trafficking. The following table illustrates this change for the 7.5/500 Lortab tablet that has been used as an example in this bill analysis:

LORTAB (7.5 mg hydrocodone, 500 mg acetaminophen)		
Minimum Mandatory Sentence	***Amount Possessed to Trigger Mandatory (current)***	***Amount Possessed to Trigger Mandatory (amended)***
3 years imprisonment and $50,000 fine	8 tablets	534 tablets
15 years imprisonment and $100,000 fine	28 tablets	1867 tablets
30 years imprisonment and $500,000 fine	56 tablets	3734 tablets

Section 2: Extension of the Limits of Confinement

This section of the bill is based on a proposal for legislation that was advanced by then-Secretary of Corrections McDonough at two separate hearings of the Criminal and Civil Justice Appropriations Committee on August 28, 2007, and December 13, 2007. A substantively identical bill (SB 1990) was passed by the Criminal Justice Committee in 2008. Senate Bill 1390, which is identical to this section, also passed the Criminal Justice Committee this year.

The section creates a supervised reentry program that would allow approved inmates to be housed at a department-approved residence in the community while working at paid employment or participating in other activities approved by the department. An inmate would be eligible to participate in the supervised reentry program only after residing at a work release center for at least 6 months, and participation would be limited to the last 14 months of the inmate's confinement. The section encourages placement of an eligible inmate in the supervised release program not less than 6 months prior to release.[39]

Inmates in the supervised release program will be required to comply with reporting, drug testing, and other requirements established by the department. An inmate who violates the program's conditions can face disciplinary action, removal from the program, or both. The department's rules allow the department to apply more subjective criteria for removal from a community release program, including: (1) the receipt of information concerning the inmate that will have an adverse impact on the safety and security of the inmate, the department, or the community; and (2) having reason to believe the inmate will not honor the department's trust.[40]

Inmates in the supervised reentry program must go to and from approved activities by means of transportation that is approved by the department. This will give the department leeway to approve means of transportation other than "walking, bicycling, or using public transportation or

[39] Because department rule limits most inmates from beginning community work release before the last 14 months of confinement, the requirement to reside at a work release center for at least 6 months prior to entering a supervised reentry program will effectively limit participation to the last 8 months of confinement unless the inmate had been assigned to the work release center in a support capacity.
[40] Rule 33-601.602(13), F.A.C.

transportation that is provided by a family member or employer" as is required of inmates on community work release.[41]

Inmates in the supervised reentry program would be required to pay the department for the costs of supervision in accordance with department rules, and to pay for the cost of any treatment programs in which he or she is participating.

The bill provides that inmates in the supervised reentry program will not be included in the bed count for purposes of determining total capacity of the state correctional system as defined in s. 944.023(1), F.S.

Section 3: Non-Violent Offender Reentry Program

Section 3 of the bill authorizes the department to develop and administer a nonviolent offender reentry program in a secure area within an institution or adjacent to an adult institution. This program is intended to divert nonviolent offenders[42] from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same effect, rehabilitate the offender, and reduce recidivism.

The department reports that 2,100 inmates meet the eligibility criteria for the program. However, available program space and taking rehabilitative benefit into consideration would currently limit the program to 534 inmates. An additional 1,251 inmates from the current inmate population will meet the eligibility criteria once they have completed 50 percent of their sentence.[43]

A "nonviolent offender" is defined as an offender who has been convicted of a third-degree felony offense that is not a forcible felony as defined in s. 776.08, F.S.,[44] and has not been convicted of any offense that requires registration as a sexual offender pursuant to s. 943.0435, F.S.[45]

The bill requires the non-violent offender reentry program to include:

[41] Section 945.091(1)(b), F.S.

[42] A "nonviolent offender" is defined in the bill as an offender who has been convicted of a third-degree felony offense that is not a forcible felony as defined in s. 776.08, F.S., and who has not been convicted of any offense that requires a person to register as a sexual offender pursuant to s. 943.0435, F.S.

[43] Fla. Dep't of Corrections, Analysis of SB 1334 (on file with the Senate Committee on Judiciary).

[44] The offenses included within the definition of "forcible felony" are treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

[45] The offenses that are not also a forcible felony are: luring and enticing a child (s. 787.025, F.S.); unlawful sexual activity with certain minors (s. 794.05, F.S.); procuring person under the age of 18 for the purposes of prostitution (s. 796.03, F.S.); selling or buying of minors into sex trafficking or prostitution (s. 796.035, F.S.); lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age (s. 800.04, F.S.); lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person (s. 825.1025, F.S.); sexual performance by a child (s. 827.071, F.S.); protection of minors with reference to certain acts in connection with obscenity (s. 847.0133, F.S.); computer pornography (s. 847.0135), except subsection (6) (owners or operators of computer services liable); transmission of pornography by electronic device or equipment (s. 847.0137, F.S.); transmission of material harmful to minors to a minor by electronic device or equipment (s. 847.0138, F.S.); selling or buying of minors (s. 847.0145, F.S.); and sexual misconduct by a Department of Juvenile Justice employee or provider with a juvenile offender (s. 985.701, F.S.).

- Prison-based substance abuse treatment;
- General education development and adult basic education courses;
- Vocational training;
- Training in decision-making and personal development; and
- Other rehabilitation programs.

The bill requires that the nonviolent offender serve at least 120 days in the reentry program. Any portion of his or her sentence served before placement in the reentry program does not count as progress toward program completion.

The bill requires the department to screen potential reentry program participants for eligibility criteria to participate in the program. In order to participate, a nonviolent offender must have:

- Served at least one-half of his or her original sentence; and
- Been identified as having a need for substance abuse treatment.

During the screening process, the bill requires the department to consider the offender's criminal history and the possible rehabilitative benefits that substance abuse treatment, educational programming, vocational training, and other rehabilitative programming might have on the offender.

If a nonviolent offender is selected to participate in the program and if space is available in the reentry program, the department must request the sentencing court to approve the offender's participation in the reentry program.

The department must also notify the state attorney that the offender is being considered for placement in the reentry program. The notice must:

- Explain to the state attorney that a proposed reduced period of incarceration, followed by participation in substance abuse treatment and other rehabilitative programming, could produce the same deterrent effect otherwise expected from a lengthy incarceration; and
- State that the state attorney may notify the sentencing court in writing of any objection he or she might have if the nonviolent offender is placed in the reentry program.[46]

The bill requires the sentencing court to notify the department in writing of the court's decision to approve or disapprove the requested placement of the nonviolent offender into the reentry program no later than 28 days after the court receives the department's request to place the offender in the reentry program.[47]

The bill requires a nonviolent offender who has been admitted to the reentry program to:

[46] The bill requires the state attorney to notify the sentencing court of any objections within 14 days after receiving the notice.
[47] The bill states that the court's failure to notify DOC of the decision within the 28-day period constitutes approval to place the offender into the reentry program.

- Undergo a full substance abuse assessment to determine his or her substance abuse treatment needs;
- Have an educational assessment, using the Test of Adult Basic Education or any other testing instrument approved by the Department of Education; and
- Enroll in an adult education program designed to help the offender obtain a high school diploma if one has not already been obtained.

The bill requires that assessments of the offender's vocational skills and future career education be provided to the offender as needed and that a periodic reevaluation be made in order to assess the progress of each offender.

If a nonviolent offender becomes unmanageable, the bill authorizes the department to revoke the offender's gain-time and place the offender in disciplinary confinement in accordance with department rule. The offender can be readmitted to the reentry program after completing the ordered discipline[48] unless:

- The offender commits or threatens to commit a violent act;
- The department determines that the offender is unable to participate in the reentry program due to the offender's medical condition;
- The offender's sentence is modified or expires;
- The department reassigns the offender's classification status; or
- The department determines that removing the offender from the reentry program is in the best interest of the offender or the security of the institution.

The bill requires the department to submit a report to the court at least 30 days before the nonviolent offender is scheduled to complete the reentry program. The report must describe the offender's performance in the reentry program. If the performance is satisfactory, the bill requires the court to issue an order modifying the sentence imposed and place the offender on drug offender probation[49] subject to the offender's successful completion of the remainder of the reentry program.[50] If the nonviolent offender violates the conditions of drug offender probation, the bill authorizes the court to revoke probation and impose any sentence that it might have originally imposed.

The bill also authorizes or requires the department to:

- Implement the reentry program to the fullest extent feasible within available resources.
- Submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the extent of implementation of the reentry program and

[48] The bill specifies that any period of time during which the offender is unable to participate in the reentry program shall be excluded from the specified time requirements in the reentry program.
[49] The bill provides that if an offender being released intends to reside in a county that has established a post-adjudicatory drug court program as described in s. 397.334, F.S., the sentencing court may require the offender to successfully complete the post-adjudicatory drug court program as a condition of drug offender probation.
[50] The bill provides that the term of drug offender probation may include placement in a community residential or nonresidential substance abuse treatment facility under the jurisdiction of the department or the Department of Children and Family Services or any public or private entity providing such services.

outlining future goals and any recommendation the department has for future legislative action.
- Enter into performance-based contracts with qualified individuals, agencies, or corporations for the provision of any or all of the services for the reentry program.
- Establish a system of incentives within the reentry program which the department may use to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.
- Develop a system for tracking recidivism, including, but not limited to, rearrests and recommitment of nonviolent offenders who successfully complete the reentry program, and report the recidivism rate in its annual report of the program.
- Adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer the reentry program.

Section 4: Gain Time and Minimum Portion of Sentence Served

Section 4 of the bill amends s. 944.275, F.S., to revise the minimum time that must be served on an adjudged sentence for offenses committed on or after October 1, 2011. This does the following in relation to the current requirement for all inmates to serve a minimum of 85 percent of their adjudged sentence:

- Increases the minimum time to be served to 92 percent if the sentence was imposed for a violent offense and the offender has a prior felony conviction.
- Increases the minimum time to be served to 87 percent if the sentence was imposed for a violent offense and the offender has no prior felony conviction.
- Maintains the 85 percent requirement if the sentence was imposed for a nonviolent offense and the offender has a prior felony conviction.
- Reduces the minimum time to be served to 65 percent if the sentence was imposed for a nonviolent offense and the offender does not have a prior felony conviction.

"Violent offense" is defined to have the same meaning as "forcible felony" in s. 776.08, F.S.[51]

Section 5: Reenactment of Law

The bill reenacts s. 775.084(4)(k), F.S., to maintain the requirement that an offender who is sentenced as a violent career criminal for an offense committed on or after October 1, 1995, or as a three-time violent felony offender for an offense committed on or after July 1, 1999, must serve 100 percent of the imposed sentence without reduction.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[51] As previously noted, the following offenses are forcible felonies: treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 2: Extension of the Limits of Confinement:
Inmates will be given the opportunity to work with employers who may serve as future employers or business references when inmates return to the community after serving their sentence. This may allow inmates to find employment more easily after incarceration.

C. Government Sector Impact:

The Criminal Justice Impact Conference met to discuss the impact of the bill. However, the Conference only provided fiscal estimates in regard to section 1 and section 4 of the bill.[52] Additionally, in regard to section 2 and 3 of the bill, the following observations are made as to the impact of each section:

Section 1 - Minimum Mandatory Sentences:
The Criminal Justice Impact Conference states that the elimination of minimum mandatory sentences for trafficking offenses will generate potentially large savings for the state.[53]

Section 2 - Extension of the Limits of Confinement:
Placement in the supervised reentry program would free up beds at a work release center, which could be filled by an inmate in prison who is eligible for community work release. Therefore, the supervised reentry program would result in moving inmates from a high-cost bed in a correctional institution to a much less costly assignment.

The department did not provide an analysis of the bill or information as to its fiscal impact. However, it identified 417 inmates in work release centers who currently meet the timelines for participation in the supervised reentry program. With this number as a baseline, the table below reflects the savings that could be achieved by implementing the program:

[52] Office of Economic and Demographic Research, Criminal Justice Impact Conference, *Conference Results*, *available at* http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm (last visited April 18, 2011).
[53] *Id*.

Eligible Inmates Who Find Department-Approved Housing	Number of Inmates	Per Diem Savings for Each Inmate[54]	Annual Savings
100%	417	$33.26	$5,062,338
75%	313	$33.26	$3,799,789
50%	208	$33.26	$2,525,099
25%	104	$33.26	$1,262,550

No cost is attributed to the supervised reentry program because the bill requires inmates in the program to pay the costs of their own supervision. It is likely, though, that there would be a small cost that would be unaccounted for by the inmate's contribution. Of course, any savings would also be reduced by any lag time for replacement as inmates leave the program.

Section 3 - Non-Violent Offender Reentry Program:
Because participation in the bill's nonviolent offender re-entry program hinges on an offenders' eligibility, the department's selection, and judicial approval, the precise impact of the bill is unknown. However, the bill will likely result in cost savings to the state.

Section 4 - Gain Time and Minimum Portion of Sentence Served:
The Criminal Justice Impact Conference estimates that the change in the minimum time to be served will result in total savings of $140 million in FY 2011-2012 and savings as high as $283 million in FY 2013-2014.[55]

VI. Technical Deficiencies:

It is unclear whether the bill's specific provisions for removing an inmate from the supervised reentry program would prevent the department from applying more subjective criteria that it currently applies for removal from a community release program.

VII. Related Issues:

Senate Bill 1390 includes the substance of Section 2 of the bill. However, CS/SB 1390 is not identical to CS/SB 1334, but is substantially similar.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 28, 2011:

[54] In its analysis of Senate Bill 144, the department indicated that $33.26 is the per diem savings for reducing the prison population by a number of inmates that is enough to support closing a dormitory but not enough to close a facility. *See* Department of Corrections Analysis of Senate Bill 144, p. 9.
[55] Office of Economic and Demographic Research, Criminal Justice Impact Conference, *Conference Results, available at* http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm (last visited April 18, 2011).

- Provides that for purposes of the drug trafficking statute, the weight of a controlled substance in a mixture does not include other substances if the mixture is a prescription drug and the amount of the controlled substance can be determined from the National Drug Database.
- Creates a supervised reentry program that allows an inmate to live in a department-approved residence while working in the community or participating in other department-approved programs. Inmates participating in the program must have resided in a work release center for at least 6 months, and preferably begin the program no later than 6 months before release.
- Amends s. 944.275, F.S., the gain time statute, to require inmates convicted of an offense on or after October 1, 2011, to serve the following portions of their prison sentences: 92 percent for a violent offense if they have a prior felony of conviction; 87 percent for a violent offense if they have no prior felony; 85 percent for a nonviolent offense if they have a prior felony; and 65 percent for a nonviolent offense if they have no prior felonies.

B. Amendments:

None.