

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 194

INTRODUCER: Senator Taddeo

SUBJECT: Correctional Education Program

DATE: October 21, 2019

REVISED: _____

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

I. Summary:

SB 194 requires the Correctional Education Program (CEP) under the Department of Corrections (DOC) to develop and implement a plan to provide classes and work programs that assist inmates in preparing for licensure to practice a profession regulated by the Department of Business and Professional Regulation (DBPR). The plan must ensure that inmates receive credit for successful completion of classes or, if all requirements are met, a license.

The bill is effective July 1, 2020.

II. Present Situation:

Programming Offered to Inmates in the Custody of the DOC

Programming; Overview

Chapter 944, F.S., requires the DOC to provide a variety of services and programming to inmates committed to the custody of the DOC, including:

- Substance abuse treatment programs;¹
- Transitional services;²
- Educational and vocational programs;³

¹ Section 944.473(2), F.S., requires each inmate to be assessed to determine if he or she qualifies to receive mandated substance-abuse treatment while incarcerated. The DOC provides four levels of inmate substance abuse programming, including intensive outpatient, residential therapeutic community, program centers, and work release centers. In FY 2017-18, a total of 10,844 inmates participated in some form of substance abuse treatment. *See* The DOC, Annual Report Fiscal Year 2017-18, p. 45, available at http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf (last visited October 14, 2019) (hereinafter cited as “Annual Report”).

² Sections 944.701-944.708, F.S.

³ Section 944.801, F.S. In FY 2017-18, the DOC had 16,630 inmates participating in academic educational programs and 6,328 in career and technical programs. Annual Report, at p. 33.

- Entrepreneurship education services;⁴ and
- Faith- and character-based programs.⁵

Career and technical education programs vary by facility. These programs include, but are not limited to, cosmetology, culinary arts, electricity, landscaping, plumbing technology, cabinetmaking, and air conditioning, refrigeration, and heating technology.⁶

These services and programs provide inmates with skills and tools to assist with an inmate's successful transition into the community upon release. These services are not offered at all prisons, therefore, services that an inmate needs to best provide rehabilitative programming are paramount to placement decisions.⁷

Education for State Prisoners

Section 944.801(1), F.S., establishes the CEP under the DOC, which must be composed of the educational facilities and services of all institutions, and facilities housing inmates operated by the DOC. The duties of the CEP, in part, include:

- Developing guidelines for collecting education-related information during the inmate reception process and for disseminating such information to the classification staff of the DOC.⁸
- Approving educational programs of the appropriate levels and types in the correctional institutions and developing procedures for the admission of inmate students into such programs.⁹
- Entering into agreements with public or private school districts, entities, community colleges, junior colleges, colleges, or universities as may be deemed appropriate for the purpose of carrying out the CEP duties.¹⁰
- Ensuring that such local agreements require minimum performance standards and standards for measurable objectives, in accordance with established Department of Education (DOE) standards.¹¹
- Developing and maintaining complete and reliable statistics on the number of high school equivalency diplomas and vocational certificates issued by each institution in each skill area, the change in inmate literacy levels, and the number of inmate admissions to and withdrawals from education courses.¹²

⁴ Section 944.801(5), F.S., authorizes the CEP to develop a Prison Entrepreneurship Program (PEP). The PEP must include at least 180 days of in-prison education with curriculum that includes a component on developing a business plan, procedures for graduation and certification of successful student inmates, and at least 90 days of transitional and post-release continuing education services. Transitional and postrelease continuing educational services may be offered to graduate student inmates on a voluntary basis and are not a requirement for completion of the program.

⁵ Section 944.803, F.S., encourages the DOC to operate faith- and character-based facilities, which emphasize the importance of personal responsibility, meaningful work, education, substance abuse treatment, and peer support.

⁶ See Annual Report, at pp. 38-40, for a comprehensive list of programs by institution.

⁷ Annual Report, at p. 33.

⁸ Section 944.801(3)(a), F.S., also provides that the information collected must include the inmate's areas of educational or vocational interest, vocational skills, and level of education.

⁹ Section 944.801(3)(d), F.S.

¹⁰ Section 944.801(3)(e), F.S.

¹¹ *Id.*

¹² Section 944.801(3)(g), F.S.

Reentry and Transitional Services

The DOC is required to provide a wide range of transitional services. These services are offered in areas such as employment, life skills training, and job placement. These services are provided for the purpose of increasing the likelihood of the inmate's successful reentry into society, thereby reducing recidivism.¹³

Section 944.704, F.S., requires the DOC to provide a transition assistance specialist at each of its major prison institutions to assist an inmate with specified assistance, including, in part, obtaining job placement information, such as job assignment credentialing or industry certifications for which the inmate is eligible.¹⁴ Section 944.705(5), F.S., requires the DOC to conduct a needs assessment of every inmate to determine what services are needed upon release.

Section 944.705, F.S., requires the DOC to establish a standard release orientation program available to every eligible inmate.¹⁵ Release orientation must include instruction addressing:

- Employment skills;
- Money management skills;
- Personal development and planning;
- Special needs;
- Community reentry concerns;
- Community reentry support; and
- Any other appropriate instruction to ensure the inmate's successful reentry into the community.¹⁶

To provide these services, the DOC may contract with outside public or private entities, including faith-based service groups and educational institutions.¹⁷ The DOC may contract with public or private entities to establish transitional employment programs that provide employment opportunities for released inmates.¹⁸

Occupational Licensing

Licensure, Generally

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as

¹³ See ss. 944.701-708, F.S.

¹⁴ Section 944.704, F.S., further provides that correctional officers and correctional probation officers are prohibited from serving in the role of the transition assistance specialist.

¹⁵ Sections 944.703 and 944.7031, F.S., provide that all inmates released from the custody of the DOC or private correctional facilities are eligible to receive transition services. However, the DOC is instructed to give priority for these services to substance-addicted inmates. Additionally, inmates released from private correctional facilities should be informed of and provided with the same level of transition assistance services as provided by the DOC for an inmate in a state correctional facility.

¹⁶ Section 944.705(2), F.S.

¹⁷ Section 944.705(6) and (10), F.S.

¹⁸ Section 944.705(11), F.S.

the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.¹⁹ The DBPR has twelve divisions that are tasked with the licensure and general regulation of several professions and businesses in Florida.²⁰ Fifteen boards²¹ and programs exist within the Division of Professions,²² two boards exist within the Division of Real Estate,²³ and one board exists in the Division of Certified Public Accounting.²⁴

The DBPR may regulate professions “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”²⁵ The DBPR or any board is prohibited from creating a regulation that has an unreasonable effect on job creation or job retention, or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.²⁶

Sections 455.203 and 455.213, F.S., establish the DBPR’s general licensing authority, including its authority to charge license fees and license renewal fees. Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.²⁷ When a person is authorized to engage in a profession or occupation in Florida regulated by the DBPR, the DBPR issues a “permit, registration, certificate, or license” to the licensee.²⁸ If any person is engaged in the unlicensed practice of a profession regulated by the DBPR, the DBPR may issue a cease and desist notice, as well as seek an issuance of an injunction, administrative fines, and citations.²⁹

Denial of Licensure and Criminal History

Section 112.011, F.S., outlines general guidelines for considering criminal convictions during licensure determinations. Generally, a person may be denied a professional license based on his or her prior conviction of a crime if the crime was a felony or first-degree misdemeanor that is directly related to the standards determined by the regulatory authority to be necessary and

¹⁹ See ss. 455.01(6) and 455.203, F.S.

²⁰ See s. 20.165, F.S., creating the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.

²¹ Section 455.01(1), F.S., defines “board” to mean any board or commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the DBPR, including the Florida Real Estate Commission. However, for purposes of ss. 455.201-455.245, F.S., “board” means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Certified Public Accounting, the Division of Professions, or the Division of Real Estate.

²² See s. 20.165(4)(a), F.S., for the establishment of specified boards and programs, which are noted with the implementing statutes.

²³ See s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

²⁴ See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

²⁵ Section 455.201(2), F.S. Regulation is required when the potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result; the public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and less restrictive means of regulation are not available.

²⁶ Section 455.201(4)(b), F.S.

²⁷ Section 455.219(1), F.S.

²⁸ Section 455.01(4) and (5), F.S.

²⁹ Section 455.228(1), F.S.

reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license is sought.³⁰

Further, the DBPR or a pertinent regulatory board is authorized to deny an application for licensure based on the grounds set forth in s. 455.227(1), F.S., or in the profession's practice act,³¹ including denying a licensure application for any person who was:

. . . convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.³²

Chapter 2019-167, ss. 17 and 20, L.O.F., modified s. 455.213(3), F.S., to provide that a conviction, or any other adjudication, for a crime more than 5 years before the date an application for licensure is received by the applicable board may not be used as grounds for denial of licensure for the following professions:

- A barber under ch. 476, F.S.;
- A cosmetologist or cosmetology specialist under ch. 477, F.S.;
- Any of the construction professions under ch. 489, F.S.;³³ or
- Any other profession for which the DBPR issues a license, provided the profession is offered to inmates in any correctional institution or correctional facility as vocational training or through an industry certification program.

The applicable board may consider the criminal history of an applicant for licensure of any of the construction professions under ch. 489, F.S. if such criminal history has been found to relate to good moral character.³⁴

In addition, s. 455.213(3), F.S., provides that a person may apply for a license before his or her lawful release from confinement or supervision. The DBPR may not charge an additional fee for being confined or under supervision. The applicable board may not deny an application for a license solely on the basis of the applicant's current confinement or supervision. The DOC and the pertinent regulatory board must make accommodations, such as allowing an applicant to appear by teleconference, to facilitate the appearance of an applicant at a board meeting or agency hearing concerning his or her application.

³⁰ Section 112.011(1)(b) and (c), F.S. *See also*, e.g., *State ex rel. Sbordy v. Rowlett*, 138 Fla. 330 (1939), holding that "the preservation of the public health is one of the duties of sovereignty and in a conflict between the right of a citizen to follow a profession and the right of a sovereignty to guard the health and welfare, it logically follows that the rights of the citizen to pursue his profession must yield to the power of the State to prescribe such restrictions and regulations as shall fully protect the people from ignorance, incapacity, deception, and fraud." Additionally, notwithstanding any law to the contrary, a state agency may not deny an application for a license based solely on the applicant's lack of civil rights.

³¹ Section 455.227(2), F.S.

³² Section 455.227(1)(c), F.S.

³³ Section 455.213(3)(a)3., F.S., lists construction professions under ch. 489, F.S.: air-conditioning contractor; electrical contractor; plumbing contractor; pollutant storage systems contractor; roofing contractor; sheet metal contractor; solar contractor; swimming pool and spa contractor; underground utility and excavation contractor; or other specialty contractors.

³⁴ Section 455.213(3)(b)2., F.S. Section 489.511, F.S., provides certification requirements for electrical or alarm system contracting, and defines "good moral character" as "a personal history of honesty, fairness, and respect for the rights of others and for laws of this state and nation."

III. Effect of Proposed Changes:

The bill amends s. 944.801, F.S., requiring the CEP under the DOC to develop and implement a plan to provide classes and work programs that assist inmates in preparing for licensure to practice a profession regulated by the DBPR. The plan must ensure that inmates receive credit for successful completion of classes or, if all requirements are met, a license.

This bill is effective July 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:

None.

C. Government Sector Impact:

The DOC estimates that the implementation of this bill will cost \$200,000 per state-operated institution, totaling \$9.8 million.³⁵ The DOC further reports that managing the

³⁵ Florida Department of Corrections, *2020 Agency Legislative Bill Analysis for SB 194*, p. 5 (October 18, 2019) (on file with the Senate Committee on Criminal Justice).

expansion of such programming with existing resources will be problematic for the DOC.³⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 944.801 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³⁶ *Id.* at p. 3.