

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JDC 13-01 Inmate Reentry

SPONSOR(S): Judiciary Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Keegan	Havlicak

SUMMARY ANALYSIS

The Department of Corrections (DOC) reports that 88% of all inmates incarcerated in Florida will eventually be released from prison. In FY 2011-12, 32,279 inmates were released. Florida's most recent recidivism rates show that 27.6% of inmates released will return to prison within three years. Inmate reentry efforts are designed to reduce recidivism rates, which in turn will result in fewer new crime victims.

A common problem inmates face upon leaving prison and returning to society is a lack of any state-issued identification card. Without an ID card, one has difficulty finding employment or housing and opening a bank account. This bill requires DOC, working in conjunction with the Department of Health (DOH) and Department of Highway Safety and Motor Vehicles (DHSMV), to assist Florida-born inmates in acquiring a state ID card prior to release. To accomplish this, the bill waives the \$9 fee DOH charges for a copy of a Florida birth certificate and the \$25 fee DHSMV charges to issue a state ID card.

Faith- and character-based institutions and programs have been effectively used in preparing inmates for their transition to society. This bill provides DOC with policy direction to expand its faith- and character-based institutions to serve both male and female inmates at their respective institutions.

The bill also directs DOC to establish and administer a reentry program for nonviolent, drug offenders who are sentenced to the program by a court. An offender must meet certain criteria to be eligible. The sentence to the program is a conditional split sentence; containing both a term of incarceration that includes substance abuse treatment followed by a period of drug offender probation. Once sentenced to the program by a judge, DOC will place the inmate into a substance abuse treatment program towards the end of the incarceration portion of the inmate's sentence. If the inmate successfully completes the substance abuse program, he or she then serves the drug offender probation component of the sentence per the court's order. If the inmate fails to complete the in-prison treatment program, his or her probation sentence becomes a term of incarceration. The bill requires the inmate, under either scenario, to serve at least 85% of his or her incarceration portion of the sentence.

The bill directs DOC to remove an inmate from the reentry program if the inmate commits a violent act; cannot complete the program for medical reasons; the sentence is modified or expired; the inmate is reclassified; or removal is in the best interest of the inmate or the security of the institution.

The bill will have a negative fiscal impact on the DOH's trust fund as well as the General Revenue Fund due to waiving fees for birth certificates and issuing ID cards. See fiscal section of analysis for more details.

The bill will take effect on July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

The Department of Corrections reports that 88% of all inmates incarcerated in Florida will eventually be released from prison.¹ In FY 2011-12, DOC released 32,279 inmates.² Florida's most recent recidivism rates show that 27.6% of inmates released will return to prison within three years.³ Inmate reentry efforts are designed to reduce recidivism rates, which in turn mean fewer new crime victims.

State-Issued ID Cards for Prisoners

The Real ID Act of 2005⁴ (the "Act") took effect on May 11, 2008.⁵ The Act is an extensive federal law that addresses a number of issues ranging from state-issued identification cards to asylum provisions. Title II of the Act creates national standards for issuing driver licenses and identification cards ("state-issued ID"), as well as detailed specifications for verifying the identity of those who apply for state-issued ID.⁶ The federal Department of Homeland Security is vested with the authority to govern these requirements and determine which states are in compliance with the Act.⁷

In order for a state-issued ID card to be compliant with the Act, applicants must present a number of identifying documents when applying for the ID card.⁸ Specifically, the applicant's documentation must include a photo identity document, or a non-photo identity document that includes the applicant's full name and date of birth, as well as independent documentation of the applicant's date of birth, social security number, and principal residence.⁹ Once the Act is fully implemented on a national level, an individual must have a photo ID issued in compliance with the Act in order to prove identity for any federal purpose, including boarding airplanes and accessing federal buildings.¹⁰

According to the Florida Department of Highway Safety and Motor Vehicles (DHSMV), a U.S. citizen must provide one piece of primary identification, proof of the individual's social security number, and two documents proving residence in order to acquire a state-issued ID.¹¹ Primary identification can be an original U.S. birth certificate, valid U.S. Passport, consular report of birth abroad, certificate of naturalization, or other similar listed documents.¹² Proof of social security number can be satisfied with a U.S. social security card, tax forms, paycheck stubs, or other similar documents.¹³ Proof of residence can include deeds, utility bills, a Certification of Address Form from a homeless shelter or halfway house, as well as other similar documents.¹⁴ The DHSMV charges a \$25 fee for issuing or renewing a state ID card.¹⁵

¹ See, "Recidivism Reduction Strategic Plan." Fiscal Year 2009-2014. Department of Corrections. <http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf> (last visited March 18, 2013).

² See, <http://www.dc.state.fl.us/pub/recidivism/2013.html> (last visited March 18, 2013).

³ *Id.* These numbers are for inmates released in 2008.

⁴ Real ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (2005).

⁵ 12 Mass. Prac. Series, Motor Vehicle Law and Practice, § 21:2 (4th ed.).

⁶ Real ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (2005).

⁷ 1 IMMIGRATION LAW SERVICE 2d § 1:88 (2013).

⁸ § 202(c), 119 Stat. at 312-14.

⁹ *Id.* at 312-13.

¹⁰ 1 IMMIGRATION LAW SERVICE 2d § 1:88 (2013).

¹¹ Florida Driver License Identification Requirements, FLORIDA DEPARTMENT OF MOTOR VEHICLES, <http://www.dmvflorida.org/drivers-license-identification.shtml> (last visited March 18, 2013).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See, s. 322.21(f), F.S.

Currently, a birth certificate is an essential part of acquiring state-issued ID for a Florida-born applicant.¹⁶ A Floridian may request a copy of his or her birth certificate from the Department of Health (DOH) after paying \$9.00, providing valid photo identification, and submitting a written request.¹⁷ Florida law also permits any Florida or Federal agency to acquire a copy of a birth certificate upon request and payment of the \$9.00 fee.¹⁸ There is no statutory fee waiver for Florida prisoners applying for a copy of his or her Florida birth certificate.¹⁹

In December 2009, Office of Program Policy Analysis & Government Accountability (OPPAGA) issued a report based on their study of the Department of Corrections' (DOC or department) rehabilitation efforts.²⁰ The report identified the importance of an inmate acquiring an identification card upon release from prison. The report found:

Proper identification generally is required to find employment, obtain housing, or apply for public benefits that may be necessary to obtain medication or other treatment services that can help reduce inmates' risks of reoffending.²¹

Similarly, the lack of a state ID card makes it difficult to cash paychecks or open a bank account. Barriers such as lack of ID increase the likelihood of an inmate failing to successfully reenter society.

Over the last few years, DOC, partnering with DHSMV and DOH, has worked to get inmates identification cards prior to release using DHSMV's mobile units that travel to the prison facilities and issue ID cards to those inmates with the proper identification documents and upon payment of the \$25 fee. The DHSMV reports that in 2011 they conducted 17 prison visits and issued 642 ID cards; in 2012 those numbers were 13 visits and 458 cards.²²

Proposed Changes:

Section 1: The bill amends s. 322.051, F.S., to provide statutory authorization for DHSMV to waive the fee charged for issuing or renewing a state identification card. This waiver will be for Florida-born inmates.

Section 2: The bill amends s. 382.0255, F.S., to provide a similar waiver of the fee the DOH charges one requesting a certified copy of a Florida birth certificate.

Section 3: The bill amends s. 944.605, F.S., to direct DOC to work with DOH and DHSMV to provide every Florida-born inmate a certified copy of their birth certificate to be used in acquiring a state ID card prior to release. This ID card requirement is not applicable to inmates who currently have a valid driver's license or state ID card or who have an active detainer. If DOC determines that the detainer is likely to be cancelled or if issued will result in incarceration less than 12 months, DOC will work to issue those inmates state ID cards.

Background: Faith- and Character-Based Institutions

The Legislature set forth policy direction for DOC in 1997 when it first addressed faith- and character-based (FCB) programming by enacting s. 944.803, F.S.²³ Over the years this section has been amended, most recently in 2011 when the Legislature directed DOC to focus its FCB programs more at full institutions rather than dormitories within institutions. The statute was also amended in 2011 to provide for peer-to-peer programming such as Alcoholic Anonymous within FCB institutions.²⁴

¹⁶ *Id.*

¹⁷ Fla. Admin. Code Ann. R. 64V-1.0131.

¹⁸ Section 382.025, F.S.

¹⁹ A number of states have various fee waivers for vital records. *See* N.C. Gen. Stat. Ann. § 130A-93.1 (2013); Md. Code Ann., Health-Gen. § 4-217 (2013).

²⁰ *See*, OPPAGA, Report No. 09-44, "Department of Corrections Should Maximize Use of Best Practices in Inmate Rehabilitation Efforts. *See* <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=09-44> (last visited March 18, 2013).

²¹ *Id.* at 5.

²² The departments currently have over 60 prison visits planned for March through December 2013. *See*, e-mail from DHSMV dated March 11, 2013 (on file with Judiciary staff).

²³ *See*, s. 19, ch. 97-78, L.O.F.

²⁴ *See*, s. 1, ch. 2011-185, L.O.F.

DOC currently has only two male FCB institutions at Wakulla and Lawtey Correctional Institutions. They also have 11 FCB programs located in dormitories at 8 institutions. The department has plans to open 6 more dorms in 2013.

Proposed Changes:

Section 4: The bill amends s. 944.803, F.S., to give DOC policy direction to expand its FCB programs into both male institutions to serve their male inmate population. The bill also gives DOC direction to serve its female inmates FCB programs at female institutions.

Background: The Department of Corrections Reentry Programming

Currently, DOC, subject to available funding, provides the following reentry programming to inmates:

- Substance abuse treatment;
- Educational and academic programs;
- Career and technical education; and
- Faith and character-based programs.²⁵

Additionally, DOC is statutorily mandated²⁶ 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.²⁷

Drug Offender Probation

The department 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.²⁸ To be eligible, a defendant must:

- Be a chronic substance abuser;
- Have committed a violation of s. 893.13(2)(a)²⁹ or (6)(a),³⁰ F.S., or other nonviolent felony;^{31,32} and
- Have a Criminal Punishment Code score sheet total of 60 sentence points or fewer.³³

²⁵ "Recidivism Reduction Strategic Plan." Fiscal Year 2009-2014. Department of Corrections.

<http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf> (last visited March 18, 2013).

²⁶ Section 944.7065, F.S.

²⁷ *Supra* "Recidivism Reduction Strategic Plan."

²⁸ Section 948.20(2), F.S.

²⁹ Section 893.13(2)(a), F.S., states that it is unlawful for any person to purchase, possess with intent to purchase, a controlled substance and provides varying penalties based on the type and quantity of such controlled substance.

³⁰ Section 893.13(6)(a), F.S., states that it is unlawful for any person to be in actual or constructive possession of a controlled substance if such controlled substance was unlawfully obtained from a practitioner or pursuant to an invalid prescription or order of a practitioner. Any person who violates this provision commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

³¹ As used in this section, the term "nonviolent felony" means a third degree felony violation under ch. 810, F.S., or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.

³² If such nonviolent felony is committed on or after July 1, 2009.

³³ Section 948.20(1), F.S.

The program may include the use of graduated sanctions consistent with the conditions imposed by the court, such as random drug testing.³⁴ Probationers in this program are subject to probation revocation if they violate any conditions of their probation.³⁵ This can result in an imposition of any sentence that may have originally been imposed before the offender was placed on probation.³⁶ In Fiscal Year 2010-11, 10,099 offenders were on drug offender probation.³⁷

Criminal Sentences

Chapter 921, F.S., is Florida's Criminal Punishment Code that applies to all felony offenses, except capital felonies, committed on or after October 1, 1998. Current law authorizes a judge to impose a split sentence.³⁸ A split sentence is a sentence issued by the court that includes an incarceration and a probation portion of the sentence.

In 1995, the Legislature passed into law the requirement that inmates must serve a minimum of 85% of their court-imposed sentence. The Criminal Punishment Code provides:

The sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law, and may not be shortened if the defendant would consequently serve less than 85 percent of his or her term of imprisonment as provided in s. 944.275(4)(b)3.³⁹

Proposed Changes:

Section 5: The bill directs DOC to establish and administer a reentry program for non-violent drug offenders sentenced to the reentry program by a judge.

Eligibility for program:

The bill sets forth eligibility requirements a judge must find an offender meets before the offender may be sentenced to the reentry program. In order to be eligible, the offender has to have been identified as having a substance abuse problem by the court;⁴⁰ the offender's primary offense must be a 3rd degree felony; and the offender must have never been convicted of any:

- Forcible felony as defined in s. 776.08;
- Offense that requires a person to register as a sexual offender;⁴¹
- Offense listed in s. 775.082(9)(a)1.r., F.S.;⁴²
- Obscenity offense involving a minor or depiction of a minor;⁴³
- Child abuse or neglect offense in ch. 827, F.S.;
- Assault or battery offense described in ss. 784.07, 784.074, 784.075, 784.076, 784.08, 784.083 or 784.085;
- Offense involving the possession or use of a firearm;
- Capital, first or second degree felony; or
- Any of the above offenses committed in another jurisdiction.

Reentry Program — In-Prison Component:

The bill requires DOC to place an inmate sentenced to a reentry program split sentence into their substance abuse treatment program not more than nine months prior to the end of the inmate's

³⁴ Section 948.20(2), F.S.

³⁵ Section 948.06(2)(a), F.S.

³⁶ Section 948.06(2)(e), F.S.

³⁷ Department of Corrections, Community Supervision Admissions, 2010-2011 Agency Statistics, http://www.dc.state.fl.us/pub/annual/1011/stats/csa_prior.html (last visited March 18, 2013).

³⁸ See, s. 944.012, F.S.

³⁹ See, s. 921.002(1)(e), F.S.

⁴⁰ This court determination must be based in part on the judge requesting and reviewing a presentence investigation report prepared pursuant to s. 921.231, F.S.

⁴¹ Pursuant to s. 943.0435, F.S.

⁴² These include any violation of s. 790.07, F.S. (criminal offenses involving possession of weapons), s. 800.04, F.S. (lewd and lascivious offenses against children under 16), s. 827.03, F.S. (child abuse and neglect), s. 827.071, F.S. (sexual performance by a child), or s. 847.0135(5), F.S. (exposing minors to lewd and lascivious conduct online).

⁴³ Specifically, offenses in chapter 847, F.S.

incarceration period of the split sentence. The substance abuse treatment program will last for a minimum of 180 days.

Reentry Program — Drug Offender Probation Component:

The out-of-prison component of the reentry program split sentence includes a one-year drug offender probation sanction. The judge, at the time of sentencing the offender to the reentry program, will impose a sentence that includes drug offender probation. An inmate transitioning into drug offender probation must have first successfully completed the in-prison substance abuse treatment program. If the inmate fails to successfully complete that component of the reentry program, the probation portion of his or her sentence becomes a term of incarceration.

The bill provides that when an inmate is released into drug offender probation all of the standard terms and conditions of regular probation under s. 948.20, F.S., and drug offender probation conditions under s. 948.20, F.S., apply. Additionally, if there is a postadjudicatory drug court in the county to which the offender returns, the inmate may have his or her case transferred to that drug court subject to the drug court judge accepting the case. In such instance, the probation portion of the sentence is transferred to the local drug court. The drug court judge will then maintain jurisdiction over the offender for purposes of compliance with the reentry program.

DOC — Administration:

Although an inmate may meet the eligibility requirements for a judge to sentence him or her to the reentry program, the bill expressly provides an inmate has no right to be so sentenced. The bill provides that no rights are created or conferred upon an inmate by means of DOC administering the reentry program. Similarly, the bill provides that an inmate sentenced to the reentry program, will be removed from the program by DOC under the following circumstances:

- If the inmate commits a violent act;
- If the department determines medical conditions will keep the inmate from participating in the program;
- The inmates sentence is modified or expires;
- DOC reassigns the offender's classification status; or
- DOC determines that removing the inmate from the program is in the best interest of the inmate or for the security of the institution.

Because an inmate has no right to participate in a reentry program, the bill expressly provides that an inmate does not have a cause of action against DOC, a court, state attorney or a victim relating to placement or participation in the reentry program.

The bill requires that an inmate sentenced to the reentry program must comply with Florida's 85% law. This would preclude an inmate from being released from the incarceration portion of his or her sentence prior to meeting the 85% threshold of his prison sanction. Additionally, the bill specifically requires in cases where the inmate fails to complete the in-prison component of the reentry program, and the probation portion of the sentence is changed to a term of incarceration, the inmate must serve 85% of the total incarceration time.

The bill provides DOC authorization to contract out any portion of the reentry program to qualified individuals, agencies or corporations. They are also authorized to establish incentives for the reentry program to promote participation by private-sector employers within the program.

The department, as part of its annual report, must include information on the implementation of the reentry program; the number of offenders sentenced to the program; number of inmates that successfully complete the in-prison and out-of-prison portions of the program; and the recidivism numbers on participating offenders.

B. SECTION DIRECTORY:

Section 1: Amends s. 322.051, F.S., relating to identification cards.

Section 2: Amends s. 382.0255, F.S., relating to fees.

Section 3: Amends s. 944.605, F.S., relating to inmate release; notification.

Section 4: Amends s. 944.803, F.S., relating to faith- and character-based programs.

Section 5: Creates s. 948.0125, F.S., relating to reentry program sentence.

Section 6: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will have a negative fiscal impact on state revenues due to the waiver of the fee for a state ID card and the waiver of the charge for a certified copy of a Florida birth certificate. DOC estimates the following numbers for Florida-born inmates expected to be released in the next few years:

Fiscal Year	Florida Born Calculation of Releases (Based on CJEC Projections)	Estimate to Calculate Costs
FY 12 – 13	14,962	15,500
FY 13 – 14	14,821	15,500
FY 14 – 15	14,604	15,000
FY 15 – 16	14,646	15,000
FY 16 – 17	14,754	15,000
FY 17 – 18	14,945	15,500

Based on these numbers, if certified copies of birth certificates were issued to every Florida-born inmate in the transition process the lost revenue to DOH will be:

- FY 12-13: $14,962 \times \$9 = \$134,658$
- FY 13-14: $14,821 \times \$9 = \$133,389$
- FY 14-15: $14,604 \times \$9 = \$131,436$
- FY 15-16: $14,646 \times \$9 = \$131,814$
- FY 16-17: $14,754 \times \$9 = \$132,786$
- FY 17-18: $14,945 \times \$9 = \$134,586^{44}$

Similarly, the lost revenues to General Revenue for waiving the \$25 fee for issuing a state ID card to every Florida-born inmate upon release would be:

- FY 12-13: $14,962 \times \$25 = \$374,050$
- FY 13-14: $14,821 \times \$25 = \$370,525$
- FY 14-15: $14,604 \times \$25 = \$365,100$
- FY 15-16: $14,646 \times \$25 = \$366,150$
- FY 16-17: $14,754 \times \$25 = \$368,850$
- FY 17-18: $14,945 \times \$25 = \$373,625^{45}$

2. Expenditures:

Anticipated increase in DOC, DOH and DHSMV's workload will be subsumed within existing agency resources.

⁴⁴ Fees charged for issuing a copy of a birth certificate are deposited into a DOH trust fund. Section 382.0255(4), F.S.

⁴⁵ Section 322.21(f), F.S. directs the \$25 fee for issuing a state ID card to the General Revenue Fund. For renewals, \$6 of the \$25 fee goes to the Highway Safety Operating Trust Fund with the remaining \$19 to the General Revenue Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

The implementation and administration of the reentry program may require DOC to promulgate rules. The bill provides DOC with adequate authority to do so.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a