

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CRJS 11-01 Prison Diversion Program

**SPONSOR(S):** Criminal Justice Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Krol	Cunningham

### SUMMARY ANALYSIS

In 2009, the Legislature enacted HB 1722, which created s. 921.00241, F.S., entitled "Prison Diversion Program." The section was created in an effort to reduce state costs, and save prison beds for more serious offenders by allowing judges to divert nonviolent, prison-bound offenders to a non-state prison sanction.

The Legislature has appropriated \$1.4 million over the last two years to the Department of Corrections to fund pilot prison diversion programs. The Department of Corrections established two pilot prison diversion programs in the 6th and 13th Judicial Circuits.

In December 2010, the Office of Program Policy Analysis and Government Accountability (OPPAGA) provided a research memorandum to the Legislature regarding the status of the prison diversion program. OPPAGA found that one program was serving offenders who may not have been prison bound. The other program had ceased operation due to a lack of referrals.

The proposed committee bill adopts recommendations made by OPPAGA to increase judicial referrals to the programs.

Specifically, the proposed committee bill:

- Expands program eligibility criteria by raising the upper threshold of the allowed Criminal Punishment Code score from 48 to 60 points (or 66 points where 6 of those points are for a violation of probation, community control, or other community supervision, and do not involve a new law violation.)
- Gives judges the discretion to sentence offenders to a 90-day jail term as part of the program.
- Allows the program to require electronic monitoring to enhance oversight of offenders placed in the program.

The proposed committee bill may have a positive fiscal impact on the state and is effective on July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Sentencing**

The Criminal Punishment Code applies to defendants whose non-capital felony offenses were committed on or after October 1, 1998.<sup>1</sup> Each non-capital felony offense is assigned a level ranking that reflects its seriousness.<sup>2</sup> There are ten levels, and Level 10 is the most serious level.<sup>3</sup> The primary offense, additional offenses and prior offenses are assigned level rankings.<sup>4</sup> Points accrue based on the offense level, with higher level accruing a greater number of points. The primary offense is worth more points than additional or prior offense of the same felony degree. Points may also accrue or be multiplied based on other aggravating factors such as whether the offense resulted in victim injury and the legal status of the defendant.<sup>5</sup>

The total sentence points scored is entered into a mathematical computation that determines the lowest permissible sentence:

- If the total sentence points equals or is less than 44 points, the lowest permissible sentence is a non-state prison sanction.<sup>6</sup>
- If the sentence point total exceeds 44 points, a prison sentence is the lowest permissible sentence.<sup>7</sup>

##### **Prison Diversion Program**

In 2009, the Legislature enacted HB 1722, which created s. 921.00241, F.S., entitled "Prison Diversion Program." The section was created in an effort to reduce state costs, and save prison beds for more serious offenders by allowing judges to divert nonviolent, prison-bound offenders to a non-state prison sanction.<sup>8</sup>

Section 921.00241(1), F.S., provides an offender is eligible for the program if he or she meets all of the following criteria:

- The offense(s) occurred on or after July 1, 2009.
- The primary offense is a third degree felony.
- The Criminal Punishment Code score is not more than 48 points (or 54 points where 6 of those points are for a violation of probation, community control, or other community supervision, and do not involve a new violation of law).
- The offender has not been convicted or previously convicted of a forcible felony.<sup>9</sup>
- The offender's primary offense does not require a minimum mandatory sentence.<sup>10</sup>

The court may sentence such an offender to a term of probation,<sup>11</sup> community control,<sup>12</sup> or community supervision with mandatory participation in a prison diversion program if such program is funded and exists in the sentencing judicial circuit.<sup>13</sup>

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<sup>1</sup> Section 921.002, F.S.

<sup>2</sup> The level ranking is assigned either by specifically listing the offense in the appropriate level in the offense severity ranking chart of the Code, s. 921.0022, F.S., or, if unlisted, being assigned a level ranking pursuant to s. 921.0023, F.S., based on the felony degree of the offense.

<sup>3</sup> Section 921.0022, F.S.

<sup>4</sup> Section 921.0024, F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. Section 924.0024(2), F.S.

<sup>7</sup> Section 924.0024(2), F.S.

<sup>8</sup> "Prison Diversion Programs." Research Memorandum. Office of Program Policy Analysis and Government Accountability. December 15, 2001.

<sup>9</sup> As defined in s. 776.08, F.S., but excluding any third degree felony violation under Ch. 810, F.S.

<sup>10</sup> Section 921.00241(1), F.S.

The prison diversion program may include:

- Residential, non-residential, or day-reporting requirements;
- Substance abuse treatment;
- Employment;
- Restitution;
- Academic, or vocational opportunities; or
- Community service work.<sup>14</sup>

The judge that sentences a defendant to the program must make written findings that the defendant meets the eligibility criteria and may order the offender to pay all or a portion of the program costs related to the prison diversion program if the offender has the ability to pay.<sup>15</sup>

The Legislature has appropriated \$1.4 million over the last two years to the Department of Corrections to fund pilot prison diversion programs. The appropriation was intended to eliminate the need for 184 new prison beds for Fiscal Year 2009-10. At an average cost of \$19,000 a year to fund a prison bed, it was anticipated that the diversion programs would save approximately \$3.5 million in prison bed costs the first year.<sup>16</sup>

The Department of Corrections established two pilot prison diversion programs in the 6<sup>th</sup> and 13<sup>th</sup> Judicial Circuits<sup>17, 18</sup> The programs began in October 2009 and November 2009, respectively.<sup>19</sup>

### **OPPAGA's Prison Diversion Program Research Memorandum**

In December 2010, the Office of Program Policy Analysis and Government Accountability (OPPAGA) provided a research memorandum to the Legislature regarding the status of the prison diversion program.

OPPAGA reports that the program in the 13<sup>th</sup> Judicial Circuit is fully operational, but is serving many offenders whose sentencing scores suggest they were not prison-bound.<sup>20</sup> The program in the 6<sup>th</sup> Judicial Circuit ceased operation in August 2010 due to a lack of referrals. Program staff, and other stakeholders, including the state attorney and circuit court judge, stated the statutory sentencing guideline point range was too narrow.<sup>21</sup> In addition, OPPAGA found that court officials may be more likely to use the diversion program if it included a short jail term or electronic monitoring.<sup>22</sup>

OPPAGA made the following recommendations to increase judicial referrals to the programs:

- Raise the upper threshold of the allowed Criminal Punishment Code score from 54 to 60 or 65 points to expand the pool of eligible offenders.
- Give judges the discretion to sentence offenders to a 90-day jail term as part of the program.

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<sup>11</sup> Section 948.001(5), F.S., defines "probation" as a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S.

<sup>12</sup> Section 948.001(3), F.S., defines "community control" as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.

<sup>13</sup> Section 924.00241(2), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Section 924.00241(3), F.S.

<sup>16</sup> *Supra* Research Memorandum.

<sup>17</sup> Pinellas and Pasco counties, and Hillsborough county, respectively.

<sup>18</sup> *Supra* Research Memorandum.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

- Allow the program to require electronic monitoring to enhance oversight of offenders placed in the program.
- Create pilot programs in judicial circuits that do not have operating drug courts to eliminate the competition for program participants.<sup>23</sup>

### **Effect of the Proposed Committee Bill**

The proposed committee bill adopts the above described recommendations made by the Office of Program Policy Analysis and Government Accountability. Specifically the proposed committee bill:

- Expands program eligibility criteria by raising the upper threshold of the allowed Criminal Punishment Code score from 48 to 60 points (or 66 points where 6 of those points are for a violation of probation, community control, or other community supervision, and do not involve a new law violation.)
- Gives judges the discretion to sentence offenders to a 90-day jail term as part of the program.
- Allows the program to require electronic monitoring to enhance oversight of offenders placed in the program.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 921.00241, F.S., relating to prison diversion program.

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

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

Because admission into the program is based on judicial discretion and the availability of a funded prison diversion program within the circuit, it is difficult to estimate the fiscal impact of this proposed committee bill. However, at an average cost of \$19,000 a year to fund a prison bed, any offenders diverted from prison would result in cost savings to the state.

##### **2. Expenditures:**

Including electronic monitoring as part of the prison diversion program may result in an increased fiscal cost to the Department of Corrections.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

Allowing judges the discretion to sentence offenders to a 90-day jail term as part of the prison diversion program may have a negative fiscal impact to the counties.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Local community treatment providers in participating circuits that contract with the Department of Corrections to provide services to prison diversion participants may see an increase in revenue.

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<sup>23</sup> *Id.*

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This proposed committee bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**V. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**