

By the Committee on Criminal Justice; and Senator Brandes

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1                   A bill to be entitled  
2       An act relating to sentencing; creating s. 948.0121,  
3       F.S.; providing definitions; creating a probationary  
4       split sentence for substance use and mental health  
5       offenders in accordance with s. 948.012, F.S.;  
6       authorizing the court to sentence an offender to the  
7       probationary split sentence; providing that an  
8       eligible offender must be a nonviolent offender;  
9       defining the term "nonviolent offender"; providing  
10      sentencing requirements for the probationary split  
11      sentence; providing an exception to the court's order  
12      of a probationary split sentence; authorizing the  
13      sentencing court to have the Department of Corrections  
14      conduct a presentence investigation report in  
15      accordance with s. 921.231, F.S., for the purpose of  
16      providing the court with appropriate information to  
17      determine the type of probation most appropriate for  
18      the offender; requiring the department to perform  
19      specified duties; requiring the department to provide  
20      written notification to specified parties upon the  
21      offender's admission into the in-prison treatment  
22      program; providing that the department may find that  
23      an offender is not eligible to participate in the in-  
24      prison treatment program under certain circumstances;  
25      requiring written notification from the department to  
26      the specified parties if an offender is terminated  
27      from or prevented from entering the in-prison  
28      treatment program; providing that an offender is  
29      transitioned to probation upon the completion of his

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30 or her imprisonment; requiring an offender to comply  
31 with specified terms of drug offender or mental health  
32 probation; requiring the offender to pay specified  
33 costs associated with his or her probation; providing  
34 that a certain violation may result in revocation of  
35 probation by the court and imposition of any sentence  
36 under the law; providing for credit for time served  
37 for a sentence that is revoked; requiring the  
38 department to develop a computerized system to track  
39 certain data; requiring the department, on a certain  
40 date and annually thereafter, to submit an annual  
41 report to the Governor and the Legislature; requiring  
42 the department to adopt rules; providing an effective  
43 date.

44  
45 Be It Enacted by the Legislature of the State of Florida:

46  
47 Section 1. Section 948.0121, Florida Statutes, is created  
48 to read:

49 948.0121 Probationary split sentences for substance use or  
50 mental health offenders.-

51 (1) DEFINITIONS.-For purposes of this section, the term:

52 (a) "Department" means the Department of Corrections.

53 (b) "Offender" means a person found guilty of a felony  
54 offense and who receives a probationary split sentence for  
55 substance use or mental health offenders as prescribed in this  
56 section.

57 (2) CREATION.-A probationary split sentence for substance  
58 use or mental health offenders is established in accordance with

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59 s. 948.012. A court may sentence an offender to a probationary  
60 split sentence in accordance with this section.

61 (3) ELIGIBILITY.—For an offender to receive a probationary  
62 split sentence pursuant to this section, he or she must be a  
63 nonviolent offender who is in need of substance use or mental  
64 health treatment and who does not pose a danger to the  
65 community. For purposes of this section, the term “nonviolent  
66 offender” means an offender who has never been convicted of, or  
67 pled guilty or no contest to, the commission of, an attempt to  
68 commit, or a conspiracy to commit any of the following:

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

70 (b) A second degree or third degree felony listed in s.  
71 775.084(1)(c)1.;

72 (c) A violation of s. 784.021, s. 784.07, s. 827.03, or s.  
73 843.01, or any offense that requires a person to register as a  
74 sex offender in accordance with s. 943.0435;

75 (d) An offense for which the sentence was enhanced under s.  
76 775.087; or

77 (e) An offense in another jurisdiction which would be an  
78 offense described in this subsection, or which would have been  
79 enhanced under s. 775.087, if that offense had been committed in  
80 this state.

81 (4) SENTENCING REQUIREMENTS.—As a condition of a  
82 probationary split sentence for substance use or mental health  
83 offenders, the court must order that the offender, at a minimum,  
84 serve:

85 (a) A term of imprisonment which must include an in-prison  
86 treatment program for substance use, mental health, or co-  
87 occurring disorders which is a minimum of 90 days in-custody

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88 treatment and is administered by the department at a department  
89 facility;

90 (b) The remainder of his or her imprisonment in a  
91 department facility in the event the department finds that the  
92 offender is ineligible or not appropriate for placement in an  
93 in-custody treatment program for the reasons prescribed in  
94 subsection (7), or for any other reason the department deems as  
95 good cause; and

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

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

99 2. Any special conditions of probation ordered by the  
100 sentencing court; and

101 3. Any recommendations made by the department in a  
102 postrelease treatment plan for substance use or mental health  
103 aftercare services.

104 (5) PRESENTENCE INVESTIGATION REPORT.—For any offender who  
105 the court believes may be sentenced under this section, the  
106 court may order the department to conduct a presentence  
107 investigation report in accordance with s. 921.231 to provide  
108 the court with appropriate information to make a determination  
109 at the time of sentencing of whether drug offender or mental  
110 health probation is most appropriate for the offender.

111 (6) DEPARTMENT DUTIES.—The department:

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

114 (b) May develop and enter into performance-based contracts  
115 with qualified individuals, agencies, or corporations to provide  
116 any or all services necessary for the in-custody treatment

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117 program. Such contracts may not be entered into or renewed  
118 unless they offer a substantial savings to the department. The  
119 department may establish a system of incentives in the in-  
120 custody treatment program to promote offender participation in  
121 rehabilitative programs and the orderly operation of  
122 institutions and facilities.

123 (c) Shall provide a special training program for staff  
124 members selected to administer or implement the in-custody  
125 treatment program.

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

129 (7) IN-PRISON TREATMENT.—

130 (a) The department shall give written notification of the  
131 offender's admission into the in-prison treatment program  
132 portion of the probationary split sentence to the sentencing  
133 court, the state attorney, the defense counsel for the offender,  
134 and any victim of the offense committed by the offender.

135 (b) If, after evaluating an offender for custody and  
136 classification status, the department determines at any point  
137 during the term of imprisonment that an offender sentenced under  
138 this section does not meet the criteria for placement in the in-  
139 prison treatment program portion of the probationary split  
140 sentence, as determined in rule by the department, or space is  
141 not available for the offender's placement in the in-prison  
142 treatment program, the department must immediately notify the  
143 court, the state attorney, and the defense counsel that this  
144 portion of the sentence is served in accordance with paragraph

145 (4) (b) .

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146       (c) If, after placement in the in-prison treatment program,  
147 an offender is unable to participate due to medical or other  
148 reasons, he or she must be examined by qualified medical  
149 personnel or qualified nonmedical personnel appropriate for the  
150 offender's situation, as determined by the department. The  
151 qualified personnel shall consult with the director of the in-  
152 prison treatment program, and the director shall determine  
153 whether the offender will continue with treatment or be  
154 discharged from the program. If the director discharges the  
155 offender from the treatment program, the department must  
156 immediately notify the court, the state attorney, and the  
157 defense counsel that this portion of the sentence is served in  
158 accordance with paragraph (4) (b).

159       (d) If, after placement in the in-prison treatment program,  
160 an offender is unable to participate due to disruptive behavior  
161 or violations of any of the rules the department adopts to  
162 implement this section, the director shall determine whether the  
163 offender will continue with treatment or be discharged from the  
164 program. If the director discharges the offender from the  
165 treatment program, the department must immediately notify the  
166 court, the state attorney, and the defense counsel that this  
167 portion of the sentence is served in accordance with paragraph  
168 (4) (b).

169       (e) An offender participating in the in-prison treatment  
170 program portion of his or her imprisonment must comply with any  
171 additional requirements placed on the participants by the  
172 department in rule. If an offender violates any of the rules, he  
173 or she may have sanctions imposed, including loss of privileges,  
174 restrictions, disciplinary confinement, forfeiture of gain-time

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175 or the right to earn gain-time in the future, alteration of  
176 release plans, termination from the in-prison treatment program,  
177 or other program modifications in keeping with the nature and  
178 gravity of the program violation. The department may place an  
179 inmate participating in the in-prison treatment program in an  
180 administrative or protective confinement, as necessary.

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

182 (a) Upon completion of the term of imprisonment ordered by  
183 the court, the offender shall be transitioned into the community  
184 to begin his or her drug offender or mental health probation for  
185 a term of 24 months, as ordered by the court at the time of  
186 sentencing in accordance with subsection (4).

187 (b) An offender on drug offender or mental health probation  
188 following a probationary split sentence ordered pursuant to this  
189 section must comply with all standard conditions of drug  
190 offender or mental health probation and any special condition of  
191 probation ordered by the sentencing court, including  
192 participation in an aftercare substance abuse or mental health  
193 program, residence in a postrelease transitional residential  
194 halfway house, or any other appropriate form of supervision or  
195 treatment.

196 (c) While on probation pursuant to this subsection, the  
197 offender shall pay all appropriate costs of probation to the  
198 department. An offender who is determined to be financially able  
199 shall also pay all costs of substance abuse or mental health  
200 treatment. The court may impose on the offender additional  
201 conditions requiring payment of restitution, court costs, and  
202 finances, community service, or compliance with other special  
203 conditions.

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

208       (9) REPORTING.—The department shall develop a computerized  
209 system to track data on the recidivism and recommitment of  
210 offenders who have been sentenced to the probationary split  
211 sentence for substance use or mental health offenders. On  
212 October 1, 2019, and on each October 1 thereafter, the  
213 department shall submit an annual report of the results of the  
214 collected data to the Governor, the President of the Senate, and  
215 the Speaker of the House of Representatives.

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

218       Section 2. This act shall take effect October 1, 2018.