

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 Committee on Criminal Justice

BILL: SB 1304

INTRODUCER: Senator Brandes

SUBJECT: Sentencing

DATE: January 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 1304 creates a conditional sentence for substance use and mental health offenders. An offender must be a nonviolent offender that is in need of substance use or mental health treatment and does not pose a danger to the community. The bill enumerates specified offenses that deem an offender ineligible for a conditional sentence for substance use and mental health.

The bill requires the following conditions to be part of a conditional sentence for substance use or mental health offenders:

- A term of imprisonment, which must include a custodial treatment program for substance use, mental health, or co-occurring disorders that is a minimum of 90-days of in-custody treatment and is administered by the Department of Corrections (DOC) at a DOC facility;
- A 24 month term of special offender probation that consists of:
 - Either drug offender or mental health probation, as determined by the court at sentencing;
 - Any special conditions of probation ordered by the sentencing court; and
 - Any recommendations made by the DOC in the postrelease treatment plan for substance use or mental health aftercare services.

The bill authorizes the DOC to refuse to place an offender in the custodial treatment program for specified reasons. Following completion of the custodial treatment program, the bill provides that an offender must be immediately transitioned into the community on drug offender or mental health probation for the last 24 months of his or her sentence.

A conditional sentence imposed by a court under the bill does not confer any right to an inmate for release from incarceration and placement on drug offender or mental health offender probation, unless such offender complies with all sentence requirements.

The DOC must develop a computerized system to track data on the recidivism and recommitment of offenders who have received such a sentence and report the findings to the Governor, President of the Senate, and Speaker of the House of Representatives.

The DOC reported that CS/SB 1074 (2019), which is substantially similar to this bill, will have a negative fiscal impact of \$9,749,100 on the department. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2020.

II. Present Situation:

The Criminal Punishment Code¹ (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.² The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence as determined by the Code to the statutory maximum for the primary offense. The statutory maximum sentence for a first-degree felony is 30 years not to exceed life, for a second-degree felony is 15 years, and for a third degree felony is five years.³

The sentence imposed by the sentencing judge reflects the length of actual time to be served, lessened only by the application of gain-time,⁴ and may not be reduced in an amount that results in the defendant serving less than 85 percent of his or her term of imprisonment.⁵

Sentencing Options

The Florida Supreme Court has identified six statutory sentencing options in Florida, including a:

- Term of imprisonment, which may be served in jail or prison;
- True split sentence, which consists of a total period of confinement with a portion of the confinement period suspended and the defendant placed on probation for that suspended portion;
- Probationary split sentence, which consists of a period of confinement, none of which is suspended, followed by a period of probation;⁶
- *Villery* sentence, which consists of a period of probation preceded by a period of confinement imposed as a special condition;⁷
- Sentence of supervision, which consists of probation or community control; and
- Reverse split sentence, which consists of a period of probation followed by a period of incarceration.⁸

¹ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

² Section 921.0022, F.S.

³ Section 775.082, F.S.

⁴ Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.

⁵ Section 921.002(1)(e), F.S.

⁶ Section 948.012, F.S., provides the authority for this type of split sentence.

⁷ *Villery v. Florida Parole & Probation Com'n*, 396 So.2d 1107 (Fla. 1980).

⁸ Section 948.012(2), F.S., *Gibson v. Florida Department of Corrections*, 885 So.2d 376, 381 (Fla. 2004).

There are also existing statutes that allow a court to modify a sentence to probation terms for a youthful offender⁹ upon completion of specified custodial programming.¹⁰

After a defendant in a criminal case has been found guilty or has entered a plea of nolo contendere or guilty and prior to a sentencing hearing, any circuit court of the state may order a presentencing investigation (PSI) report in accordance with s. 921.231, F.S. The court may refer the case to the DOC for investigation and recommendation. The PSI report submitted must include specified background information on the defendant.¹¹ All information in the presentence investigation report must be factually presented and verified if reasonably possible by the preparer of the report. The preparer may be examined at the sentencing hearing and bears the burden of explaining why it was not possible to verify the challenged information. Additionally, the nonconfidential portion of the PSI must constitute the basic classification and evaluation document of the DOC and contain a recommendation to the court on the treatment program most appropriate to the diagnosed needs of the offender, based upon the offender's custody classification, rehabilitative requirements, and the utilization of treatment resources in proximity to the offender's home environment.¹²

Substance Abuse Services for Inmates

Chapter 397, F.S., provides comprehensive laws for the provision of substance abuse services to citizens throughout Florida, including licensure of substance abuse service providers and inmate substance abuse programs.

Substance use programming within the DOC institutions seeks to treat participants with histories of dependency by focusing on changing the behaviors that led to the addiction.¹³ The DOC has developed Correctional Substance Abuse Programs at its institutions and community-based sites throughout the state. The programs' principle objectives are to identify substance users, assess the severity of their drug problems, and provide the appropriate services.¹⁴ The Department of Children and Families licenses all custodial substance abuse programs.¹⁵ The Bureau of Readiness and Community Transitions within the DOC is responsible for the coordination and delivery of substance abuse program services for individuals incarcerated in a state correctional facility.¹⁶

⁹ Section 958.04(1), F.S., describes who qualifies to be sentenced as a youthful offender. A youthful offender is a person who is younger than 21 at the time of sentencing, who has not been found guilty or plead to a capital or life felony and has not previously been sentenced as a youthful offender. The court can sentence a person as a youthful offender or the DOC can classify a person as a youthful offender.

¹⁰ See ss. 958.04(2)(d) and 958.045(6), F.S.

¹¹ See s. 921.231(1)(a)-(o), F.S., for a complete list of information included in the report.

¹² Section 921.231(3)-(5), F.S.

¹³ The DOC, *Bureau of Readiness and Community Transition*, available at <http://www.dc.state.fl.us/development/readiness.html> (last visited January 13, 2020).

¹⁴ The DOC, Bureau of Readiness and Community Transition, Inmate Programs, *Substance Use Treatment, Annual Report, Fiscal Year 2016-2017*, p. 1 (hereinafter cited as "Substance Abuse Annual Report")(on file with the Senate Criminal Justice Committee).

¹⁵ Licensure is conducted in accordance with ch. 397, F.S., and Fla. Admin. Code R. 65D-30.003.

¹⁶ Substance Abuse Annual Report at p. 6.

Determining the Appropriate Services for Inmates

All inmates are screened at reception and assessed and placed into programs using the Correctional Integrated Needs Assessment System (CINAS).¹⁷ The CINAS is based on the Risk-Needs-Responsivity Principle (RNR). The RNR principle refers to predicting which inmates have a higher probability of recidivating, and treating the criminogenic needs of those higher risk inmates with appropriate programming and services based on their level of need.¹⁸

The CINAS is administered to inmates again at 42 months from release. Additionally, the DOC conducts updates every six months thereafter to evaluate the inmate's progress and ensure enrollment in needed programs. The DOC's use of the CINAS allows for development and implementation of programs that increase the likelihood of successful transition. The DOC matches factors that influence an inmate's responsiveness to different types of services with programs that are proven to be effective within an inmate population. This involves selecting services that are matched to the offender's learning characteristics and then to the offender's stage of change readiness.¹⁹

Additionally, the CINAS allows for a flow of information between the DOC's Office of Community Corrections and Office of Institutions. For instance, when an inmate is received at a Reception Center, the staff has access to detailed information about prior supervision history. Likewise, if an inmate is released to community supervision, probation officers will have access to an offender's incarceration history and relevant release information. The DOC reports that this information is to be used to better serve the offender and prepare them for successful transition back into the community.²⁰

Drug Offender and Mental Health Probation

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose.²¹ Specifically, drug offender probation is a form of intensive supervision that emphasizes treatment of drug offenders in accordance with individualized treatment plans administered by probation officers with reduced caseloads.²² Mental health probation means a form of specialized supervision that emphasizes mental health treatment and working with treatment providers to focus on underlying mental health disorders and compliance with a prescribed psychotropic medication regimen in accordance with individualized treatment plans. Mental health probation is supervised by officers with reduced caseloads who are sensitive to the unique needs of individuals with mental health disorders, and

¹⁷ The DOC, *Agency Analysis for CS/SB 1074 (2019)*, p. 2, April 2, 2019 (on file with the Senate Criminal Justice Committee) (hereinafter cited as "The DOC CS/SB 1074 (2019) Analysis"). This bill is substantially similar to CS/SB 1074 (2019).

¹⁸ The DOC reports that criminogenic needs are those factors that are associated with recidivism that can be changed (e.g. lack of education, substance abuse, criminal thinking, lack of marketable job skills, etc.). Offenders are not higher risk because they have a particular risk factor, but, rather, because they have multiple risk factors. Accordingly, a range of services and interventions are provided that target the specific crime producing needs of offenders who are higher risk. *Id.*

¹⁹ The DOC CS/SB 1074 (2019) Analysis, p. 2.

²⁰ *Id.*

²¹ Section 948.001(8), F.S.

²² Section 948.001(4), F.S.

who will work in tandem with community mental health case managers assigned to the defendant.²³

Gain-time

Gain-time awards, which result in deductions to the court-ordered sentences of specified eligible inmates, are used to encourage satisfactory prisoner behavior or to provide incentives for prisoners to participate in productive activities while incarcerated.²⁴ An inmate is not eligible to earn or receive gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.²⁵

III. Effect of Proposed Changes:

The bill creates a conditional sentence for substance use or mental health offenders.

Eligibility

An offender must be a nonviolent offender that is in need of substance use or mental health treatment and does not pose a danger to the community. The bill defines a “nonviolent offender” to mean an offender that has never been convicted of, or plead guilty or no contest to, the commission of, an attempt to commit, or a conspiracy to commit any of the following:

- Any capital, life, or first degree felony;
- Any second degree or third degree felony offense listed in s. 775.084(1)(c)1., F.S.;²⁶
- Aggravated assault as described in s. 784.021, F.S.;
- Assault or battery of a law enforcement officer and other specified persons as described in s. 784.07, F.S.;
- Abuse, aggravated abuse, and neglect of a child as described in s. 827.03, F.S.;
- Resisting an officer with violence as described in s. 843.01, F.S.;
- Any offense that requires a person to register as a sex offender under s. 943.0435, F.S.;²⁷

²³ Section 948.001(5), F.S.

²⁴ Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further provides that an inmate serving a life sentence is not able to earn gain-time. Additionally, an inmate serving the portion of his or her sentence that is included in an imposed mandatory minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

²⁵ Section 944.275(4)(f), F.S.

²⁶ The offenses enumerated in s. 775.084(1)(c)1., F.S., include: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; aggravated stalking; home invasion/robbery; carjacking; or an offense which is in violation of a law of any other jurisdiction if the elements of the offense are substantially similar to the elements of any felony offense enumerated in s. 775.084(1)(c)1., F.S., or an attempt to commit any such felony offense.

²⁷ Section 943.0435, F.S., includes the following offenses: sexual misconduct by a covered person (s. 393.135(2), F.S.); sexual misconduct by an employee; kidnapping, false imprisonment, or luring or enticing a child, where the victim is a minor; human trafficking; sexual battery, excluding s. 794.011(10), F.S.; unlawful sexual activity with certain minors; former procuring person under age of 18 for prostitution; former selling or buying of minors into prostitution; lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age; video voyeurism; lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person; sexual performance by a child;

- Any offense for which the sentence was enhanced under s. 775.087, F.S.;²⁸ or
- Any offense committed in another jurisdiction which would be an offense described above or would have been enhanced as described above, if committed in this state.

Sentencing Requirements

The bill requires the court to order the following conditions to be part of a conditional sentence for an offender with a substance use or mental health disorder:

- A term of imprisonment, which must include a custodial treatment program for substance use, mental health, or co-occurring disorders that is a minimum of 90-days of in-custody treatment and is administered by the DOC at a DOC facility;
- A 24 month term of special offender probation that consists of:
 - Either drug offender or mental health probation, as determined by the court at sentencing;
 - Any special conditions of probation ordered by the sentencing court; and
 - Any recommendations made by the DOC in the postrelease treatment plan for substance use or mental health aftercare services.

The court must also specify that if the DOC finds that the offender is ineligible or not appropriate for placement in a custodial treatment program for one of the enumerated reasons, or any other reason the DOC deems as good cause, the offender must serve the remainder of his or her imprisonment at a DOC facility. At sentencing, the court must determine the appropriate type of special offender probation based upon the departments' recommendation contained in the presentence investigation report.

The court may order a presentencing investigation report in accordance with s. 921.231, F.S., for any offender that the court believes may be sentenced to a conditional sentence for substance use or mental health. The presentencing report will provide the court with the appropriate information to make a determination at sentencing of whether the offender is better suited for drug offender or mental health probation.

The bill provides that a conditional sentence imposed by a court does not confer any right to an inmate for release from incarceration and placement on drug offender or mental health offender probation, unless such offender complies with all sentence requirements. However, the bill also provides some flexibility to the DOC with regard to determining placement of inmates based on availability and appropriateness of the inmate for the program, which are discussed below.

prohibition of certain acts in connection with obscenity; computer pornography, excluding s. 847.0135(6), F.S.; transmission of pornography by electronic device or equipment prohibited; transmission of material harmful to minors to a minor by electronic device or equipment prohibited; selling or buying of minors; prohibited activities/RICO, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in s. 943.0435(1)(h)1.a.(I), F.S., or at least one offense listed in s. 943.0435(1)(h)1.a.(I), F.S., with sexual intent or motive; sexual misconduct prohibited; or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in s. 943.0435(1)(h)1.a.(I), F.S.

²⁸ Section 775.087, F.S., provides for the reclassification of an offense based on the possession or use of a weapon when such use or possession is not an element of the underlying offense.

The Department of Corrections Duties

The DOC is required to administer the custodial treatment program and provide a special training program for staff members selected to implement the custodial treatment program. The DOC is authorized to enter into performance-based contracts with qualified individuals, agencies, or corporations to supply any or all services provided through the custodial treatment program. The bill prohibits the DOC from entering into a contract or renewing a contract for the purpose of providing services required under the act unless the contract offers a substantial savings to the DOC. Additionally, the DOC may establish a system of incentives within the custodial treatment program to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.

The DOC must give written notification of the offender's admission into the custodial treatment program to the sentencing court, the state attorney, defense counsel, and any victim of the crime committed by the offender. Before an offender completes the custodial treatment program, the DOC must evaluate the offender's needs and develop a postrelease treatment plan that includes substance or mental health aftercare services.

The bill provides rulemaking authority to the DOC to implement the custodial treatment program. The DOC can refuse to place an offender in the custodial treatment program if, after evaluating the offender for custody and classification status, the DOC determines that the offender does not meet the criteria for the custodial treatment program as proscribed by rule. The DOC must notify the sentencing court, the state attorney, and the defense counsel of the inability to place the offender in the program and that the rest of the offender's sentence will be served in a DOC facility.

If, after placement in the custodial treatment program, the offender appears to be unable to participate due to medical or other reasons, he or she must be examined by qualified medical personnel or qualified nonmedical personnel appropriate for the offender's situation. After consultation with the qualified personnel that evaluated the offender, the director of the custodial treatment program must determine if the offender will continue with treatment or if the offender will be discharged from the program. If the offender is discharged from the custodial treatment program, the remaining portion of his or her sentence will be served in a DOC facility and the DOC must immediately notify the court, the state attorney, and the defense counsel that this portion of the sentence is unsuccessfully served.

If an offender, after placement in the custodial treatment program, appears to be unable to participate due to disruptive behavior or violations of any of the rules promulgated by the DOC, the director must determine if the offender will continue in treatment or be discharged from the program. If the offender is discharged from the custodial treatment program, the remaining portion of his or her sentence will be served in a DOC facility and the DOC must immediately notify the court, the state attorney, and the defense counsel that this portion of the sentence is unsuccessfully served.

If an offender violates any rules, the DOC may impose sanctions including the loss of privileges, imposition of restrictions or disciplinary confinement, forfeiture of gain-time or the right to earn gain-time in the future, alteration of release plans, termination from the custodial treatment

program, or other program modifications dependent upon the severity of the violation. Additionally, the bill authorizes the DOC to place a participating offender in administrative or protective confinement, as it deems necessary.

Drug Offender or Mental Health Probation Portion of Sentence

Upon completion of the custodial treatment program, an offender must be transitioned into the community on drug offender or mental health probation for the last 24 months of his or her sentence. An offender on probation is subject to:

- All standard terms of drug offender or mental health probation; and
- Any special condition of supervision ordered by the sentencing court, which may include:
 - Participation in an aftercare substance abuse or mental health program;
 - Residence in a postrelease transitional residential halfway house; or
 - Any other appropriate form of supervision or treatment.

Additionally, an offender placed on drug offender probation who resides in a county that has established a drug court or a postadjudicatory drug court, is required to be monitored by such court as a condition of drug offender probation. Similarly, an offender placed on mental health offender probation who resides in a county that has established a mental health court must be monitored by the court as a condition of mental health offender probation.

The bill requires the DOC to collect the cost of supervision, as appropriate, from the offender. An offender who is determined to be financially able must also pay all costs of substance abuse or mental health treatment. The court may impose on the offender additional conditions such as requiring payment of restitution, court costs, and fines; community service; or compliance with other special conditions.

If an offender violates any condition of probation or order, the court may revoke the offender's probation and impose any sentence authorized by law.

The DOC must develop a computerized system to track data on the recidivism and recommitment of offenders who have been sentenced to a conditional sentence for substance use or mental health.

The bill also requires the department to, on October 1 of every year, beginning on October 1, 2021, submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives of the results of the recidivism and recommitment data collected by the DOC pursuant to the act.

The bill is effective on October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill authorizes the DOC to contract with qualified individuals, agencies, or corporations to supply any or all services provided for the custodial treatment program. To the extent that this increases revenues of for-profit companies that offer these services, the bill will likely have a positive (i.e. increased) fiscal impact on such entities.

C. Government Sector Impact:

The DOC evaluated CS/SB 1074 (2019), which is substantially similar to this bill, and determined that the estimated fiscal impact of the bill was based on 2,760 inmates who would meet the eligibility criteria in the bill for the custodial treatment program and the technological impacts for creating/adjusting the codes for the new split sentence as of April, 2019. The DOC reported that the estimated fiscal impacts were a total of \$9,911,600.²⁹

The DOC estimation for such fiscal impact was as a result of increased staffing needs to comply with the bill, including staffing for the mental health and substance abuse of co-occurring disorders, including the following specified contracted personnel:

- One (1) Licensed Psychiatrist for every 500 individuals.
- One (1) Licensed Psychologist for every four (4) Master's Levels Practitioners.
- One (1) Master's Level Practitioner for every 15-50 individuals (depending on level of service).
- One (1) Clinical Support for every two (2) Master's Level Practitioners.³⁰

²⁹ The DOC CS/SB 1074 (2019) Analysis, p. 6-8.

³⁰ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 948.0121 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.