

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 Budget Subcommittee on Criminal and Civil Justice Appropriations

BILL: CS/CS/SB 448

INTRODUCER: Criminal Justice Committee and Senator Bogdanoff

SUBJECT: Inmate Reentry

DATE: February 28, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Fav/CS
2.	Sneed	Sadberry	BJA	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill requires the Department of Corrections (department) to develop and administer a nonviolent offender reentry program. Non-violent offenders with substance abuse issues could be eligible to participate in the program with court-approval after serving at least one-half of their sentence. Upon completion, the court would reduce the incarcerative portion of the original sentence and re-sentence the offender to drug offender probation. The 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 deterrent effect, to rehabilitate the offender, and to reduce recidivism.

The bill creates a new section of the Florida Statutes.

II. Present Situation:

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.¹ 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.² 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.”³

The department currently provides the following reentry programming to a segment of the inmate population:

- Substance abuse treatment programs;
- Educational and academic programs;
- Career and technical education programs; and
- Faith and character-based programs.⁴

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.

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.”

¹ Fla. Dep’t of Corrections, *Inmate Admissions*, http://www.dc.state.fl.us/pub/annual/0910/stats/im_admis.html (last visited November 10, 2011).

² 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.

³ Florida TaxWatch, *Report and Recommendation of the Florida TaxWatch Government Cost Savings Task Force for Fiscal Year 2012-13*, available at <http://www.floridataxwatch.org/resources/pdf/Report%20GCSTF%20for%20FY2012-13.pdf> (last visited November 10, 2011).

⁴ Florida Department of Corrections, *Recidivism Reduction Strategic Plan Fiscal Year 2009-2014*, available at <http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf> (last visited November 10, 2011).

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.⁵

100-Hour 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.⁶ This program offers inmates training in life management skills, job readiness, and changing criminal thinking.⁷

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.⁸ 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.⁹ 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.¹⁰ In FY 2009-10, 9,928 offenders were admitted to drug offender probation.¹¹

III. Effect of Proposed Changes:

The bill requires the department to develop and administer a nonviolent offender reentry program in a secure area in or adjacent to an adult institution. This program is intended to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration including intensive substance abuse treatment may have the same deterrent effect, protect the public, rehabilitate the offender, and reduce recidivism. The bill requires the non-violent offender reentry program to include the following components:

- 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.

⁵ Florida Department of Corrections, Analysis of SB 448.

⁶ Section 944.7065, F.S.

⁷ *Florida Department of Corrections Re-Entry Programs and Education*, <http://www.dc.state.fl.us/orginfo/reentry.html> (last visited November 10, 2011).

⁸ Section 948.20(1), F.S.

⁹ *Id.*

¹⁰ Section 948.06(2)(e), F.S.

¹¹ Florida Department of Corrections, *Community Supervision Admissions*, 2009-2010 Agency Statistics, available at http://www.dc.state.fl.us/pub/annual/0910/stats/csa_month.html (last visited November 10, 2011).

A “nonviolent offender” is defined as an offender whose primary offense is a third-degree felony, who is not the subject of a domestic violence injunction that is currently in force, and who have never been convicted of any of the following:

- A forcible felony as defined in s. 776.08, F.S.,¹²
- Any offense listed in s. 775.082(9)(a)1.r., F.S.¹³
- any offense in ch. 847, F.S., (which deals with obscenity and materials harmful to minors) that involves a minor or a depiction of a minor;
- Any offense described in ch. 827, F.S. (abuse of children);
- Any offense described in s. 784.07, F.S. (assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers); s. 784.074, F.S. (assault or battery on sexually violent predators detention or commitment facility staff); s. 784.075, F.S. (battery on detention or commitment facility staff or a juvenile probation officer); s. 784.076, F.S., (Battery on health services personnel); s. 784.08, F.S. (assault or battery on persons 65 years of age or older); s. 784.083, F.S. (assault or battery on code inspectors); s. 784.085, F.S. (battery of child by throwing, tossing, projecting, or expelling certain fluids or materials);¹⁴
- Any offense involving the possession or use of a firearm;
- A capital felony or a first or second degree felony; or
- Any offense that requires registration as a sexual offender pursuant to s. 943.0435, F.S.¹⁵.

The department is required to screen potential reentry program participants. In order to be considered for the program, a nonviolent offender must have served at least one-half of his or her original sentence and have been identified as having a need for substance abuse treatment.

¹² 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.

¹³ The specific offenses are felony violations of the following criminal statutes: (1) s. 790.07, F.S. (commission of a felony while having a weapon); s. 800.04, F.S. (lewd or lascivious offense committed in the presence of a person under 16 years of age); s. 827.03, F.S. (abuse or neglect of a child); s. 827.071, F.S. (offenses relating to sexual performance by a child); and s. 847.0135(5), F.S. (certain computer transmission to a child under 16 years of age).

¹⁴ Sections 784.07, 784.074, 784.08, and 784.083, F.S., reclassify the offenses of assault, aggravated assault, battery, and aggravated battery to a higher level of seriousness if the victim is in a category specified in the statutes. Offenders who commit these offenses are also ineligible for the reentry program because the offenses are forcible felonies.

¹⁵ The offenses that require registration as a sexual offender and 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.).

If the offender volunteers for the program and meets the eligibility screening criteria, the department must consider other factors in deciding whether to actually select him or her for the program. These include:

- The offender's disciplinary report history;
- The offender's criminal history;
- The severity of the offender's addiction;
- The offender's history of criminal behavior related to substance abuse;
- The offender's participation or request to participate in General Education Development or other educational, technical, work, vocational, or self-rehabilitation programs;
- The results of any risk assessment;
- The outcome of all past participation of the offender in substance abuse programs;
- The possible rehabilitative benefits to the offender of substance abuse treatment, educational programming, vocational training, and other rehabilitative programs; and
- The likelihood that the offender's participation in the program will produce the same deterrent effect, protect the public, save taxpayer dollars, and prevent or delay recidivism to an equal or greater extent than completion of the original sentence.

If the department selects a nonviolent offender to participate in the program and space is available, it may make a written request for the sentencing court to approve the offender's participation in the reentry program. The request must include a summary of the department's evaluation of the selection factors and a recital of the documents or other information upon which the evaluation was based. Documents may be provided to the court electronically.

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

- Include a copy of all documents provided to the court. This may be done electronically and may be a copy of the submission to the court.
- State that the state attorney may notify the sentencing court in writing of any objection to placing the offender in a reentry program within 15 days of receiving the notice from the department. The state attorney may provide supplemental or contrary information to the court regardless of whether an objection is made.

The sentencing court may consider any relevant fact in deciding whether to approve the inmate's entry into the program. These facts include, but are not limited to, the following considerations listed in the bill:

- The criteria listed in subsection (4) of Section 1 of the bill that were used by the department in evaluating the inmate for selection;
- The original sentencing report and any evidence admitted in a previous sentencing hearing;
- The offender's record of arrests without conviction, and any other evidence of allegations of unlawful conduct or use of violence;
- The offender's family ties, length of residence in the community, employment history, and mental condition;
- The likelihood that the offender will engage in criminal conduct in the future.

The sentencing court is required to notify the department whether it approves or disapproves placing the offender into the reentry program within 30 days after it receives the department's

request. If it approves, it must list the factors upon which it relied. Failure to notify the department within the 30-day period constitutes approval to place the offender into the reentry program.

The bill requires the department to take the following specific actions with respect to each inmate in the reentry program:

- The offender must undergo a full substance abuse assessment to determine his or her substance abuse treatment needs;
- The offender must have an educational assessment, using the Test of Adult Basic Education or any other testing instrument approved by the Department of Education;
- An offender who does not have a high school diploma must be enrolled in an adult education program designed to help him or her improve academic skills and obtain a high school diploma.
- Assessments of the offender's vocational skills and future career education must be performed as needed, and periodic reevaluations must be made to assess each offender's progress.

If a nonviolent offender becomes unmanageable while in the program, the bill authorizes the department to revoke the offender's gain-time and to place the offender in disciplinary confinement in accordance with department rule. Time during which the offender is unable to participate in the reentry program is not credited toward program completion. The offender must be readmitted to the program after completing the discipline. However, an offender can be removed from the program at any time for the following reasons:

- Committing or threatening to commit a violent act;
- Determination by the department that the offender is unable to participate in the reentry program due to his or her medical condition;
- Modification or expiration of the offender's sentence;
- Reassignment of the offender's classification status by the department; or
- Determination by the department that removing the offender from the reentry program is in the best interest of the offender or the security of the institution.

A minimum of six months is required to complete the program, and any portion of the offender's sentence that was served before placement in a reentry program will not count toward program completion.

The bill requires the department to submit a report to the court describing the offender's performance in the program at least 30 days before his or her scheduled program completion date and certifying whether the offender's performance was satisfactory. If the offender's performance was satisfactory to the department, the court must hold a hearing to determine:

- Whether the offender's performance was satisfactory to the court;
- Whether public safety would be compromised by modification of the sentence; and
- Any appropriate modifications of sentence that are no less than the minimum punishment required by law at the time the offense was committed.

After the sentencing court considers all information available to it, it may issue an order modifying the sentence imposed and may place the offender on drug offender probation as

defined in s. 848.20(2), F.S., subject to the offender's successful completion of the remainder of the reentry program. The order must include findings that the requirements for resentencing under the section were met and that public safety will not be compromised by the sentence modification.

The bill provides the court can order GPS monitoring of the offender as a condition of drug offender probation. It also provides that the drug offender probation can 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.

If the offender intends to reside in a county that has established a post-adjudicatory drug court program as described in s. 397.334, F.S., the court may consider the county program's record of helping reduce recidivism and require the offender to successfully complete the county drug court program as a condition of drug offender probation. In such a case, the sentencing court must relinquish jurisdiction to the post-adjudicatory drug court program. The offender would be required to comply with all conditions and orders of the county program, and jurisdiction would remain with the drug court program until the offender is no longer active in the program, the case is returned to the sentencing court because the offender is terminated from the program for failure to comply with its terms, or the offender completes his or her sentence.

If the nonviolent offender violates the conditions of drug offender probation, the court can revoke probation and impose any sentence that it might have originally imposed.

The bill requires the department to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include:

- A detailed description of the extent of implementation of the reentry program;
- The number of participants selected, approved, and successfully completing the program;
- A reasonable estimate or description of the additional public costs incurred and public funds saved for each participant;
- A brief description of each sentence modification and any subsequent criminal history of a program participant whose sentence was modified; and
- An outline of future goals and any recommendation the department has for future legislative action.

The bill also requires the department to:

- Implement the reentry program to the fullest extent feasible within available resources.
- 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 concerning the program.
- Adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer the reentry program. These include rules of conduct for program participants, including sanctions that are appropriate to the nature and gravity of a violation of the rules. These sanctions may include, but are not limited to, GPS monitoring, loss of privileges, restrictions, disciplinary confinement, alteration of release plans, or other program modifications.

In addition, the bill permits the department to:

- Enter into performance-based contracts with qualified persons, 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.

The bill specifically states that it does not create a right for any offender to be placed in the program or to placement or early release under supervision, and that an offender cannot have a cause of action against the department, a court, or the state attorney related to the reentry program. The bill states that this provision is non-severable, and that any state or federal court's determination that it is unenforceable will automatically result in repeal of the provision.

The bill's effective date is October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill states that it does not create or confer any right to placement in the reentry program or any right to placement or early release under supervision of any type. It further states that an inmate does not have a cause of action under the section against the department, a court, or the state attorney related to the reentry program. The "no cause of action provision" does not appear to be subject to successful constitutional challenge if it is read in *pari materia* with the sentence that an offender does not have a right to participate in the program or to be placed on supervision. However, it cannot be interpreted to prohibit an inmate from having a cause of action for infringement of a constitutional right.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Because participation in the bill's nonviolent offender re-entry program hinges on an offenders' eligibility, the department's selection, limited availability of drug treatment slots, and judicial approval, the fiscal impact of the bill is indeterminate. However, the bill will likely result in cost savings to the state.

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 uses for removal from a community release program.
- The bill provides for automatic repeal of the new statute if any state or federal court determines that the "no cause of action" subsection is unenforceable. The language does not address the status of repeal if a ruling that the subsection is unenforceable is reversed on appeal.

VII. Related Issues:

None.

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 and Civil Justice Appropriations on February 28, 2012:

- Removes being sentenced as a habitual felony offender from the list of disqualifying offenses.
- Amends the definition of "non-violent offender" to include additional offenses that will exclude an offender from participation in the reentry program.
- Specifies additional specific criteria to be considered by the department in selecting an inmate for the reentry program.
- Expands discussion of the factors to be considered by the sentencing court in evaluating whether to approve the inmate's participation in the program.
- Requires the court to hold a hearing after successful completion of the program to determine whether the offender's sentence should be modified.
- Specifies that the court may order GPS monitoring as a condition of drug offender probation.
- Expands the information that must be submitted by the department in its annual report concerning the reentry program.
- Expands the list of sanctions that may be imposed by the department for failure to comply with the program's rules of conduct.

- Provides that the provision of the bill stating that it does not create or confer any right or cause of action for an offender is non-severable, and that any state or federal court's determination that it is unenforceable will automatically result in repeal of the provision.

CS by Criminal Justice on November 17, 2011:

- Amends the definition of “non-violent offender” to clarify that the primary offense must be a third-degree felony, and that the offender must never have been convicted of a forcible felony or any offense that requires registration as a sexual offender.
- Further amends the definition of “non-violent offender” to exclude persons who are sentenced as a habitual felony offender.
- Clarifies that the department is not required to place an offender in the program if he or she meets basic eligibility requirements and space is available, but must select any participants from among those who meet basic eligibility requirements.

B. Amendments:

None.