

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 Criminal Justice Committee

BILL: CS/SB 2350

INTRODUCER: Criminal Justice Committee and Senator Dockery

SUBJECT: Criminal Justice

DATE: March 26, 2010

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Clodfelter	Cannon	CJ	Fav/CS
2. _____	_____	JU	_____
3. _____	_____	JA	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill makes a number of changes relating to criminal justice statutes, including:

- Repealing anachronistic statutes that prohibit the Attorney General from collecting a fee from defendants and require sheriffs to live within two miles of the county seat.
- Repealing obsolete statutes that create “criminal quarantine community control” and “community drug punishment centers,” and removing references to the repealed statutes.
- Repealing an unnecessary requirement for the department to assist inmates in completing the forms for restoration of civil rights, since the application process is now automatic.
- Repealing an obsolete statute concerning construction of juvenile corrections facilities by the now-defunct Correctional Privatization Commission.
- Repealing an obsolete statute that authorizes county and municipal law enforcement agencies to operate a sheriff’s training and respect program for certain juvenile offenders, and removing references to the repealed program.

This bill repeals the following sections of the Florida Statutes: 16.07, 30.11, 944.293, 948.034, 948.0345, 957.125 and 985.4891. The bill amends the following sections of the Florida Statutes:

384.34, 796.08, 775.0877, 893.13, 921.187, 944.293, 948.001, 948.04, 948.101, 948.11, 958.046, 985.445, 985.47, 985.483, 985.494, and 985.645.

II. Present Situation:

Prohibition on collecting fee for defending

Section 16.07, F.S., makes it a misdemeanor in office for the Attorney General to take or receive any fee for defending any supposed offender in any of the courts. This law was enacted in 1845, and it is not relevant to current practice.

Sheriff's Place of Residence

Section 30.11, F.S., requires the sheriff or his or her deputy to reside within two miles of the county seat. This law was enacted in 1851, and the need to have the sheriff at such a close distance does not reflect advances in communication and transportation since that time.

Community Supervision

More than 118,000 offenders are actively supervised by the Department of Corrections (department) on some form of community supervision.¹ Florida law recommends community supervision for offenders who do not appear likely to reoffend and who present the lowest danger to the welfare of society. Generally, this includes those offenders whose sentencing score sheet result does not fall into the range recommending incarceration under the Criminal Punishment Code. The two major types of community supervision are probation and community control. Community control is a higher level of supervision that is administered by officers with a statutorily mandated caseload limit.

Criminal Quarantine Community Control

Criminal quarantine community control is a form of community supervision that is available for sentencing offenders who are convicted of criminal transmission of HIV pursuant to s. 775.0877, F.S. It is defined in s. 948.001, F.S., as “intensive supervision, by officers with restricted caseloads, with a condition of 24-hour-per-day electronic monitoring, and a condition of confinement to a designated residence during designated hours.” Section 948.101, F.S., provides that the court must require 24 hour a day electronic monitoring and confinement to a designated residence during designated hours as a condition of criminal quarantine community control. However, no one has been sentenced to criminal quarantine community control since the statutes were enacted in 1993. Offenders who have been convicted of criminal transmission of HIV have historically been sentenced to regular probation.

Community residential drug punishment centers

Section 948.034, F.S., defines community residential drug punishment centers. The statute contemplates that the centers would allow judges to place offenders on community supervision with a requirement to stay at a center as an alternative to a prison sentence. However, no one has ever been sentenced to a community drug punishment center. In fact, the centers were never funded and there are none in existence.

¹ Department of Corrections Monthly Status Report of Florida's Community Supervision Population, January 2010, p. 3.

Restoration of Civil Rights Process

The civil rights of a convicted felon are suspended until restored by pardon or restoration of civil rights. Among the civil rights that are lost are the rights to vote, to hold public office, to serve on a jury, to possess a firearm, and to engage in certain regulated occupations or businesses. The power to restore civil rights is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members pursuant to Article IV, Section 8(a), of the Florida Constitution. The Governor and the Cabinet collectively act as the Clemency Board. The Florida Parole Commission (commission) acts as the agent of the Clemency Board in determining whether offenders are eligible for restoration of rights, investigating applications and conducting hearings when required, and making recommendations to the board.

Section 940.061, F.S., requires the department to: (1) inform and educate inmates and offenders on community supervision about the restoration of civil rights, and (2) assist eligible inmates and offenders on community supervision with the completion of the application for the restoration of civil rights. Section 944.293, F.S., requires the department to obtain the application and any other forms needed to apply for restoration of civil rights, to assist offenders in completing the forms, and to ensure that the forms are forwarded to the governor.

These statutes were enacted when the restoration of civil rights process required persons to fill out and submit paper applications to the commission. Filing of a paper application is no longer required. Since 2001, the department has electronically submitted the names of inmates released from incarceration and offenders terminated from supervision to the commission each month. These lists serve as electronic restoration of civil rights applications. The commission reviews the lists to determine whether a person is eligible for restoration of civil rights without a hearing.

Correctional Privatization Commission

Section 957.125, F.S., authorized the Correctional Privatization Commission to build/operate three youthful offender facilities and later, give two of them to the Department of Juvenile Justice (DJJ) to operate. DJJ no longer operates these facilities, which are now under the authority of the Department of Corrections. The Correctional Privatization Commission was eliminated in 2004 by Chapter 2004-248, Laws of Florida.

Sheriff's Training and Respect Programs

Section 985.4891 F.S., authorizes a county or municipal law enforcement agency to implement and operate a sheriff's training and respect program to provide intensive education, physical training, and rehabilitation program for certain juvenile offenders. The Department of Juvenile Justice indicates that these programs no longer exist.

III. Effect of Proposed Changes:

Section 1 repeals s. 16.07, F.S., which provides that it is a "misdemeanor in office" for the Attorney General to take or receive any fee for defending any supposed offender in any of the courts. The statute dates from 1845 and no longer has any relevance.

Section 2 repeals s. 30.11, F.S., to remove a requirement that the sheriff or his or her deputy must reside within two miles of the county seat. This statute dates from 1851, when communication and transportation was not as efficient as they are today.

Sections 3, 4, 5, 7, 9, 13 and 14 remove references to criminal quarantine community control. This form of community supervision has never been ordered by a sentencing court since its creation in 1993. Currently under s. 775.0877, F.S., a person convicted of criminal transmission of HIV may be sentenced to serve a term of criminal quarantine community control. Section 4 of the bill removes criminal quarantine community control as a sentencing option and instead provides that persons convicted of criminal transmission of HIV must be sentenced as provided in ss. 775.082 (fine), 775.083 (imprisonment), or 775.084 (habitual offender), F.S. Conforming changes are also made in ss. 384.34, 796.08, 921.187, 948.001, 948.101, and 948.11, F.S.

Sections 6, 7, 10, 11, 12 remove references to the obsolete community residential drug punishment centers. Section 6 and 7 amend s. 893.13, F.S., and s. 921.187, F.S., respectively, to remove penalty provisions relating to these centers. Section 10 repeals s. 948.034, F.S., the statute which authorizes and describes the centers. Section 11 repeals s. 948.0345, F.S., which specifies the disposition of fines assessed against offenders sentenced to a center. Section 12 amends s. 948.04, F.S., to remove a reference to s. 948.034, F.S.

Section 8 repeals s. 944.293, F.S., to delete an obsolete requirement that the department obtain forms and assist inmates and offenders with completion of a restoration of civil rights application.

Section 15 repeals s. 957.125, F.S., which gave authority for the now-defunct Correctional Privatization Commission to contract for construction of three correctional facilities for youthful offenders.

Sections 16 through 22 relate to the sheriff's training and respect (STAR) programs for juvenile offenders.

- Section 16 repeals s. 985.4891, F.S., which allows county and municipal law enforcement agencies to operate STAR programs.
- Section 17 amends s. 958.046, F.S., to remove a reference to STAR programs.
- Section 18 amends s. 985.445, F.S., to remove a phrase concerning ineligibility for placement in a STAR program. The amended statute would allow a child to be placed in such a program, although the statute authorizing the programs is being repealed in this bill.
- Sections 19, 20, 21 and 22 amend ss. 985.47, 985.483, 985.494, and 985.645, F.S., respectively, to remove references to s. 985.4891, F.S.

Section 23 establishes an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 18 of the bill amends s. 985.445, F.S., to remove a phrase concerning ineligibility for placement in a STAR program. However, portions of the amended statute would still allow the court to be placed in a STAR program, even though the statute authorizing such programs is repealed by Section 16 of the bill.

VII. Related Issues:

Senate Bill 1284 includes the provisions regarding criminal quarantine community control.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 26, 2010:

Removes a reference to sheriff's training and respect programs in Section 18 of the bill.

B. Amendments:

None.