

By 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.; defining terms; creating conditional sentences  
4       for substance use and mental health offenders;  
5       specifying eligibility requirements; providing minimum  
6       sentencing requirements; providing an exception to a  
7       conditional sentence; authorizing a presentence  
8       investigation report; specifying duties of the  
9       Department of Corrections; authorizing the department  
10      to enter into certain contracts; requiring the  
11      department to provide written notice to specified  
12      parties upon the offender's admission into an in-  
13      prison treatment program; providing that the  
14      department may find that an offender is ineligible for  
15      an in-prison program under certain circumstances;  
16      requiring written notice to certain parties if an  
17      offender is terminated from or prevented from entering  
18      an in-prison program; requiring that an offender be  
19      transitioned to probation upon the completion of an  
20      in-prison program; requiring an offender to comply  
21      with specified terms of probation; requiring the  
22      offender to pay specified costs; providing that  
23      certain violations may result in revocation of  
24      probation and imposition of any authorized sentence;  
25      requiring the department to develop a computerized  
26      tracking system; requiring the department make an  
27      annual report; requiring rulemaking; providing an  
28      effective date.

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30 Be It Enacted by the Legislature of the State of Florida:

31  
32 Section 1. Section 948.0121, Florida Statutes, is created  
33 to read:

34 948.0121 Conditional sentences for substance use or mental  
35 health offenders.—

36 (1) DEFINITIONS.—As used in this section, the term:

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

38 (b) "Offender" means a person who is convicted of a felony  
39 offense and who receives a conditional sentence for substance  
40 use or a person with a mental health disorder as prescribed in  
41 this section.

42 (2) CREATION.—A conditional sentence for offenders is  
43 established in accordance with s. 948.012. A court may sentence  
44 an offender to a conditional sentence in accordance with this  
45 section. A conditional sentence imposed by a court under this  
46 section does not confer to the offender any right to release  
47 from incarceration and placement on drug offender or mental  
48 health probation unless the offender complies with all sentence  
49 requirements in accordance with this section.

50 (3) ELIGIBILITY.—For an offender to receive a conditional  
51 sentence under this section, he or she must be a nonviolent  
52 offender who is in need of substance use or mental health  
53 treatment and who does not pose a danger to the community. As  
54 used in this subsection, the term "nonviolent offender" means an  
55 offender who has never been convicted of, or pled guilty or no  
56 contest to, the commission of, an attempt to commit, or a  
57 conspiracy to commit, any of the following:

58 (a) A capital, life, or first degree felony.

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59 (b) A second degree felony or third degree felony listed in  
60 s. 775.084(1)(c)1.

61 (c) A violation of s. 784.021, s. 784.07, s. 827.03, or s.  
62 843.01 or any offense that requires a person to register as a  
63 sex offender in accordance with s. 943.0435.

64 (d) An offense for which the sentence was enhanced under s.  
65 775.087.

66 (e) An offense in another jurisdiction which would be an  
67 offense described in this subsection, or which would have been  
68 enhanced under s. 775.087 if the offense had been committed in  
69 this state.

70 (4) SENTENCING REQUIREMENTS.—

71 (a) As part of a conditional sentence for an offender with  
72 a substance use or mental health disorder, a court must order  
73 such offender, at a minimum, to:

74 1. Serve a term of imprisonment which must include an in-  
75 prison treatment program for substance use, mental health, or  
76 co-occurring disorders which consists of a minimum of 90 days of  
77 custodial treatment and is administered by the department at a  
78 department facility.

79 2. Upon successful completion of a custodial treatment  
80 program, comply with a term of special offender probation for 24  
81 months, which shall serve as a modification of the remainder of  
82 his or her term of imprisonment, and must consist of:

83 a. Either drug offender or mental health probation, to be  
84 determined by the court at the time of sentencing.

85 b. Any special conditions of probation ordered by the  
86 sentencing court.

87 c. Any recommendations made by the department in a

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88 postrelease treatment plan for substance use or mental health  
89 aftercare services.

90 (b) If the department finds that the offender is ineligible  
91 or not appropriate for placement in a custodial treatment  
92 program for the reasons prescribed in subsection (7), or for any  
93 other reason the department deems as good cause then the  
94 offender shall serve the remainder of his or her term of  
95 imprisonment in the custody of the department.

96 (c) The appropriate type of special offender probation  
97 shall be determined by the court at the time of sentencing based  
98 upon the recommendation by the department in a presentence  
99 investigation report.

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

107 (6) DEPARTMENT DUTIES.—The department:

108 (a) Shall administer custodial treatment programs that  
109 comply with the type of treatment required in this section.

110 (b) May develop and enter into performance-based contracts  
111 with qualified individuals, agencies, or corporations to provide  
112 any services necessary for the custodial treatment program. Such  
113 contracts may only be entered into or renewed if the contracts  
114 offer a substantial savings to the department. The department  
115 may establish a system of incentives in a custodial treatment  
116 program to promote offender participation in rehabilitative

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117 programs and the orderly operation of institutions and  
118 facilities.

119 (c) Shall provide a special training program for staff  
120 members selected to administer or implement a custodial  
121 treatment program.

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

125 (7) IN-PRISON TREATMENT.—

126 (a) The department shall give written notification of the  
127 offender's admission into an in-prison treatment program portion  
128 of the conditional sentence to the sentencing court, the state  
129 attorney, the defense counsel for the offender, and any victim  
130 of the offense committed by the offender.

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

142 (c) If, after placement in an in-prison treatment program,  
143 an offender is unable to participate due to medical concerns or  
144 other reasons, he or she must be examined by qualified medical  
145 personnel or qualified nonmedical personnel appropriate for the

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146 offender's situation, as determined by the department. The  
147 qualified personnel shall consult with the director of the in-  
148 prison treatment program, and the director shall determine  
149 whether the offender will continue with treatment or be  
150 discharged from the program. If the director discharges the  
151 offender from the treatment program, the department must  
152 immediately notify the court, the state attorney, and the  
153 defense counsel that this portion of the sentence is  
154 unsuccessfully served in accordance with paragraph (4) (b).

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

165 (e) An offender participating in an in-prison treatment  
166 program portion of his or her sentence must comply with any  
167 additional requirements placed on the participants by the  
168 department in rule. If an offender violates a rule, he or she  
169 may have sanctions imposed, including loss of privileges,  
170 restrictions, disciplinary confinement, forfeiture of gain-time  
171 or the right to earn gain-time in the future, alteration of  
172 release plans, termination from the in-prison treatment program,  
173 or other program modifications in keeping with the nature and  
174 gravity of the rule violation. The department may place an

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175 offender participating in an in-prison treatment program in  
176 administrative or protective confinement, as necessary.

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

178 (a) Upon completion of the in-prison treatment program  
179 ordered by the court, the offender shall be transitioned into  
180 the community to begin his or her drug offender or mental health  
181 probation for a term of 24 months, as ordered by the court at  
182 the time of sentencing in accordance with subsection (4).

183 (b) An offender on drug offender or mental health probation  
184 following a conditional sentence imposed under this section must  
185 comply with all standard conditions of his or her probation and  
186 any special condition of probation ordered by the sentencing  
187 court, including participation in an aftercare substance abuse  
188 or mental health program, residence in a postrelease  
189 transitional residential halfway house, or any other appropriate  
190 form of supervision or treatment.

191 (c)1. If an offender placed on drug offender probation  
192 resides in a county that has established a drug court or a  
193 postadjudicatory drug court, the offender shall be monitored by  
194 the court as a condition of drug offender probation.

195 2. If an offender placed on mental health probation resides  
196 in a county that has established a mental health court, the  
197 offender shall be monitored by the court as a condition of  
198 mental health probation.

199 (d) While on probation pursuant to this subsection, the  
200 offender shall pay all appropriate costs of probation to the  
201 department. An offender who is determined to be financially able  
202 shall also pay all costs of substance abuse or mental health  
203 treatment. The court may impose on the offender additional

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204 conditions requiring payment of restitution, court costs, fines,  
205 community service, or compliance with other special conditions.

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

210 (9) REPORTING.—The department shall develop a computerized  
211 system to track data on the recidivism and recommitment of  
212 offenders who have been sentenced to a conditional sentence for  
213 substance use or mental health offenders. On October 1, 2021,  
214 and on each October 1 thereafter, the department shall submit an  
215 annual report of the results of the collected data to the  
216 Governor, the President of the Senate, and the Speaker of the  
217 House of Representatives.

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

220 Section 2. This act shall take effect October 1, 2020.