

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 917 Sentencing of Inmates

SPONSOR(S): Criminal Justice Subcommittee; Porth and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Krol	Cunningham
2) Rulemaking & Regulation Subcommittee		Miller	Rubottom
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

CS/HB 917 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:

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.¹

Also, DOC is statutorily mandated² 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.³

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.⁴ 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.⁵ 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.⁶ In FY 2009-10, 9,928 offenders were on drug offender probation.⁷

Effect of the Bill

CS/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

¹ "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).

² Section 944.7065, F.S.

³ *Supra* "Recidivism Reduction Strategic Plan."

⁴ Section 948.20(2), F.S.

⁵ Section 948.20(1), F.S.

⁶ Section 948.06 (2)(e), F.S.

⁷ 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).

intended to divert nonviolent offenders⁸ 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:

- 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. The bill provides that no nonviolent offender has the right to placement in the re-entry program or placement or early release under supervision of any type. The bill denies a nonviolent offender a cause of action against the department, a court, or the state attorney related to the re-entry 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.⁹

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.¹⁰

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

- Undergo a full substance abuse assessment to determine his or her substance abuse treatment needs.

⁸ 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.

⁹ The bill requires that the state attorney must notify the sentencing court of his or her objections within 14 days after receiving the notice.

¹⁰ 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.

- 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.

If a nonviolent offender in the program 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 discipline¹¹ 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 probation¹² subject to the offender's successful completion of the remainder of the reentry program.¹³ 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.
- Authorizes DOC to establish rules of conduct to which nonviolent offenders in the reentry program would be subject, including sanctions which DOC may impose for noncompliance.

¹¹ 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.

¹² 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.

¹³ 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.

B. SECTION DIRECTORY:

Section 1. Creates the nonviolent reentry program.

Section 2. Provides an effective date of October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill 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:

The bill authorizes DOC to adopt rules pursuant to ch. 120, F.S., to govern operation of the nonviolent offender re-entry program. A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.¹⁴ Rulemaking authority is delegated by the Legislature¹⁵ through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”¹⁶ a rule. Agencies do not have discretion whether to engage in rulemaking.¹⁷ To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.¹⁸ The grant of rulemaking authority itself need not be detailed.¹⁹ The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.²⁰

The bill makes nonviolent offenders in the reentry program subject to rules of conduct established by DOC. Existing rules govern inmate conduct and sanctions for violations.²¹ The bill does not state whether these existing rules are sufficient to govern the conduct of nonviolent inmates in the program or whether DOC is to create additional rules governing the conduct of this subset of inmates. If new rulemaking is contemplated, the current language in the bill could provide more specific guidance for DOC to define personal conduct which complies with the statute.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁴ s. 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

¹⁵ *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

¹⁶ s. 120.52(17), F.S.

¹⁷ s. 120.54(1)(a), F.S.

¹⁸ s. 120.52(8) & s. 120.536(1), F.S.

¹⁹ *Save the Manatee Club, Inc.*, *supra* at 599.

²⁰ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

²¹ Fla. Admin. Code R. 33-601.314.