

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 917 Sentencing of Inmates

SPONSOR(S): Porth and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1334

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol	Cunningham
2) Rulemaking & Regulation Subcommittee			
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Florida's drug trafficking laws, found in s. 893.135, F.S., are applicable to "[a]ny person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession" of a specified amount of a controlled substance and contain minimum mandatory terms of imprisonment. Each controlled substance has a different threshold to trigger felony trafficking charges, and requires increasingly significant sentences for a greater volume of drug.

HB 917 removes the mandatory minimum terms of imprisonment related to all of the drug trafficking provisions listed in s. 893.135, F.S.

The bill also creates a new section of statute to authorize the Department of Corrections to develop and administer a nonviolent offender re-entry program. This program is intended to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same effect, rehabilitate the offender, and reduce recidivism.

The bill may have a positive fiscal impact on the Department of Corrections and provides an effective date of October 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Drug Trafficking Mandatory Minimum Sentences

Florida's drug trafficking laws, found in s. 893.135, F.S., contain minimum mandatory terms of imprisonment. Each controlled substance has a different threshold to trigger felony trafficking charges, and requires increasingly significant sentences for a greater volume of drug.

The following controlled substances are listed with their associated minimum mandatory sentences:

***Cannabis*¹**

A person commits a first degree felony, known as "trafficking in cannabis," when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of in excess of 25 pounds of cannabis or 300 or more cannabis plants^{2,3}.

Trafficking in cannabis results in the following minimum mandatory sentences based on the following amounts:

- In excess of 25 pounds, but less than 2,000 pounds, or is 300 or more cannabis plants, but not more than 2,000 cannabis plants, provides a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$25,000.
- 2,000 pounds or more, but less than 10,000 pounds, or is 2,000 or more cannabis plants, but not more than 10,000 cannabis plants, provides a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$50,000.
- 10,000 pounds or more, or is 10,000 or more cannabis plants, provides a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$200,000.⁴

***Cocaine*⁵**

A person commits a first degree felony, known as "trafficking in cocaine," when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 28 grams or more of cocaine or of any mixture⁶ containing cocaine, but less than 150 kilograms of cocaine or any such mixture.⁷

Trafficking in cocaine results in the following minimum mandatory sentences based on the following amounts:

- 28 grams or more, but less than 200 grams, provides a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

¹ Section 893.03(1)(c)7., F.S., lists cannabis as a Schedule I drug. Section 893.02(3), F.S., defines "Cannabis" as "all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin."

² Section 893.135(1)(a), F.S., provides "For the purpose of this paragraph, a plant, including, but not limited to, a seedling or cutting, is a "cannabis plant" if it has some readily observable evidence of root formation, such as root hairs. To determine if a piece or part of a cannabis plant severed from the cannabis plant is itself a cannabis plant, the severed piece or part must have some readily observable evidence of root formation, such as root hairs. Callous tissue is not readily observable evidence of root formation. The viability and sex of a plant and the fact that the plant may or may not be a dead harvested plant are not relevant in determining if the plant is a "cannabis plant" or in the charging of an offense under this paragraph.

³ Section 893.135(1)(a), F.S.

⁴ *Id.*

⁵ Section 893.03(2)(a)4., F.S. lists cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine as Schedule II drugs.

⁶ Section 893.02(15), F.S., defines "mixture" as "any physical combination of two or more substances."

⁷ Section 893.135(1)(b)1., F.S.

- 200 grams or more, but less than 400 grams, provides a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.
- 400 grams or more, but less than 150 kilograms, provides a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.⁸
- 150 kilograms or more is punishable by life imprisonment and the person is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149, F.S.⁹

Morphine, Opium, Oxycodone, Hydrocodone, Hydromorphone, and Heroin¹⁰

A person commits a first degree felony, known as “trafficking in illegal drugs,” when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 4 grams or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture.¹¹

Trafficking in illegal drugs results in the following minimum mandatory sentences based on the following amounts:

- 4 grams or more, but less than 14 grams, provides a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- 14 grams or more, but less than 28 grams, provides a mandatory minimum term of imprisonment of 15 years, and the defendant shall be ordered to pay a fine of \$100,000.
- 28 grams or more, but less than 30 kilograms, provides a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of \$500,000.¹²
- 30 kilograms or more or 30 kilograms or more of any mixture containing any such substance, is punishable by life imprisonment and the person is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149, F.S.¹³

Phencyclidine¹⁴

A person commits a first degree felony, known as “trafficking in phencyclidine,” when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 28 grams or more of phencyclidine or of any mixture containing phencyclidine.¹⁵

Trafficking in phencyclidine results in the following minimum mandatory sentences based on the following amounts:

- 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

⁸ *Id.*

⁹ Section 893.135(1)(b)2., F.S.

¹⁰ Section 893.03(1)(b), F.S., lists heroin as a Schedule I drug. Section 893.03(2)(a), lists morphine, opium, oxycodone, hydrocodone, and hydromorphone as Schedule II drugs. Section 893.03(3)(c)3. and (3)(c)4., F.S. list specific amounts of hydrocodone in Schedule III.

¹¹ Section 893.135(1)(c)1., F.S.

¹² *Id.*

¹³ Section 893.135(1)(c)2., F.S.

¹⁴ Section 893.03(2)(b), F.S., lists phencyclidine as a Schedule II drug.

¹⁵ Section 893.135(1)(d)1., F.S.

- 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.¹⁶

Methaqualone¹⁷

A person commits a first degree felony, known as “trafficking in methaqualone,” when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 200 grams or more of methaqualone or of any mixture containing methaqualone.¹⁸

Trafficking in methaqualone results in the following minimum mandatory sentences based on the following amounts:

- 200 grams or more, but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- 5 kilograms or more, but less than 25 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.
- 25 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.¹⁹

Amphetamine²⁰ ***and Methamphetamine***²¹

A person commits a first degree felony, known as “trafficking in amphetamine,” when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 14 grams or more of amphetamine or methamphetamine or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture²² of amphetamine or methamphetamine.²³

Trafficking in amphetamine results in the following minimum mandatory sentences based on the following amounts:

- 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.
- 200 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.²⁴

¹⁶ *Id.*

¹⁷ Section 893.03(1)(d), F.S., lists methaqualone as a Schedule I drug.

¹⁸ Section 893.135(1)(e)1., F.S.,

¹⁹ *Id.*

²⁰ Section 893.03(2)(c)2., F.S.. lists amphetamine as a Schedule II drug.

²¹ Section 893.03(2)(c)4., F.S., lists methamphetamine as a Schedule II drug.

²² Section 893.02(14)(a), F.S., defines “manufacture” as “the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.
2. A practitioner, or by his or her authorized agent under the practitioner’s supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.”

²³ Section 893.135(1)(f)1., F.S.

²⁴ *Id.*

Flunitrazepam²⁵

A person commits a first degree felony, known as “trafficking in flunitrazepam,” when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 4 grams or more of flunitrazepam or any mixture containing flunitrazepam.²⁶

Trafficking in flunitrazepam can result in the following minimum mandatory sentences based on the following amounts:

- 4 grams or more but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- 14 grams or more but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.
- 28 grams or more but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of \$500,000.²⁷
- 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam is punishable by life imprisonment and the person is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149, F.S.²⁸

Gamma-hydroxybutyric Acid (GHB)²⁹

A person commits a first degree felony, known as “trafficking in GHB,” when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 1 kilogram or more of GHB or any mixture containing GHB.³⁰

Trafficking in GHB results in the following minimum mandatory sentences based on the following amounts:

- 1 kilogram or more but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- 5 kilograms or more but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.
- 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.³¹

Gamma-butyrolactone (GBL)³²

A person commits a first degree felony, known as “trafficking in GBL,” when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 1 kilogram or more of GBL or any mixture containing GBL.³³

Trafficking in GBL results in the following minimum mandatory sentences based on the following amounts:

²⁵ Section 893.03(1)(a), F.S., lists flunitrazepam as a Schedule I drug.

²⁶ Section 893.135(1)(g)1., F.S.

²⁷ *Id.*

²⁸ Section 893.135(1)(g)2., F.S.

²⁹ Section 893.03(1)(d), F.S., lists GHB as a Schedule I drug.

³⁰ Section 893.135(1)(h)1., F.S.

³¹ *Id.*

³² Section 893.03(1)(d), F.S., lists GBL as a Schedule I drug.

³³ Section 893.135(1)(i)1., F.S.

- 1 kilogram or more but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- 5 kilograms or more but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.
- 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.³⁴

1,4-Butanediol³⁵

A person commits a first degree felony, known as “trafficking in 1,4-Butanediol,” when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 1 kilogram or more of GHB or any mixture containing 1,4-Butanediol.³⁶

Trafficking in 1,4-Butanediol results in the following minimum mandatory sentences based on the following amounts:

- 1 kilogram or more but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- 5 kilograms or more but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.
- 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000³⁷

Substances Described in s. 893.03(1)(a) or (c), F.S.³⁸

A person commits a first degree felony, known as “trafficking in Phenethylamines,” when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 10 grams or more of any of the following substances listed in s. 893.03(1)(a) or (c)a.-o., F.S., individually or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-o.³⁹

Trafficking in Phenethylamines results in the following minimum mandatory sentences based on the following amounts:

- 10 grams or more but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.
- 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.⁴⁰

³⁴ *Id.*

³⁵ Section 893.03(1)(d), F.S., lists 1,4-Butanediol as a Schedule I drug.

³⁶ Section 893.135(1)(j)1., F.S.

³⁷ *Id.*

³⁸ Section 893.03(1)(a) or (c), F.S., lists the following drugs 3,4-Methylenedioxymethamphetamine (MDMA); 4-Bromo-2,5-dimethoxyamphetamine; 4-Bromo-2,5-dimethoxyphenethylamine; 2,5-Dimethoxyamphetamine; 2,5-Dimethoxy-4-ethylamphetamine (DOET); N-ethylamphetamine; N-Hydroxy-3,4-methylenedioxyamphetamine; 5-Methoxy-3,4-methylenedioxyamphetamine; 4-methoxyamphetamine; 4-methoxymethamphetamine; 4-Methyl-2,5-dimethoxyamphetamine; 3,4-Methylenedioxy-N-ethylamphetamine; 3,4-Methylenedioxyamphetamine; N,N-dimethylamphetamine; or 3,4,5-Trimethoxyamphetamine as Schedule I.

³⁹ Section 893.135(1)(k)1., F.S.

⁴⁰ *Id.*

Lysergic Acid Diethylamide (LSD)⁴¹

A person commits a first degree felony, known as “trafficking in LSD,” when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 1 gram or more of LSD or any mixture containing LSD.⁴²

Trafficking in LSD results in the following minimum mandatory sentences based on the following amounts:

- 1 gram or more, but less than 5 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- 5 grams or more, but less than 7 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.
- 7 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$500,000.⁴³

Notwithstanding the provisions of s. 948.01, F.S., with respect to any person who is found to have violated the drug trafficking provisions in s. 893.135, F.S., adjudication of guilt or imposition of sentence may not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed. A person sentenced to a mandatory minimum term of imprisonment under s. 893.135, F.S., is not eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 947.149, F.S., prior to serving the mandatory minimum term of imprisonment.⁴⁴

The state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of s. 893.135, F.S., and who provides substantial assistance in the identification, arrest, or conviction of any of that person’s accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking in controlled substances. The arresting agency must be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if the judge finds that the defendant rendered such substantial assistance.⁴⁵

Effect of the Bill

HB 917 removes the minimum mandatory sentence requirements for trafficking of controlled substances listed above. The penalty for trafficking in each substance will still remain a first degree felony, which is punishable by up to 30 years in prison and up a \$10,000 fine, in addition to the fines associated with the differing thresholds of drug volume.

The bill amends s. 893.135(3), F.S., to remove language that prohibits a person convicted of a drug trafficking offense from being eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 947.149, F.S., prior to serving the mandatory minimum term of imprisonment.

The bill allows a judge, upon motion of the state attorney, to defer a sentence or withhold the sentence or adjudication of guilt of a person convicted of a drug trafficking offense if the judge finds the defendant rendered substantial assistance.

⁴¹ Section 893.03(1)(c), F.S., lists LSD as a Schedule I drug.

⁴² Section 893.135(1)(l)1., F.S.

⁴³ *Id.*

⁴⁴ Section 893.135(3), F.S.

⁴⁵ Section 893.135(4), F.S.

The Department of Corrections Re-entry Programming

Currently, the Department of Corrections (DOC) provides the following re-entry programming to inmates:

- Substance abuse treatment;
- Educational and academic programs;
- Career and technical education; and
- Faith and character-based programs.⁴⁶

Also, DOC is statutorily mandated⁴⁷ to provide inmates who are within 12 months of their release with the 100-Hour Transition Training Program. This program offers inmates training in the following:

- Job readiness and life management skills, including goal setting;
- Problem solving and decision making;
- Communication;
- Values clarification;
- Living a healthy lifestyle;
- Family issues;
- Seeking and keeping a job;
- Continuing education;
- Community reentry; and
- Legal responsibilities.⁴⁸

Drug Offender Probation

DOC is required to develop and administer a drug offender probation program which emphasizes a combination of treatment and intensive community supervision approaches and which provides for supervision of offenders in accordance with a specific treatment plan.⁴⁹ This program generally uses graduated sanctions when offenders violate program requirements by actions such as testing positive on drug tests, missing treatment sessions, or failing to report to court.⁵⁰ These sanctions can include mandatory community service, extended probation, or jail stays. Probationers in this program are subject to probation revocation if they violate any conditions of their probation. This can result in an imposition of any sentence that may have originally been imposed before the offender was placed on probation.⁵¹ In FY 2009-10, 9,928 offenders were on drug offender probation.⁵²

Effect of the Bill

HB 917 authorizes the Department of Corrections to develop and administer a nonviolent offender re-entry program in a secure area within an institution or adjacent to an adult institution. This program is intended to divert nonviolent offenders⁵³ from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same effect, rehabilitate the offender, and reduce recidivism. The program must include:

⁴⁶ "Recidivism Reduction Strategic Plan." Fiscal Year 2009-2014. Department of Corrections.
<http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf> (Last accessed on March 18, 2011).

⁴⁷ Section 944.7065, F.S.

⁴⁸ *Supra* "Recidivism Reduction Strategic Plan."

⁴⁹ Section 948.20(2), F.S.

⁵⁰ Section 948.20(1), F.S.

⁵¹ Section 948.06 (2)(e), F.S.

⁵² Department of Corrections, Community Supervision Admissions, 2008-2009 Agency Statistics,
http://www.dc.state.fl.us/pub/annual/0809/stats/csa_prior.html (Last accessed on March 18, 2011).

⁵³ The bill defines nonviolent offenders as an offender who has been convicted of a third-degree felony offense that is not a forcible felony as defined in s. 776.08, F.S., and has not been convicted of any offense that requires a person to register as a sexual offender pursuant to s. 943.0435, F.S.

- Prison-based substance abuse treatment,
- General education development and adult basic education courses,
- Vocational training,
- Training in decisionmaking and personal development, and
- Other rehabilitation programs.

The bill requires that the nonviolent offender serve at least 120 days in the reentry program. Any portion of his or her sentence served before placement in the reentry program does not count as progress toward program completion.

The bill requires DOC to screen potential reentry program participants for eligibility criteria to participate in the program. In order to participate, a nonviolent offender must have:

- Served at least one-half of his or her original sentence, and
- Been identified as having a need for substance abuse treatment.

During the screening process, the bill requires DOC to consider the offender's criminal history and the possible rehabilitative benefits that substance abuse treatment, educational programming, vocational training, and other rehabilitative programming might have on the offender.

If a nonviolent offender is selected to participate in the program and if space is available in the reentry program, DOC must request the sentencing court to approve the offender's participation in the reentry program.

DOC must also notify the state attorney that the offender is being considered for placement in the reentry program. The notice must:

- Explain to the state attorney that a proposed reduced period of incarceration, followed by participation in substance abuse treatment and other rehabilitative programming, could produce the same deterrent effect otherwise expected from a lengthy incarceration.
- State that the state attorney may notify the sentencing court in writing of any objection he or she might have if the nonviolent offender is placed in the reentry program.⁵⁴

The bill requires the sentencing court to notify DOC in writing of the court's decision to approve or disapprove the requested placement of the nonviolent offender into the re-entry program no later than 28 days after the court receives DOC's request to place the offender in the reentry program.⁵⁵

The bill requires a nonviolent offender who had been admitted to the re-entry program to:

- Undergo a full substance abuse assessment to determine his or her substance abuse treatment needs.
- Have an educational assessment, using the Test of Adult Basic Education or any other testing instrument approved by the Department of Education.
- Obtain a high school diploma if one has not already been obtained.

The bill requires that assessments of the offender's vocational skills and future career education be provided to the offender as needed and that a periodic reevaluation be made in order to assess the progress of each offender.

⁵⁴ The bill requires that the state attorney must notify the sentencing court of his or her objections within 14 days after receiving the notice.

⁵⁵ The bill states that the court's failure to notify DOC of the decision within the 28-day period constitutes approval to place the offender into the reentry program.

If a nonviolent offender becomes unmanageable, the bill authorizes DOC to revoke the offender's gain-time and place the offender in disciplinary confinement in accordance with DOC rule. The offender can be readmitted to the reentry program after completing the ordered discipline⁵⁶ unless:

- The offender commits or threatens to commit a violent act;
- DOC determines that the offender is unable to participate in the reentry program due to the offender's medical condition;
- The offender's sentence is modified or expires;
- DOC reassigns the offender's classification status; or
- DOC determines that removing the offender from the reentry program is in the best interest of the offender or the security of the institution.

The bill requires DOC to submit a report to the court at least 30 days before the nonviolent offender is scheduled to complete the reentry program. The report must describe the offender's performance in the reentry program. If the performance is satisfactory, the bill requires the court to issue an order modifying the sentence imposed and place the offender on drug offender probation⁵⁷ subject to the offender's successful completion of the remainder of the reentry program.⁵⁸ If the nonviolent offender violates the conditions of drug offender probation, the bill authorizes the court to revoke probation and impose any sentence that it might have originally imposed.

The bill also authorizes DOC to:

- Implement the reentry program to the fullest extent feasible within available resources.
- Submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the extent of implementation of the reentry program and outlining future goals and any recommendation the department has for future legislative action.
- Enter into performance-based contracts with qualified individuals, agencies, or corporations for the provision of any or all of the services for the reentry program.
- Establish a system of incentives within the reentry program which the department may use to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.
- Develop a system for tracking recidivism, including, but not limited to, rearrests and recommitment of nonviolent offenders who successfully complete the reentry program, and shall report the recidivism rate in its annual report of the program.
- Adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer the reentry program.

B. SECTION DIRECTORY:

Section 1. Amends s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 2. Creates the nonviolent reentry program.

Section 3. Provides an effective date of October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁵⁶ The bill specifies that any period of time during which the offender is unable to participate in the reentry program shall be excluded from the specified time requirements in the reentry program.

⁵⁷ The bill provides that if an offender being released intends to reside in a county that has established a postadjudicatory drug court program as described in s. 397.334, F.S., the sentencing court may require the offender to successfully complete the postadjudicatory drug court program as a condition of drug offender probation.

⁵⁸ The bill provides that the term of drug offender probation may include placement in a community residential or nonresidential substance abuse treatment facility under the jurisdiction of the department or the Department of Children and Family Services or any public or private entity providing such services.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Criminal Justice Impact Conference has not met to discuss the impact of HB 917. DOC reports that the removal of the mandatory minimum sentences for defendants trafficking in controlled substances will likely have an overall positive fiscal impact on the department.⁵⁹

The bill also creates a new section of statute to authorize the Department of Corrections to develop and administer a nonviolent offender re-entry program. This program is intended to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same effect, rehabilitate the offender, and reduce recidivism.

The bill provides that an inmate must serve at least half of his or her original sentence before being eligible for the re-entry program. An inmate who satisfactorily completes the reentry program will then be placed on drug offender probation. Because participation in the program hinges on an offender being eligible, DOC selection, and judicial approval, the precise impact of the bill is unknown. However, the bill will likely result in cost savings to the state.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

⁵⁹ The Department of Corrections 2011 Analysis of HB 917.

The bill authorizes DOC to adopt rules pursuant to ch. 120, F.S., to govern operation of the nonviolent offender re-entry program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- Line 687 states that “If a nonviolent offender becomes unmanageable...” This line should be clarified to “If a nonviolent offender in the re-entry program becomes unmanageable...”
- Although the bill authorizes DOC the discretion to screen and select inmates for program participation, inmates who meet the eligibility criteria but are not selected for the program may have a cause of action against DOC.

Adding the following may address this issue:

“This section does not create or confer any right to any inmate to placement in the re-entry program or any right to placement or early release under supervision of any type. No inmate shall have a cause of action against the department, a court, or the state attorney related to the re-entry program.”

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES