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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 948.0121, Florida Statutes, is created
to read:

948.0121 Probationary split sentences for substance use or
mental health offenders.—

(1) DEFINITIONS.—For purposes of this section:

(a) "Department" means the Department of Corrections; and



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11 (b) "Offender" means a person sentenced by the court on a
12 felony offense to the probationary split sentence for substance
13 use or mental health offenders as proscribed in this section.

14 (2) CREATION.—A probationary split sentence for substance
15 use or mental health offenders is established in accordance with
16 s. 948.012. A court may sentence an offender to such
17 probationary split sentence in accordance with this section.

18 (3) ELIGIBILITY.—For an offender to be sentenced by the
19 court to a probationary split sentence pursuant to this section,
20 the offender shall be a nonviolent offender that is in need of
21 substance use or mental health treatment and who does not pose a
22 danger to the community. For purposes of this section,
23 nonviolent offender means an offender that has never been
24 convicted of, or pled guilty or no contest to, the commission
25 of, an attempt to commit, or a conspiracy to commit any of the
26 following:

27 (a) A capital, life, or first degree felony;

28 (b) A second degree or third degree felony listed in s.
29 775.084(1)(c)1.;

30 (c) A violation of ss. 784.021, 784.07, 827.03, or 843.01,
31 or any offense that requires a person to register as a sex
32 offender in accordance with s. 943.0435;

33 (d) A violation of an offense for which the sentence was
34 enhanced under s. 775.087; or

35 (e) A violation of an offense in another jurisdiction which
36 would be an offense described in this subsection, or which would
37 have been enhanced under s. 775.087, if that offense had been
38 committed in this state.

39 (4) SENTENCING REQUIREMENTS.—As a condition of a



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40 probationary split sentence for substance use or mental health
41 offenders, the court shall order that the offender, at a minimum
42 serve:

43 (a) A term of imprisonment, which must include an in-prison
44 treatment program for substance use, mental health, or co-
45 occurring disorders that is a minimum of 90-days in-custody
46 treatment and is administered by the department at a department
47 facility;

48 (b) The remainder of his or her imprisonment in a
49 department facility in the event the department finds that the
50 offender is ineligible or not appropriate for placement in an
51 in-custody treatment program for the reasons proscribed in
52 subsection (7), or any other reason the department deems as good
53 cause; and

54 (c) A term of probation of 24 months that consists of:

55 1. Either drug offender or mental health probation to be
56 determined by the court at the time of sentencing;

57 2. Any special conditions of probation ordered by the
58 sentencing court; and

59 3. Any recommendations made by the department in a
60 postrelease treatment plan for substance use or mental health
61 aftercare services.

62 (5) PRESENTENCE INVESTIGATION REPORT.—For any offender that
63 the court believes may be sentenced under this section, the
64 court may order the department to conduct a presentence
65 investigation report in accordance with s. 921.231 to provide
66 the court with appropriate information to make a determination
67 at the time of sentencing of whether drug offender or mental
68 health probation is most appropriate for the offender.



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69 (6) DEPARTMENT DUTIES.—The department:

70 (a) Shall administer treatment programs that comply with
71 the type of treatment required in this section.

72 (b) May develop and enter into performance-based contracts
73 with qualified individuals, agencies, or corporations to provide
74 any or all services necessary for the in-custody treatment
75 program. Such contract may not be entered into or renewed unless
76 it offers a substantial savings to the department. The
77 department may establish a system of incentives within the in-
78 custody treatment program to promote participation in
79 rehabilitative programs and the orderly operation of
80 institutions and facilities.

81 (c) Shall provide a special training program for staff
82 members selected to administer or implement the in-custody
83 treatment program.

84 (d) Shall evaluate the offender's needs and develop a
85 postrelease treatment plan that includes substance use or mental
86 health aftercare services.

87 (7) IN-PRISON TREATMENT.—

88 (a) The department shall give written notification of the
89 offender's admission into the in-prison treatment program
90 portion of the probationary split sentence to the sentencing
91 court, state attorney, defense counsel for the offender, and any
92 victim of the crime committed by the offender.

93 (b) If, after evaluating an offender for custody and
94 classification status, the department determines at any point
95 during the term of imprisonment that an offender sentenced under
96 this section does not meet the criteria for placement in the in-
97 prison treatment program portion of the probationary split



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98 sentence as determined in rule by the department, or space is
99 not available for the offender's placement in the in-prison
100 treatment program, the department shall notify the court, state
101 attorney, and defense counsel immediately that this portion of
102 the sentence is served in accordance with paragraph (4) (b).

103 (c) If, after placement in the in-prison treatment program,
104 an offender appears to be unable to participate due to medical
105 or other reasons, he or she must be examined by qualified
106 medical personnel or qualified nonmedical personnel appropriate
107 for the offender's situation, as determined by the department.
108 The qualified personnel shall consult with the director of the
109 in-prison treatment program, and the director shall determine if
110 the offender will continue with treatment or if the offender is
111 discharged from the program. If the director discharges the
112 offender from the treatment program, the department shall notify
113 the court, state attorney, and defense counsel immediately that
114 this portion of the sentence is served in accordance with
115 paragraph (4) (b).

116 (d) If, after placement in the in-prison treatment program,
117 an offender appears to be unable to participate due to
118 disruptive behavior or violations of any of the rules
119 promulgated by the department for the implementation of this
120 section, the director shall determine if the offender will
121 continue with treatment or if the offender is discharged from
122 the program. If the director discharges the offender from the
123 treatment program, the department shall notify the court, state
124 attorney, and defense counsel immediately that this portion of
125 the sentence is served in accordance with paragraph (4) (b).

126 (e) An offender participating in the in-prison treatment



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127 program portion of his or her imprisonment must comply with any
128 additional requirements placed on the participants by the
129 department in rule. If an offender violates any of the rules, he
130 or she may have sanctions imposed, including loss of privileges,
131 restrictions, disciplinary confinement, forfeiture of gain-time
132 or the right to earn gain-time in the future, alteration of
133 release plans, termination from the in-prison treatment program,
134 or other program modifications in keeping with the nature and
135 gravity of the program violation. The department may place an
136 inmate in the in-prison treatment program in an administrative
137 or protective confinement, as necessary.

138 (8) DRUG OFFENDER OR MENTAL HEALTH PROBATION.—

139 (a) Upon completion of the term of imprisonment ordered by
140 the court, the offender shall be transitioned into the community
141 to his or her drug offender or mental health probation for a
142 term of 24 months as ordered by the court at the time of
143 sentencing in accordance with subsection (4).

144 (b) An offender on drug offender or mental health probation
145 pursuant to a probationary split sentence ordered pursuant to
146 this section must comply with all standard conditions of drug
147 offender or mental health probation, any special condition of
148 probation ordered by the sentencing court, including
149 participation in an aftercare substance abuse or mental health
150 program, residence in a postrelease transitional residential
151 halfway house, or any other appropriate form of supervision or
152 treatment.

153 (c) While on probation pursuant to this subsection, the
154 offender shall pay all appropriate costs of probation to the
155 department. An offender who is determined to be financially able



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156 to shall also pay all costs of substance abuse or mental health
157 treatment. The court may impose on the offender additional
158 conditions requiring payment of restitution, court costs, and
159 finances, community service, or compliance with other special
160 conditions.

161 (d) An offender's violation of any condition or order may
162 result in revocation of probation by the court and imposition of
163 any sentence authorized under the law, with credit given for the
164 time already served in prison.

165 (9) REPORTING.—The department shall develop a computerized
166 system to track data on the recidivism and recommitment of
167 offenders who have been sentenced to the probationary split
168 sentence for substance use or mental health offenders. On
169 October 1, 2019, and on each October 1 thereafter, the
170 department shall submit an annual report of the results of the
171 collected data to the Governor, the President of the Senate, and
172 the Speaker of the House of Representatives.

173 (10) RULEMAKING.—The department shall adopt rules pursuant
174 to ss. 120.536(1) and 120.54 to administer this section.

175 Section 3. This act shall take effect October 1, 2018.

177 ===== T I T L E A M E N D M E N T =====

178 And the title is amended as follows:

179 Delete everything before the enacting clause
180 and insert:

181 A bill to be entitled
182 An act relating to sentencing; creating s. 948.0121,
183 F.S.; providing definitions; creating a probationary
184 split sentence for substance use and mental health



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185 offenders in accordance with s. 948.012, F.S.;

186 authorizing the court to sentence an offender to the

187 probationary split sentence; providing an eligible

188 offender must be a nonviolent offender; defining the

189 term "nonviolent offender"; providing sentencing

190 requirements for the probationary split sentence;

191 providing an exception to the court's order of a

192 probationary split sentence; authorizing the

193 sentencing court to have the Department of Corrections

194 conduct a presentence investigation report in

195 accordance with s. 921.231, F.S., for the purpose of

196 providing the court with appropriate information to

197 determine the type of probation is most appropriate

198 for the offender; requiring the department to perform

199 specified duties; requiring the department to provide

200 written notification to specified parties upon the

201 offender's admission into the in-prison treatment

202 program; providing that the department may find an

203 offender is not eligible to participate in the in-

204 prison treatment program under certain circumstances;

205 requiring written notification from the department to

206 the specified parties if an offender is terminated

207 from or prevented from entering the in-prison

208 treatment program; providing an offender is

209 transitioned to probation upon the completion of the

210 offender's imprisonment; requiring an offender to

211 comply with specified terms of drug offender or mental

212 health probation; requiring the offender to pay

213 specified fees associated with his or her probation;



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214 providing that a violation of the probation may result
215 in revocation by the court and imposition of any
216 sentence under the law; providing for credit of time
217 served for a sentence that is revoked; providing
218 reporting requirements; providing rulemaking
219 authority; providing an effective date.