



Criminal Justice Subcommittee

October 18th, 2011

9:00 AM

404 HOB

REVISED

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Tuesday, October 18, 2011 09:00 am
End Date and Time: Tuesday, October 18, 2011 11:30 am
Location: 404 HOB
Duration: 2.50 hrs

Consideration of the following bill(s):

HB 125 Preventing Deaths from Drug-related Overdoses by Bernard
HB 135 Costs of Prosecution, Investigation, and Representation by Ray
HB 173 Department of Juvenile Justice by Pilon
HB 177 Inmate Reentry by Porth
HB 183 Misdemeanor Pretrial Substance Abuse Programs by Moraitis
HB 189 Unauthorized Copying of Recordings by Young

Presentation on pretrial, in-prison, and post-release substance abuse and mental health programs.

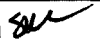
NOTICE FINALIZED on 10/11/2011 16:14 by hudson.jessica

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 125 Preventing Deaths from Drug-related Overdoses

SPONSOR(S): Bernard and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol TK	Cunningham 
2) Health & Human Services Access Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law contains a number of provisions that provide immunity from civil liability to persons in specified instances. Florida law also contains various provisions that allow criminal defendants to have their sentences reduced or suspended in certain instances.

The bill creates s. 893.21, F.S., entitled the "911 Good Samaritan Act," and provides that:

- A person making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the person's seeking medical assistance.
- A person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the overdose and the need for medical assistance.

The bill states that the above-described protection from prosecution for possession offenses may not be grounds for suppression of evidence in other criminal prosecutions.

The bill also adds the following to the list of mitigating circumstances a judge may consider when departing from the lowest permissible sentence:

- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

The bill does not appear to have a fiscal impact and is effective on October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida law currently contains a number of provisions that provide immunity from civil liability to persons in specified instances. Florida law also contains various provisions that allow criminal defendants to have his or her sentence reduced or suspended in certain instances. A description of these provisions follows.

Florida Good Samaritan Laws

The Good Samaritan Act, found in s. 768.13, F.S., provides immunity from civil liability for those who render emergency care and treatment to individuals in need of assistance. The statute provides immunity from liability for civil damages to any person who:

- Gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situations or at the scene of an emergency, without objection of the injured victim, if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.¹
- Participates in emergency response activities of a community emergency response team if that person acts prudently and within scope of his or her training.²
- Gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.³

Section 768.1325, F.S., provides that a person is immune from civil liability for any harm resulting from the use or attempted use of an automated external defibrillator device on a victim of a perceived medical emergency, without objection of the victim.

Section 768.1355, F.S., entitled the Florida Volunteer Protection Act, provides that any person who volunteers to perform any service for any nonprofit organization without compensation will incur no civil liability for any act or omission that results in personal injury or property damage if:

- The person was acting in good faith within the scope of any official duties performed under the volunteer service and the person was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- The injury or damage was not caused by any wanton or willful misconduct on the part of the person in the performance of the duties.

Reduction or Suspension of Criminal Sentence

Section 921.186, F.S., allows the state attorney to move the sentencing court to reduce or suspend the sentence of persons convicted of a felony who provide substantial assistance in the identification, arrest, or conviction of any accomplice, accessory, coconspirator, or principal of the defendant; or any other person engaged in felonious criminal activity.

¹ Section 768.13(2)(a), F.S.

² Section 768.13(2)(d), F.S.

³ Section 768.13(3), F.S.

Mitigating Circumstances

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart"⁴ from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.⁵

The points are added in order to determine the "lowest permissible sentence" for the offense. A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are "circumstances or factors that reasonably justify the downward departure."⁶

Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include:

- The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
- The defendant acted under extreme duress or under the domination of another person.
- The defendant cooperated with the state to resolve the current offense or any other offense.⁷

Currently, there are no mitigating circumstances related to defendants who make a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

Possession of a Controlled Substance

Chapter 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act, makes it a crime for a person to possess⁸ a controlled substance.⁹ The severity of the crime depends on the type and quantity of the controlled substance possessed. For example:

- Actual or constructive possession of a controlled substance, unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice, is a third degree felony punishable¹⁰ by up to 5 years in prison and a fine up to \$5,000.¹¹
- Possession of less than 20 grams of cannabis¹² is a first degree misdemeanor punishable¹³ by up to 1 year in prison and a fine up to \$1,000.¹⁴
- Possession of more than 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), F.S., or any combination thereof, or any mixture containing any such substance is a first degree felony punishable¹⁵ by up to 30 years in prison and a fine up to \$10,000.¹⁶

⁴ Section 921.0022, F.S.

⁵ Section 921.0024, F.S., provides that a defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; and the defendant's prior record and other aggravating factors.

⁶ Section 921.0026, F.S.

⁷ *Id.*

⁸ Section 893.02(18), F.S., states that possession "includes temporary possession for the purpose of verification or testing, irrespective of dominion or control."

⁹ Section 893.02(4), F.S., defines "controlled substance" as "any substance named or described in Schedules I-V of s. 893.03, F.S."

¹⁰ As provided in ss. 775.082, 775.083, or 775.084, F.S.

¹¹ Section 893.13(6)(a), F.S.

¹² For the purposes of s. 893.13(6)(b), F.S., "cannabis" is defined as "all parts of any plant of the genus *Cannabis*, whether growing or not, and the seeds thereof."

¹³ As provided in ss. 775.082 or 775.083 F.S.

¹⁴ Section 893.13(6)(b), F.S.

¹⁵ As provided in ss. 775.082, 775.083, or 775.084, F.S.

¹⁶ Section 893.13(6)(c), F.S.

911 Good Samaritan Laws in Other States

In 2007 New Mexico enacted the 911 Good Samaritan Act, which prevents prosecution for drug possession based on evidence "gained as a result of the seeking of medical assistance" to treat a drug overdose.¹⁷ This law was the first of its kind in the country.¹⁸

While many states have considered similar Good Samaritan immunity legislation, Alaska, Connecticut, New York, and Washington are the only other states to have passed such a law.¹⁹

Effect of the Bill

The bill is cited as the "911 Good Samaritan Act" and contains the following "whereas clauses:"

- Whereas, some research suggests that in a majority of cases of fatal drug overdose another person was aware of or present during the decedent's fatal drug use and that in one third of the cases someone recognized the decedent's distress,
- Whereas, many people cite fear of police involvement or fear of arrest as their primary reason for not seeking immediate help for a person thought to be experiencing a drug overdose, and
- Whereas, it is in the public interest to encourage a person who is aware of or present during another individual's drug overdose to seek medical assistance for that individual.

The bill provides that a person who in good faith seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the person's seeking medical assistance.

The bill also provides that a person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the overdose and the need for medical assistance.

The bill states that the above-described protection from prosecution for possession offenses may not be grounds for suppression of evidence in other criminal prosecutions.

The bill also adds the following to the list of mitigating circumstances a judge may consider when departing from the lowest permissible sentence:

- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

B. SECTION DIRECTORY:

Section 1. Provides this act may be cited as the "911 Good Samaritan Act."

Section 2. Creates s. 893.21, F.S., relating to drug-related overdoses; medical assistance; immunity from prosecution.

Section 3. Amends s. 921.0026, F.S., relating to mitigating circumstances.

Section 4. Provides an effective date of October 1, 2012.

¹⁷ New Mexico Statutes Annotated section 30-31-27.1.

¹⁸ "Preventing Overdose, Saving Lives." Drug Policy Alliance. March 2009. <http://drugpolicy.org/library/overdose2009.cfm> (last visited on October 11, 2011).

¹⁹ Alaska Statute section 12.55.155(d)(19). Effective September 2008; Connecticut Public Act No. 11-210. Effective 2011; Laws of New York s. 220.78. Effective September 2011; Revised Code of Washington 69.50.315. Effective June 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

Generally, possession of controlled substances is a felony offense. The bill precludes a person from being charged with possession of controlled substances in specified instances. During the 2011 legislative session, the Criminal Justice Impact Conference (CJIC) determined that a bill identical to this one would have no impact on the Department of Corrections.²⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Possession of less than 20 grams of cannabis is a first degree misdemeanor. The bill could have a positive impact on local jails in that it precludes a person from being charged with possession of cannabis in specified instances. However, because CJIC determined that an identical bill filed during the 2011 legislative session would have "no impact" on prison beds;²¹ the jail bed impact will also likely be negligible.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²⁰ Criminal Justice Impact Conference. HB 91. March 2, 2011.

²¹ *Id.*

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1 A bill to be entitled
2 An act relating to preventing deaths from drug-related
3 overdoses; providing a short title; creating s.
4 893.21, F.S.; providing that a person acting in good
5 faith who seeks medical assistance for an individual
6 experiencing a drug-related overdose may not be
7 charged, prosecuted, or penalized for specified
8 offenses in certain circumstances; providing that a
9 person who experiences a drug-related overdose and
10 needs medical assistance may not be charged,
11 prosecuted, or penalized for specified offenses in
12 certain circumstances; providing that the protections
13 from prosecution for specified offenses are not
14 grounds for suppression of evidence in other
15 prosecutions; amending s. 921.0026, F.S.; amending
16 mitigating circumstances under which a departure from
17 the lowest permissible criminal sentence is reasonably
18 justified to include circumstances in which a
19 defendant was making a good faith effort to obtain or
20 provide medical assistance for an individual
21 experiencing a drug-related overdose; providing an
22 effective date.

23
24 WHEREAS, some research suggests that in a majority of cases
25 of fatal drug overdose another person was aware of or present
26 during the decedent's fatal drug use and that in one-third of
27 the cases someone recognized the decedent's distress, and

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WHEREAS, many people cite fear of police involvement or fear of arrest as their primary reason for not seeking immediate help for a person thought to be experiencing a drug overdose, and

WHEREAS, it is in the public interest to encourage a person who is aware of or present during another individual's drug overdose to seek medical assistance for that individual, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "911 Good Samaritan Act."

Section 2. Section 893.21, Florida Statutes, is created to read:

893.21 Drug-related overdoses; medical assistance; immunity from prosecution.—

(1) A person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized pursuant to this chapter for possession of a controlled substance if the evidence for possession of a controlled substance was obtained as a result of the person's seeking medical assistance.

(2) A person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized pursuant to this chapter for possession of a controlled substance if the evidence for possession of a

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controlled substance was obtained as a result of the overdose
and the need for medical assistance.

(3) Protection in this section from prosecution for
possession offenses under this chapter may not be grounds for
suppression of evidence in other criminal prosecutions.

Section 3. Paragraph (n) is added to subsection (2) of
section 921.0026, Florida Statutes, to read:

921.0026 Mitigating circumstances.—This section applies to
any felony offense, except any capital felony, committed on or
after October 1, 1998.

(2) Mitigating circumstances under which a departure from
the lowest permissible sentence is reasonably justified include,
but are not limited to:

(n) The defendant was making a good faith effort to obtain
or provide medical assistance for an individual experiencing a
drug-related overdose.

Section 4. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 135 Costs of Prosecution, Investigation, and Representation

SPONSOR(S): Ray

TIED BILLS: None **IDEN./SIM. BILLS:** SB 210

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol <i>TK</i>	Cunningham <i>SM</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Currently, convicted persons are liable for costs of prosecution, as well as costs of representation. These costs may be imposed at a rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases. The court may set a higher amount upon showing of sufficient proof of higher fees or costs incurred.

The bill makes defendants whose charges are dismissed by the court after the successful completion of a misdemeanor or felony pretrial substance abuse education and treatment intervention program or treatment-based drug court liable for payment of costs of prosecution and costs of representation.

The bill adds the costs of prosecution and representation to the list of costs a clerk of the court is allowed to withhold from the return of a cash bond posted on behalf of a criminal defendant.

The bill also requires:

- The clerk of the court to collect and dispense cost payments in any case, regardless of whether the case takes place before the judge in open court or in any other manner.
- The court to impose the costs of prosecution and investigation and prohibits these costs from being converted into any form of court-ordered community service in lieu of the financial obligation.
- The costs of prosecution to be assessed from juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

This bill appears to have a positive fiscal impact on state attorneys and public defenders.

This bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Costs of Prosecution

Section 938.27, F.S., provides that convicted persons¹ are liable for payment of the costs of prosecution, including any investigative costs incurred by a law enforcement agency, fire department, the Department of Financial Services, or the Office of Financial Regulation of the Financial Services Commission.²

Costs of prosecution may be imposed at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases unless the prosecutor proves that costs are higher in the particular case before the court.³ The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.⁴

The clerk of the court (clerk) collects and dispenses cost payments in every case.⁵

Costs of Representation

Section 938.29, F.S., provides that convicted persons⁶ are liable for payment of the \$50 application fee under s. 27.52(1)(b), F.S.,⁷ and attorney's fees and costs if he or she received assistance from the public defender's office, a special assistant public defender, the office of criminal conflict and civil regional counsel, or a private conflict attorney, or who has received due process services after being found indigent for costs.⁸

Costs of representation may be imposed at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases.⁹ The court may set a higher amount upon showing of sufficient proof of higher fees or costs incurred.¹⁰ The costs of representation are deposited into the Indigent Criminal Defense Trust Fund.¹¹

The court may order payment of the assessed application fee and attorney's fees and costs as a condition of probation, of suspension of sentence, or of withholding the imposition of sentence.¹² The clerk within the county where the defendant was tried or received services from a public defender is responsible for enforcing, satisfying, compromising, settling, subordinating, releasing or otherwise disposing of any debt or lien imposed.¹³

Pretrial Intervention Programs

Defendants charged with certain offenses may be eligible for pretrial intervention programs, such as misdemeanor or felony pretrial substance abuse education and treatment intervention¹⁴ or treatment-

¹ Conviction, for this purpose, includes a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld. Section 937.27(1), F.S.

² Section 938.27(1), F.S.

³ Section 938.27(8), F.S.

⁴ *Id.*

⁵ Section 938.27(6), F.S.

⁶ Conviction, for this purpose, includes a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld. Section 937.29(1)(a), F.S.

⁷ Section 27.52(1), F.S., provides that a person seeking the appointment of a public defender under s. 27.51, F.S., based upon an inability to pay, must apply to the clerk of the court for a determination of indigent status.

⁸ Section 938.29(1)(a), F.S.

⁹ This includes proceedings in which the underlying offense was a violation of probation or community control. Section 938.29(1), F.S.

¹⁰ *Id.*

¹¹ Section 27.562, F.S.

¹² Section 938.29(1)(c), F.S.

¹³ Section 938.29(3), F.S.

¹⁴ Sections 948.16 and 948.08(6), F.S., respectively.

based drug court.¹⁵ Defendants who successfully complete these programs have the charges against them dismissed by the court.¹⁶ Because the charges are dismissed by the court, these defendants are not liable for the payment of costs of prosecution or representation.

Effect of the Bill

The bill makes defendants liable for the payment of costs of prosecution, including investigative costs, and costs of representation when charges are dismissed by the court after successfully completing a misdemeanor or felony pretrial substance abuse education and treatment intervention program or treatment-based drug court.

The bill requires the clerk to collect and dispense cost of prosecution payments in any case regardless of whether the disposition of the case takes place before the judge in open court or in any other manner provided by law.

Costs Converted into Community Service

Section 938.30(2), F.S., authorizes a judge to convert any statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining a person's inability to pay.

In FY 09-10, \$8,610,731 in court-related fees, charges, costs, fines, and other monetary penalties were converted into community service under s. 938.30(2), F.S.¹⁷

Effect of the Bill

Notwithstanding any other provision or law, court rule, or administrative order, the bill requires the court to impose the costs of prosecution and investigation and prohibits these costs from being converted into any form of court-ordered community service in lieu of the financial obligation.

Cash Bonds

Section 903.286, F.S., authorizes the clerk to withhold the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent¹⁸ to pay the following:

- Court fees,
- Court costs, and
- Criminal penalties.

If sufficient funds are not available to pay the above costs, the clerk must immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246, F.S.¹⁹

All cash bond forms must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk for the payment of the above costs on behalf of the criminal defendant regardless of who posted the funds.²⁰

Effect of the Bill

The bill adds the "costs of prosecution, costs of representation"²¹ to the list of costs a clerk is allowed to withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. If sufficient funds are not available to pay such costs, the bill requires the clerk to obtain payment from a defendant or require the defendant to enroll in a payment plan. The bill also

¹⁵ Section 948.08(6), F.S. *See* s. 397.334, F.S.

¹⁶ Sections 948.16(2) and 948.08(6)(c), F.S.

¹⁷ "PAYMENT OF COURT-RELATED FEES, CHARGES, COSTS, FINES and OTHER MONETARY PENALTIES, Section 28.246(1), Florida Statutes ANNUAL REPORT." The Florida Association of Court Clerks and Comptrollers. FISCAL YEAR: October 1, 2009 to September 30, 2010.

¹⁸ Licensed pursuant to ch. 648, F.S.

¹⁹ Section 903.286(1), F.S.

²⁰ Section 903.286(2), F.S.

²¹ As provided by s. 27.52, F.S.

requires the cash bond form notice to include the costs of prosecution and representation as funds that are subject to forfeiture and withholding.

Delinquency Cases

Currently, juveniles who are adjudicated delinquent or have had adjudication of delinquency withheld are not required to pay the costs of prosecution.

Effect of the Bill

The bill requires that costs of prosecution²² be assessed against juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

B. SECTION DIRECTORY:

Section 1. Amends s. 903.286, F.S., relating to return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.

Section 2. Amends s. 938.27, F.S., relating to judgment for costs on conviction.

Section 3. Amends s. 938.29, F.S., relating to legal assistance; lien for payment of attorney's fees or costs.

Section 4. Amends s. 985.032, F.S., relating to legal representation for delinquency cases.

Section 5. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill appears to have a positive impact on state attorneys and public defenders for the following reasons:

- 1) The clerk is required to collect and dispense cost payments in any case regardless of whether the disposition of the case takes place before the judge in open court or in any other manner provided by law. This may result in more costs of prosecution being collected and paid to state attorneys.
- 2) The costs of prosecution and investigation will be prohibited from being converted into court-ordered community service. This may result in more costs of prosecution being collected and paid to state attorneys.
- 3) The costs of prosecution will be assessed against juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. This will likely result in a positive fiscal impact on state attorneys as these costs were not assessed in these specific cases in the past.
- 4) The costs of prosecution and representation are now allowed to be withheld by the clerk from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. This will likely result in a positive fiscal impact for state attorneys and public defenders as the cost of prosecution and representation will be deducted from any cash bonds posted on behalf of a criminal defendant.
- 5) The costs of prosecution and representation will now be assessed against defendants who successfully complete pretrial intervention programs. This will likely result in a positive fiscal impact for state attorneys and public defenders as these costs were not assessed in these specific cases in the past.

²² As provided in s. 938.27, F.S.

2. Expenditures:

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

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:

Defendants who successfully complete pretrial intervention programs and juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld will now be assessed costs of prosecution and representation.

The bill prohibits costs of prosecution from being converted into court-ordered community service. Defendants will now be responsible for paying this cost as oppose to working the debt off through community service.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1 of the bill allows the clerk to withhold costs of representation "as provided by s. 27.52, F.S.," from the return of a cash bond. Section 27.52, F.S., only references the \$50 application fee for court appointed counsel. If the intent was to include all costs of representation, such as attorney's fees, the reference should be changed to s. 938.29, F.S.

Section 938.27, F.S., is amended to prohibit the costs of prosecution and investigation from being converted into any form of court-ordered community service in lieu of the financial obligation. This change may be more aptly made in s. 938.30, F.S., which provides the court with this kind of discretion.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
2 An act relating to costs of prosecution,
3 investigation, and representation; amending s.
4 903.286, F.S.; providing for the withholding of unpaid
5 costs of prosecution and representation from the
6 return of a cash bond posted on behalf of a criminal
7 defendant; requiring a notice on bond forms of such
8 possible withholding; amending s. 938.27, F.S.;
9 providing liability for the cost of prosecution and
10 investigation for persons whose cases are disposed of
11 under specified provisions; requiring courts to impose
12 the costs of prosecution and investigation;
13 prohibiting the court from converting the costs of
14 prosecution and investigation to any form of community
15 service; clarifying the types of cases that are
16 subject to the collection and dispensing of cost
17 payments by the clerk of the court; amending s.
18 938.29, F.S.; providing liability for attorney's fees
19 and costs for persons whose cases are disposed of
20 under specified provisions; amending s. 985.032, F.S.;
21 providing for assessment of costs of prosecution
22 against a juvenile who has been adjudicated delinquent
23 or has adjudication of delinquency withheld; providing
24 an effective date.

26 Be It Enacted by the Legislature of the State of Florida:

28 Section 1. Section 903.286, Florida Statutes, is amended

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to read:

903.286 Return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.—

(1) Notwithstanding s. 903.31(2), the clerk of the court shall withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent licensed pursuant to chapter 648 sufficient funds to pay any unpaid costs of prosecution, costs of representation as provided by s. 27.52, court fees, court costs, and criminal penalties. If sufficient funds are not available to pay all unpaid costs of prosecution, costs of representation as provided by s. 27.52, court fees, court costs, and criminal penalties, the clerk of the court shall immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246.

(2) All cash bond forms used in conjunction with the requirements of s. 903.09 must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk of the court for the payment of costs of prosecution, costs of representation as provided by s. 27.52, court fees, court costs, and criminal penalties on behalf of the criminal defendant regardless of who posted the funds.

Section 2. Section 938.27, Florida Statutes, is amended to read:

938.27 Judgment for costs of prosecution and investigation ~~on conviction.~~—

(1) In all criminal and violation-of-probation or community-control cases, convicted persons and persons whose cases are disposed of pursuant to s. 948.08(6)(c) or s.

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948.16(2) are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission, if requested by such agencies. The court shall include these costs in every judgment rendered against the convicted person. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

(2)(a) Notwithstanding any other law, court rule, or administrative order, the court shall impose upon the defendant the costs of prosecution and investigation. The costs of prosecution and investigation may not be converted to any form of court-ordered community service to be served in lieu of the obligation to pay the costs of prosecution and investigation.

(b) ~~(a)~~ The court shall impose the costs of prosecution and investigation notwithstanding the defendant's present ability to pay. The court shall require the defendant to pay the costs within a specified period or in specified installments.

(c) ~~(b)~~ The end of such period or the last such installment shall not be later than:

1. The end of the period of probation or community control, if probation or community control is ordered;
2. Five years after the end of the term of imprisonment imposed, if the court does not order probation or community

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control; or

3. Five years after the date of sentencing in any other case.

However, in no event shall the obligation to pay any unpaid amounts expire if not paid in full within the period specified in this paragraph.

(d)~~(e)~~ If not otherwise provided by the court under this section, costs shall be paid immediately.

(3) If a defendant is placed on probation or community control, payment of any costs under this section shall be a condition of such probation or community control. The court may revoke probation or community control if the defendant fails to pay these costs.

(4) Any dispute as to the proper amount or type of costs shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.

(5) Any default in payment of costs may be collected by any means authorized by law for enforcement of a judgment.

(6) The clerk of the court shall collect and dispense cost payments in any case regardless of whether the disposition of the case takes place before the judge in open court or in any other manner provided by law.

113 (7) Investigative costs that are recovered shall be
114 returned to the appropriate investigative agency that incurred
115 the expense. Such costs include actual expenses incurred in
116 conducting the investigation and prosecution of the criminal
117 case; however, costs may also include the salaries of permanent
118 employees. Any investigative costs recovered on behalf of a
119 state agency must be remitted to the Department of Revenue for
120 deposit in the agency operating trust fund, and a report of the
121 payment must be sent to the agency, except that any
122 investigative costs recovered on behalf of the Department of Law
123 Enforcement shall be deposited in the department's Forfeiture
124 and Investigative Support Trust Fund under s. 943.362.

125 (8) Costs for the state attorney shall be set in all cases
126 at no less than \$50 per case when a misdemeanor or criminal
127 traffic offense is charged and no less than \$100 per case when a
128 felony offense is charged, including a proceeding in which the
129 underlying offense is a violation of probation or community
130 control. The court may set a higher amount upon a showing of
131 sufficient proof of higher costs incurred. Costs recovered on
132 behalf of the state attorney under this section shall be
133 deposited into the State Attorneys Revenue Trust Fund to be used
134 during the fiscal year in which the funds are collected, or in
135 any subsequent fiscal year, for actual expenses incurred in
136 investigating and prosecuting criminal cases, which may include
137 the salaries of permanent employees, or for any other purpose
138 authorized by the Legislature.

139 Section 3. Paragraph (a) of subsection (1) of section
140 938.29, Florida Statutes, is amended to read:

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938.29 Legal assistance; lien for payment of attorney's fees or costs.—

(1)(a) A defendant who is convicted of a criminal act or a violation of probation or community control or whose case is disposed of pursuant to s. 948.08(6)(c) or s. 948.16(2) and who has received the assistance of the public defender's office, a special assistant public defender, the office of criminal conflict and civil regional counsel, or a private conflict attorney, or who has received due process services after being found indigent for costs under s. 27.52, shall be liable for payment of the assessed application fee under s. 27.52 and attorney's fees and costs. Attorney's fees and costs shall be set in all cases at no less than \$50 per case when a misdemeanor or criminal traffic offense is charged and no less than \$100 per case when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher fees or costs incurred. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld. The court shall include these fees and costs in every judgment rendered against the convicted person.

Section 4. Section 985.032, Florida Statutes, is amended to read:

985.032 Legal representation for delinquency cases.—

(1) For cases arising under this chapter, the state

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169 attorney shall represent the state.

170 (2) A juvenile who has been adjudicated delinquent or has
 171 adjudication of delinquency withheld shall be assessed costs of
 172 prosecution as provided in s. 938.27.

173 Section 5. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 173 Department of Juvenile Justice

SPONSOR(S): Pilon and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 504

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Williams <i>AW</i>	Cunningham <i>SC</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

During the 2011 Legislative Session, CS/SB 618 passed the legislature which repealed numerous provisions relating to serious or habitual juvenile offenders and serious or habitual offender programs (SHOPs). According to the Department of Juvenile Justice, SHOPs had a long history of being underutilized, and the changes made by CS/SB 618 more accurately reflected the practices of the department.

The bill amends numerous sections of statute in chapters 984 and 985, F.S., to delete references to serious or habitual juvenile offenders and SHOPs. These changes conform the statutes to the repeals made by CS/SB 618.

In addition, the bill:

- Authorizes the court to commit a child who has been adjudicated delinquent to Department of Juvenile Justice for placement in a mother-infant program; and
- Provides authority for the Department of Juvenile Justice, at the secretary's discretion, to pay up to \$5,000 towards the basic funeral expenses for a youth who dies while in custody of the department and whose parents or guardians are indigent and unable to pay for such expenses.

The bill does not appear to have a fiscal impact and is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Serious or Habitual Juvenile Offenders and Programs

During the 2011 Legislative Session, CS/SB 618 passed the legislature¹ which repealed numerous provisions relating to serious or habitual juvenile offenders and serious or habitual offender programs (SHOPs). According to the Department of Juvenile Justice (DJJ), SHOPs had a long history of being underutilized, and the changes made by CS/SB 618 more accurately reflected the practices of DJJ.²

Effect of the Bill

The bill amends the following sections of statute to delete references to serious or habitual juvenile offenders and SHOPs:

- Section 984.03(48), F.S., (defining a SHOP);
- Section 985.14, F.S., (referring to assessment for placement in a SHOP);
- Section 985.441, F.S., (referring to juvenile placement in a SHOP); and
- Section 985.0301, F.S., (deleting references to SHOPs).

These changes conform the statutes to the repeals made by CS/SB 618.

Commitment – Mother-Infant Programs

Section 985.441, F.S., authorizes a court that has jurisdiction of an adjudicated delinquent child to commit the child to:

- A licensed child-caring agency willing to receive the child.
- DJJ at a restrictiveness level defined in s. 985.03, F.S.
- DJJ for placement in a program/facility for serious or habitual juvenile offenders.
- DJJ for placement in a program or facility for juvenile sexual offenders.

Currently, DJJ operates a 20-bed mother-infant program called Women in Need of Greater Strength for Life (WINGS) in Miami-Dade County.³ The program serves pregnant and postpartum females ages 14-19 with the objective of:

- Providing a structured and supervised transition from residential placement to the community; and
- Closely monitoring the youth to ensure public safety.⁴

At this time, there is no statutory provision allowing a court to commit a child who has been adjudicated delinquent to a mother-infant program.

Effect of the Bill

The bill amends s. 985.441, F.S., to authorize the court to commit a child to DJJ for placement in a mother-infant program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents. The bill requires DJJ's mother-infant program to be licensed as a childcare facility under s. 402.308, F.S. The bill also requires the program to provide the services and support necessary to enable the committed juvenile mothers to provide for the needs of their infants. An infant, upon agreement of the mother, may accompany the mother in the program.

¹ Chapter 2011-70, L.O.F.

² Department of Juvenile Justice 2011 Agency Proposal (on file with the House Criminal Justice Subcommittee staff).

³ Department of Juvenile Justice, WINGS for Life.

⁴ http://www.djj.state.fl.us/Residential/Facilities/south_facilities/WINGS_FOR_LIFE.html (last visited on October 11, 2011).

⁴ *Id.*

Juvenile Funeral Expenses

On July 10, 2011, Eric Perez died while in the care of DJJ at a state detention facility in West Palm Beach.⁵ At the time, DJJ had an internal policy authorizing DJJ to pay up to \$5,000 in funeral expenses when a youth died in their custody and the parents or guardians were indigent and unable to pay such expenses.⁶ Citing this policy, DJJ sought to pay for a portion of Eric Perez's funeral expenses. However, according to DJJ, the Department of Financial Services (DFS) would not process the payment based on DFS's determination that there was no statutory authority which allowed DJJ to make such payment.⁷

According to DJJ, when a state agency is responsible for the safety and welfare of youth, under some circumstances, it may be beneficial to both community relations and in the context of potential litigation, to offer financial assistance to indigent parents or guardians to assist with the burial expenses of a youth.⁸ Other states have authorized state agencies to pay for such expenses in similar instances.⁹

Effect of the Bill

The bill amends s. 985.601, F.S., to authorize DJJ, at the secretary's discretion, to pay up to \$5,000 toward the basic funeral expenses for a youth who dies while in the custody of DJJ and whose parents or guardians are indigent and for which no other funding is available.

B. SECTION DIRECTORY:

Section 1. Amends s. 984.03., F.S., relating to definitions.

Section 2. Amends s. 985.14, F.S., relating to intake and case management system.

Section 3. Amends s. 985.441, F.S., relating to commitment.

Section 4. Amends s. 985.601, F.S., relating to administering the juvenile justice continuum.

Section 5. Amends s. 985.0301, F.S., relating to jurisdiction.

Section 6. The bill is effective July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill authorizes DJJ, at the secretary's discretion, to pay up to \$5,000 toward the basic funeral expenses for a youth who dies while in the custody of DJJ and whose parents or guardians are indigent and for which no other funding is available. DJJ reports that this bill will not have a fiscal impact.¹⁰

⁵ *Florida finance chief won't pay for funeral of teen who died in lockup*. The Miami Herald. July 29, 2011. <http://www.miamiherald.com/2011/07/29/2337038/florida-finance-chief-wont-pay.html#storylink=misearch> (last visited on October 11, 2011).

⁶ Phone conversation with Ana Maria Sanchez, Legislative Affairs Director, Department of Juvenile Justice. October 11, 2011. *See also*, DJJ Analysis HB 173, 2012. (On file with House Criminal Justice Subcommittee staff).

⁷ *Id.*

⁸ DJJ Analysis HB 173, 2012. (On file with House Criminal Justice Subcommittee staff).

⁹ The state of Tennessee's Department of Children's Services Administrative Policies and Procedures provides that the department will provide for a funeral and burial for a child who dies in custody if the parent/guardian or next of kin cannot be located or cannot afford to pay. *See*, State of Tennessee, Department of Children's Services Administrative Policies and Procedures: 20.29. www.tn.gov/youth/dcsguide/policies/chap20/20.29.pdf (last visited on October 11, 2011).

¹⁰ DJJ Analysis HB 173, 2012. (On file with House Criminal Justice Subcommittee staff).

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:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 985.64, F.S., requires DJJ to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of ch. 985, F.S. The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As drafted, the bill amends s. 985.0301(5)(a), (b), (c), (e), and (g)1., F.S., to delete references to serious or habitual juvenile offenders and SHOPS. However, the bill does not remove language in ss. 985.0301(5)(g)2., 985.601(3)(a), and 985.688(2), F.S., that refers to serious or habitual juvenile offenders and/or SHOPS. If the intent is to remove all references to serious and habitual juvenile offenders and SHOPS, these sections of statute should be amended accordingly.

The bill amends s. 985.441, F.S., to authorize the court to commit a child to DJJ for placement in a mother-infant program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents. The bill provides that such program must be licensed as a childcare facility under s. 402.308, F.S., and requires the program to provide the services and support necessary to enable the committed juvenile mothers to provide for the needs of the infants. However, the bill does not set forth any additional requirements or criteria that a mother-infant program must satisfy. Without further legislative directive, the structure and components of mother-infant programs could vary greatly.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
2 An act relating to the Department of Juvenile Justice;
3 amending ss. 984.03 and 985.14, F.S.; deleting
4 obsolete references; amending s. 985.441, F.S.;
5 deleting an obsolete provision; authorizing the
6 department to place a juvenile adjudicated delinquent
7 in a mother-infant program designed to serve the needs
8 of juvenile mothers or expectant juvenile mothers;
9 providing requirements for such a program; amending s.
10 985.601, F.S.; authorizing the department, at the
11 secretary's discretion, to pay up to a specified
12 amount toward the basic funeral expenses for a youth
13 who dies while in the custody of the department and
14 whose parents or guardians are indigent and for which
15 no other funding is available; amending s. 985.0301,
16 F.S.; conforming a cross-reference; deleting obsolete
17 references; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsections (49) through (56) of section
22 984.03, Florida Statutes, are renumbered as subsections (48)
23 through (55), respectively, and present subsection (48) of that
24 section is amended to read:

25 984.03 Definitions.—When used in this chapter, the term:
26 ~~(48) "Serious or habitual juvenile offender program" means~~
27 ~~the program established in s. 985.47.~~

28 Section 2. Paragraph (a) of subsection (3) of section

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29 985.14, Florida Statutes, is amended to read:

30 985.14 Intake and case management system.—

31 (3) The intake and case management system shall facilitate
32 consistency in the recommended placement of each child, and in
33 the assessment, classification, and placement process, with the
34 following purposes:

35 (a) An individualized, multidisciplinary assessment
36 process that identifies the priority needs of each individual
37 child for rehabilitation and treatment and identifies any needs
38 of the child's parents or guardians for services that would
39 enhance their ability to provide adequate support, guidance, and
40 supervision for the child. This process shall begin with the
41 detention risk assessment instrument and decision, shall include
42 the intake preliminary screening and comprehensive assessment
43 for substance abuse treatment services, mental health services,
44 retardation services, literacy services, and other educational
45 and treatment services as components, additional assessment of
46 the child's treatment needs, and classification regarding the
47 child's risks to the community ~~and, for a serious or habitual~~
48 ~~delinquent child, shall include the assessment for placement in~~
49 ~~a serious or habitual delinquent children program under s.~~

50 ~~985.47.~~ The completed multidisciplinary assessment process shall
51 result in the predisposition report.

52 Section 3. Subsection (1) of section 985.441, Florida
53 Statutes, is amended to read:

54 985.441 Commitment.—

55 (1) The court that has jurisdiction of an adjudicated
56 delinquent child may, by an order stating the facts upon which a

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determination of a sanction and rehabilitative program was made at the disposition hearing:

(a) Commit the child to a licensed child-caring agency willing to receive the child; however, the court may not commit the child to a jail or to a facility used primarily as a detention center or facility or shelter.

(b) Commit the child to the department at a restrictiveness level defined in s. 985.03. Such commitment must be for the purpose of exercising active control over the child, including, but not limited to, custody, care, training, monitoring for substance abuse, electronic monitoring, and treatment of the child and release of the child from residential commitment into the community in a postcommitment nonresidential conditional release program. If the child is not successful in the conditional release program, the department may use the transfer procedure under subsection (4).

~~(c) Commit the child to the department for placement in a program or facility for serious or habitual juvenile offenders in accordance with s. 985.47.~~

~~1. Following a delinquency adjudicatory hearing under s. 985.35 and a delinquency disposition hearing under s. 985.433 that results in a commitment determination, the court shall, on its own or upon request by the state or the department, determine whether the protection of the public requires that the child be placed in a program for serious or habitual juvenile offenders and whether the particular needs of the child would be best served by a program for serious or habitual juvenile offenders as provided in s. 985.47. The determination shall be~~

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made under ss. 985.47(1) and 985.433(7).

~~2. Any commitment of a child to a program or facility for serious or habitual juvenile offenders must be for an indeterminate period of time, but the time may not exceed the maximum term of imprisonment that an adult may serve for the same offense.~~

(c)~~(d)~~ Commit the child to the department for placement in a program or facility for juvenile sexual offenders in accordance with s. 985.48, subject to specific appropriation for such a program or facility.

1. The child may only be committed for such placement pursuant to determination that the child is a juvenile sexual offender under the criteria specified in s. 985.475.

2. Any commitment of a juvenile sexual offender to a program or facility for juvenile sexual offenders must be for an indeterminate period of time, but the time may not exceed the maximum term of imprisonment that an adult may serve for the same offense.

(d) Commit the child to the department for placement in a mother-infant program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents. The department's mother-infant program must be licensed as a child care facility in accordance with s. 402.308 and must provide the services and support necessary to enable the committed juvenile mothers to provide for the needs of their infants who, upon agreement of the mother, may accompany them in the program.

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Section 4. Subsection (11) is added to section 985.601, Florida Statutes, to read:

985.601 Administering the juvenile justice continuum.—

(11) At the secretary's discretion, the department is authorized to pay up to \$5,000 toward the basic funeral expenses for a youth who dies while in the custody of the department and whose parents or guardians are indigent and unable to pay such expenses and for which there is no other source of funding available.

Section 5. Paragraphs (a), (b), (c), (e), and (g) of subsection (5) of section 985.0301, Florida Statutes, are amended to read:

985.0301 Jurisdiction.—

(5)(a) Notwithstanding ss. 743.07, 985.43, 985.433, 985.435, 985.439, and 985.441, and except as provided in ss. 985.461 ~~and~~ 985.465, ~~and 985.47~~ and paragraph (f), when the jurisdiction of any child who is alleged to have committed a delinquent act or violation of law is obtained, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 19 years of age, with the same power over the child which the court had before the child became an adult. For the purposes of s. 985.461, the court may retain jurisdiction for an additional 365 days following the child's 19th birthday if the child is participating in transition-to-adulthood services. The additional services do not extend involuntary court-sanctioned residential commitment and therefore require voluntary participation by the affected youth.

(b) Notwithstanding ss. 743.07 and 985.455(3), ~~and except~~

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as ~~provided in s. 985.47~~, the term of any order placing a child in a probation program must be until the child's 19th birthday unless he or she is released by the court on the motion of an interested party or on his or her own motion.

(c) Notwithstanding ss. 743.07 and 985.455(3), ~~and except as provided in s. 985.47~~, the term of the commitment must be until the child is discharged by the department or until he or she reaches the age of 21 years. Notwithstanding ss. 743.07, 985.435, 985.437, 985.439, 985.441, 985.455, and 985.513, and except as provided in this section ~~and s. 985.47~~, a child may not be held under a commitment from a court under s. 985.439, s. 985.441(1)(a) or (b), or s. 985.455 after becoming 21 years of age.

(e) The court may retain jurisdiction over a child committed to the department for placement in an intensive residential treatment program for 10-year-old to 13-year-old offenders, in the residential commitment program in a juvenile prison or in a residential sex offender program, ~~or in a program for serious or habitual juvenile offenders as provided in s. 985.47 or s. 985.483~~ until the child reaches the age of 21. If the court exercises this jurisdiction retention, it shall do so solely for the purpose of the child completing the intensive residential treatment program for 10-year-old to 13-year-old offenders, in the residential commitment program in a juvenile prison, in a residential sex offender program, or the program for serious or habitual juvenile offenders. Such jurisdiction retention does not apply for other programs, other purposes, or new offenses.

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168 (g)1. Notwithstanding ss. 743.07 and 985.455(3), a serious
169 or habitual juvenile offender shall not be held under commitment
170 from a court under s. ~~985.441(1)(c)~~, ~~s. 985.47~~, or s. 985.565
171 after becoming 21 years of age. This subparagraph shall apply
172 only for the purpose of completing the serious or habitual
173 juvenile offender program under this chapter and shall be used
174 solely for the purpose of treatment.

175 2. The court may retain jurisdiction over a child who has
176 been placed in a program or facility for serious or habitual
177 juvenile offenders until the child reaches the age of 21,
178 specifically for the purpose of the child completing the
179 program.

180 Section 6. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 177 Inmate Reentry

SPONSOR(S): Porth and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 448

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

SUMMARY ANALYSIS

The bill creates a new section of statute requiring the Department of Corrections (DOC) to develop and administer a nonviolent offender reentry program designed 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 deterrent effect, rehabilitate the offender, and reduce recidivism.

The reentry program must include:

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

The bill requires DOC to screen inmates for eligibility criteria to participate in the program. In order to participate, an inmate must:

- Be a nonviolent offender,
- Have served at least one-half of his or her original sentence, and
- Be identified as having a need for substance abuse treatment.

If an inmate meets the eligibility criteria and if space is available in the reentry program, DOC must request the sentencing court to approve the inmate's participation in the reentry program.

If approved for participation in the program, the bill requires that the inmate serve at least 120 days 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 inmate on drug offender probation. If the 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 may have a positive fiscal impact on DOC and provides an effective date of October 1, 2012.

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 To be eligible, a defendant must:

- Be a chronic substance abuser;
- Have committed a violation of s. 893.13(2)(a)⁵ or (6)(a),⁶ F.S., or other nonviolent felony;^{7,8} and
- Have a Criminal Punishment Code score sheet total of 60 sentence points or fewer.⁹

The program may include the use of graduated sanctions consistent with the conditions imposed by the court, such as random drug testing.¹⁰ Probationers in this program are subject to probation revocation if

¹ "Recidivism Reduction Strategic Plan." Fiscal Year 2009-2014. Department of Corrections.
<http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf> (last visited on October 10, 2011).

² Section 944.7065, F.S.

³ *Supra* "Recidivism Reduction Strategic Plan."

⁴ Section 948.20(2), F.S.

⁵ 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.

⁶ 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 a 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.

⁷ 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.

⁸ If such nonviolent felony is committed on or after July 1, 2009.

⁹ Section 948.20(1), F.S.

they violate any conditions of their probation.¹¹ This can result in an imposition of any sentence that may have originally been imposed before the offender was placed on probation.¹² In FY 2010-11, 10,099 offenders were on drug offender probation.¹³

Effect of the Bill

The bill requires DOC to develop and administer a nonviolent offender re-entry program in a secure area within an adult institution or adjacent to an adult institution. 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 deterrent effect, rehabilitate the offender, and reduce recidivism.

The reentry program must include:

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

The bill requires DOC to screen potential reentry program participants for eligibility criteria to participate in the program. In order to participate, an inmate must:

- Be a nonviolent offender, which the bill defines as an offender who has been convicted of a third-degree felony offense that is not a forcible felony¹⁴ and has not been convicted of any offense that requires a person to register as a sexual offender;¹⁵
- Have served at least one-half of his or her original sentence; and
- Be 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 meets the eligibility criteria 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.¹⁶

¹⁰ Section 948.20(2), F.S.

¹¹ Section 948.06(2)(a), F.S.

¹² Section 948.06(2)(e), F.S.

¹³ 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 on October 10, 2011).

¹⁴ As defined in s. 776.08, F.S.

¹⁵ Pursuant to s. 943.0435, F.S.

¹⁶ The bill requires that the state attorney must notify the sentencing court of his or her objections within 14 days after receiving the notice.

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.¹⁷

If approved for participation in the program, 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 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.
- Have an educational assessment, using the Test of Adult Basic Education or any other testing instrument approved by the Department of Education.
- Enroll in an adult education program to improve academic skills to earn 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 must be readmitted to the reentry program after completing the ordered discipline.¹⁸ DOC can terminate the offender from the reentry program if:

- 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 probation¹⁹ subject to the offender's successful completion of the remainder of the reentry program.²⁰ 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 requires DOC to:

- Implement the reentry program to the fullest extent feasible within available resources.

¹⁷ 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.

¹⁸ 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.

¹⁹ 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.

²⁰ 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.

- 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 DOC has for future legislative action.
- Develop a system for tracking recidivism, including, but not limited to, rearrests and recommitment of nonviolent offenders who successfully complete the reentry program, and 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.

The bill permits DOC to:

- 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 DOC may use to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.
- Establish rules of conduct to which nonviolent offenders in the reentry program would be subject, including sanctions which DOC may impose for noncompliance.

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.

B. SECTION DIRECTORY:

Section 1. Creates the nonviolent reentry program.

Section 2. Provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill creates a new section of statute requiring 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 and judicial approval, the precise impact of the bill is unknown. However, the bill will likely result in cost savings to the state.

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:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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.²¹ Rulemaking authority is delegated by the Legislature²² through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"²³ a rule. Agencies do not have discretion whether to engage in rulemaking.²⁴ To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.²⁵ The grant of rulemaking authority itself need not be detailed.²⁶ 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.²⁷

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.²⁸ 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:

Lines 109-119 of the bill provide the eligibility and screening requirements for the reentry program. The bill specifies that in order to participate, a nonviolent offender must have served at least one-half of his or her original sentence and must have been identified as having a need for substance abuse treatment. The bill then provides DOC with the following screening considerations:

²¹ Section 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).

²² *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla. 1st DCA 2000).

²³ Section 120.52(17), F.S.

²⁴ Section 120.54(1)(a), F.S.

²⁵ Sections 120.52(8) and 120.536(1), F.S.

²⁶ *Supra Save the Manatee Club, Inc.*, at 599.

²⁷ *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).

²⁸ Rule 33-601.314, F.A.C.

- 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.

Lines 120-123 require that if a nonviolent offender meets the eligibility criteria and space is available in the reentry program, DOC must request the sentencing court to approve the offender's participation in the program. Because lines 120-123 only refer to the eligibility criteria and not screening considerations it would appear that DOC would have to request sentencing court approval for all nonviolent offenders who have served at least one-half of his or her sentence and have an identified need for substance abuse treatment regardless of DOC's screening considerations.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to inmate reentry; defining the terms
3 "department" and "nonviolent offender"; directing the
4 Department of Corrections to develop and administer a
5 reentry program for nonviolent offenders which is
6 intended to divert nonviolent offenders from long
7 periods of incarceration; requiring that the program
8 include intensive substance abuse treatment and
9 rehabilitative programming; providing for the minimum
10 length of service in the program; providing that any
11 portion of a sentence before placement in the program
12 does not count as progress toward program completion;
13 specifying eligibility criteria for a nonviolent
14 offender to be placed into the reentry program;
15 directing the department to notify the nonviolent
16 offender's sentencing court to obtain approval before
17 the nonviolent offender is placed into the reentry
18 program; requiring the department to notify the state
19 attorney; authorizing the state attorney to file
20 objections to placing the offender into the reentry
21 program within a specified period; requiring the
22 sentencing court to notify the department of the
23 court's decision to approve or disapprove the
24 requested placement within a specified period;
25 providing that failure of the court to timely notify
26 the department of the court's decision constitutes
27 approval by the requested placement; requiring the
28 nonviolent offender to undergo an education assessment

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29 and a full substance abuse assessment if admitted into
 30 the reentry program; requiring the offender to be
 31 enrolled in an adult education program in specified
 32 circumstances; requiring that assessments of
 33 vocational skills and future career education be
 34 provided to the offender; requiring that certain
 35 reevaluation be made periodically; providing that the
 36 nonviolent offender is subject to the disciplinary
 37 rules of the department; specifying the reasons for
 38 which the offender may be terminated from the reentry
 39 program; requiring that the department submit a report
 40 to the sentencing court at least 30 days before the
 41 nonviolent offender is scheduled to complete the
 42 reentry program; setting forth the issues to be
 43 addressed in the report; requiring the sentencing
 44 court to issue an order modifying the sentence imposed
 45 and place the nonviolent offender on drug offender
 46 probation if the nonviolent offender's performance is
 47 satisfactory; authorizing the court to revoke
 48 probation and impose the original sentence in
 49 specified circumstances; authorizing the court to
 50 require the offender to complete a postadjudicatory
 51 drug court program in specified circumstances;
 52 directing the department to implement the reentry
 53 program using available resources; requiring the
 54 department to submit an annual report to the Governor
 55 and Legislature detailing the extent of implementation
 56 of the reentry program and outlining future goals and

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recommendations; authorizing the department to enter into contracts with qualified individuals, agencies, or corporations for services for the reentry program; authorizing the department to impose administrative or protective confinement as necessary; authorizing the department to 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; providing that the section does not create a right to placement in the reentry program or any right to placement or early release under supervision of any type; providing that the section does not create a cause of action related to the program; directing the department to develop a system for tracking recidivism, including, but not limited to, rearrests and recommitment of nonviolent offenders who successfully complete the reentry program, and to report on recidivism in its annual report of the program; directing the department to adopt rules; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Nonviolent offender reentry program.—

(1) As used in this section, the term:

(a) "Department" means the Department of Corrections.

(b) "Nonviolent offender" means an offender who has:

85 1. Been convicted of a third-degree felony offense that is
 86 not a forcible felony as defined in s. 776.08, Florida Statutes;
 87 and

88 2. Not been convicted of any offense that requires a
 89 person to register as a sexual offender pursuant to s. 943.0435,
 90 Florida Statutes.

91 (2)(a) The department shall develop and administer a
 92 reentry program for nonviolent offenders. The reentry program
 93 must include prison-based substance abuse treatment, general
 94 education development and adult basic education courses,
 95 vocational training, training in decisionmaking and personal
 96 development, and other rehabilitation programs.

97 (b) The reentry program is intended to divert nonviolent
 98 offenders from long periods of incarceration when a reduced
 99 period of incarceration followed by participation in intensive
 100 substance abuse treatment and rehabilitative programming could
 101 produce the same deterrent effect, rehabilitate the offender,
 102 and reduce recidivism.

103 (c) The nonviolent offender shall serve at least 120 days
 104 in the reentry program. The offender may not count any portion
 105 of his or her sentence served before placement in the reentry
 106 program as progress toward program completion.

107 (d) A reentry program may be operated in a secure area in
 108 or adjacent to an adult institution.

109 (3)(a) Upon receiving a potential reentry program
 110 participant, the department shall screen the nonviolent offender
 111 for eligibility criteria to participate in the reentry program.
 112 In order to participate, a nonviolent offender must have served

113 at least one-half of his or her original sentence and must have
114 been identified as having a need for substance abuse treatment.
115 When screening a nonviolent offender, the department shall
116 consider the offender's criminal history and the possible
117 rehabilitative benefits that substance abuse treatment,
118 educational programming, vocational training, and other
119 rehabilitative programming might have on the offender.

120 (b) If a nonviolent offender meets the eligibility
121 criteria and space is available in the reentry program, the
122 department shall request the sentencing court to approve the
123 offender's participation in the reentry program.

124 (c)1. The department shall notify the state attorney that
125 the offender is being considered for placement in the reentry
126 program. The notice must explain to the state attorney that a
127 proposed reduced period of incarceration, followed by
128 participation in substance abuse treatment and other
129 rehabilitative programming, could produce the same deterrent
130 effect otherwise expected from a lengthy incarceration.

131 2. The notice must also state that the state attorney may
132 notify the sentencing court in writing of any objection the
133 state attorney might have if the nonviolent offender is placed
134 in the reentry program. The state attorney must notify the
135 sentencing court of his or her objections within 14 days after
136 receiving the notice.

137 (d) The sentencing court shall notify the department in
138 writing of the court's decision to approve or disapprove the
139 requested placement of the nonviolent offender no later than 28
140 days after the court receives the department's request to place

the offender in the reentry program. Failure to notify the department of the court's decision within the 28-day period constitutes approval to place the offender into the reentry program.

(4) After the nonviolent offender is admitted into the reentry program, he or she shall undergo a full substance abuse assessment to determine his or her substance abuse treatment needs. The offender shall also have an educational assessment, which shall be accomplished using the Test of Adult Basic Education or any other testing instrument approved by the Department of Education. Each offender who has not obtained a high school diploma shall be enrolled in an adult education program designed to aid the offender in improving his or her academic skills and earn a high school diploma. Further assessments of the offender's vocational skills and future career education shall be provided to the offender as needed. A periodic reevaluation shall be made in order to assess the progress of each offender.

(5)(a) If a nonviolent offender in the reentry program becomes unmanageable, the department may revoke the offender's gain-time and place the offender in disciplinary confinement in accordance with department rule. Except as provided in paragraph (b), the offender shall be readmitted to the reentry program after completing the ordered discipline. 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.

(b) The department may terminate an offender from the

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reentry program if:

1. The offender commits or threatens to commit a violent act;

2. The department determines that the offender is unable to participate in the reentry program due to the offender's medical condition;

3. The offender's sentence is modified or expires;

4. The department reassigns the offender's classification status; or

5. The department determines that removing the offender from the reentry program is in the best interest of the offender or the security of the institution.

(6)(a) The department shall 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 court shall issue an order modifying the sentence imposed and place the offender on drug offender probation subject to the offender's successful completion of the remainder of the reentry program. 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. If the nonviolent offender violates the conditions of drug offender probation, the court may revoke probation and impose any sentence that it might have originally imposed.

197 (b) If an offender being released pursuant to paragraph
 198 (a) intends to reside in a county that has established a
 199 postadjudicatory drug court program as described in s. 397.334,
 200 Florida Statutes, the sentencing court may require the offender
 201 to successfully complete the postadjudicatory drug court program
 202 as a condition of drug offender probation. The original
 203 sentencing court shall relinquish jurisdiction of the offender's
 204 case to the postadjudicatory drug court program until the
 205 offender is no longer active in the program, the case is
 206 returned to the sentencing court due to the offender's
 207 termination from the program for failure to comply with the
 208 terms thereof, or the offender's sentence is completed. If
 209 transferred to a postadjudicatory drug court program, the
 210 offender shall comply with all conditions and orders of the
 211 program.

212 (7) The department shall implement the reentry program to
 213 the fullest extent feasible within available resources.

214 (8) The department shall submit an annual report to the
 215 Governor, the President of the Senate, and the Speaker of the
 216 House of Representatives detailing the extent of implementation
 217 of the reentry program and outlining future goals and any
 218 recommendation the department has for future legislative action.

219 (9) The department may enter into performance-based
 220 contracts with qualified individuals, agencies, or corporations
 221 for the provision of any or all of the services for the reentry
 222 program.

223 (10) A nonviolent offender in the reentry program is
 224 subject to rules of conduct established by the department and

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may have sanctions imposed, including loss of privileges,
restrictions, disciplinary confinement, alteration of release
plans, or other program modifications in keeping with the nature
and gravity of the program violation. Administrative or
protective confinement, as necessary, may be imposed.

(11) This section does not create or confer any right to
any inmate to placement in the reentry program or any right to
placement or early release under supervision of any type. No
inmate may have a cause of action under this section against the
department, a court, or the state attorney related to the
reentry program.

(12) The department may 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.

(13) The department shall 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.

(14) The department shall adopt rules pursuant to ss.
120.536(1) and 120.54, Florida Statutes, to administer the
reentry program.



Section 2. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 183 Misdemeanor Pretrial Substance Abuse Programs

SPONSOR(S): Moraitis

TIED BILLS: None **IDEN./SIM. BILLS:** SB 186

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Williams 	Cunningham 
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Currently, only persons who have been charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., and who have not been previously convicted of a felony nor been admitted to a pretrial program, are eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

This bill expands the list of persons eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program to include:

- A person who is charged with a nonviolent, nontraffic-related misdemeanor and who has been identified as having a substance abuse problem;
- A person who is charged with a misdemeanor for prostitution under s. 796.07, F.S.,
- A person who is charged with a misdemeanor for possession of alcohol while under the age of 21; and
- A person who is charged with a misdemeanor for possession of a controlled substance without a valid prescription under s. 499.03(2) or (3), F.S.

The bill also expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by removing the requirement that a person not have previously been admitted into a pretrial program in order to participate in such programs.

This may have a positive fiscal impact on local governments because persons who successfully complete such programs have their criminal charges dismissed and may not be sentenced to time in local jails. However, counties may need to expend funds to expand their misdemeanor pretrial substance abuse education and treatment programs if more people are eligible to participate.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Pretrial Diversion Programs

Pretrial diversion has been described by the National Association of Pretrial Services Agencies (NAPSA),¹ as a voluntary option which provides alternative criminal case processing for a defendant charged with a crime that ideally, upon successful completion of an individualized program plan, results in a dismissal of the charge.² The purpose of a pretrial diversion/intervention program is to enhance justice and public safety through addressing the root cause of the arrest provoking behaviors of the defendant, reducing the stigma which accompanies a record of conviction, restoring victims and assisting with the conservation of court and criminal justice resources.³

Research indicates that pretrial diversion programs, such as misdemeanor pretrial substance abuse education and intervention programs, have proven themselves to be effective alternatives to traditional case proceedings.⁴ The Pretrial Justice Institute⁵ states that pretrial diversion programs "operate under the theory that if the underlying problems are addressed the individual is less likely to recidivate. This, in turn, will lead to less crime and less future costs to the criminal justice system."⁶

A 2007 study conducted by NAPSA found that, although data on recidivism rates for these programs was sparse, the available data indicated low rates (between 1 percent and 12 percent depending on the type of crime) of recidivism for offenders that complete pre-trial diversion programs.⁷ Research by the National Association of Drug Court Professionals also reveals that intervention programs such as drug courts reduce recidivism, typically measured by fewer arrest for new offenses and technical violations.⁸

Current Situation

Section 948.16, F.S., specifies that a person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S.,⁹ and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program,¹⁰ for a period based on the program requirements and the treatment plan for the offender. Admission to such a program may be based upon the motion of either party or the court's own motion.¹¹

¹ Incorporated in 1973 as a not-for-profit corporation, the National Association of Pretrial Services Agencies is the national professional association for the pretrial release and pretrial diversion fields. (<http://www.napsa.org/mission.htm>)(last accessed October 10, 2011).

² Performance Standards and Goals for Pretrial Diversion/Intervention National Association of Pretrial Services Agencies November 2008. (http://www.napsa.org/publications/diversion_intervention_standards_2008.pdf)(last accessed October 10, 2011).

³ *Id.*

⁴ Larry L. Bemby, Esq., New Jersey Office of the Public Defender. Drug Courts. (<http://www.state.nj.us/defender/drugcrt.shtml>)(last accessed October 10, 2011).

⁵ In 1976, the U.S. Department of Justice funded the Pretrial Justice Institute at the request of NAPSA, and it is the nation's only non-profit organization dedicated to ensuring informed pretrial decision-making for safe communities. *See*, (<http://www.pretrial.org/AboutPJI/Pages/default.aspx>)(last accessed October 10, 2011).

⁶ Clark, John. Pretrial Justice Institute, *The Role of Traditional Pretrial Diversion in the Age of Specialty Treatment Courts: Expanding the Range of Problem-Solving Options at the Pretrial Stage*. (October 2007). ([http://www.pretrial.org/Reports/PJI%20Reports/PJI%20The%20Role%20of%20Traditional%20Pretrial%20Diversion%20in%20the%20Age%20of%20Specialty%20Treatment%20Courts%20\(2007\).pdf](http://www.pretrial.org/Reports/PJI%20Reports/PJI%20The%20Role%20of%20Traditional%20Pretrial%20Diversion%20in%20the%20Age%20of%20Specialty%20Treatment%20Courts%20(2007).pdf))(last accessed October 10, 2011).

⁷ Kennedy, Spurgeon et al. *Promising Practices in Pretrial Diversion*, 16 (2007), (<http://www.pretrial.org/Docs/Documents/PromisingPracticeFinal.pdf>)(last accessed October 10, 2011).

⁸ Doulag B. Marlowe. National Association of Drug Court Professionals, Research Update on Adult Drug Courts. (December 2010) (www.nadcp.org/learn/need_to_know)(last accessed October 10, 2011).

⁹ Chapter 893, F.S., is the Florida Comprehensive Drug Abuse Prevention and Control Act.

¹⁰ Section 397.334, F.S., authorizes counties to fund treatment-based drug court programs and sets criteria for such programs.

¹¹ Admission may be based upon motion of either party or the court except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling controlled substances, the court shall hold a preadmission hearing. If

Participants in the program are subject to a coordinated strategy¹² developed by a drug court team under s. 397.334(4), F.S., which may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court.¹³

At the end of the pretrial intervention period, the court is required to consider the recommendation of the treatment program and the recommendation of the state attorney as to disposition of the pending charges.¹⁴ The court must determine, by written finding, whether the defendant successfully completed the pretrial intervention program.¹⁵ If the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment or return the charges to the criminal docket for prosecution.¹⁶ The court will dismiss the charges upon finding that the defendant has successfully completed the pretrial intervention program.¹⁷

Effect of the Bill

As noted above, only persons who have been charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., and who have not been previously convicted of a felony nor been admitted to a pretrial program, are eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

This bill expands the list of persons eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program to include:

- A person who is charged with a nonviolent, nontraffic-related misdemeanor and who has been identified as having a substance abuse problem;
- A person who is charged with a misdemeanor for prostitution under s. 796.07, F.S.,¹⁸
- A person who is charged with a misdemeanor for possession of alcohol while under the age of 21;¹⁹ and
- A person who is charged with a misdemeanor for possession of a controlled substance without a valid prescription under s. 499.03(2) or (3), F.S.²⁰

The bill also expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by removing the requirement that a person not have previously been admitted into a pretrial program in order to participate in such programs.

the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program. s. 948.16(1)(a), F.S.

¹² The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a pretrial treatment-based drug court program or other pretrial intervention program. s. 948.16(1)(b), F.S.

¹³ Section 948.16(1)(b), F.S.

¹⁴ Section 948.16(2), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ "Prostitution" means the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses. Section 796.07, F.S.

¹⁹ Section 562.111, F.S., prohibits the possession of alcohol by a person under the age of 21. Any person under the age of 21 who commits the first offense of the possession of alcohol is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S. The second offense of any person under the age of 21 convicted of the possession of alcohol is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S. Section 562.111, F.S.

²⁰ Section 499.03, F.S., makes the possession of any habit-forming, toxic, harmful, or new drug subject to s. 499.003(33), or prescription drug as defined in s. 499.003(43), a second degree misdemeanor, unless the possession of the drug has been obtained by a valid prescription. These drugs include "new drugs" (s. 499.003(33), F.S.), prescription drugs (s. 499.003(43), F.S.), medicinal drugs (s. 465.003(8), F.S.), misbranded drugs (s. 499.007(13), F.S.), compressed medical gas (s. 499.003(11), F.S.), prescription medical oxygen (s. 499.003(46), F.S.) and veterinary prescription drugs (s. 499.003(53), F.S.).

B. SECTION DIRECTORY:

Section 1. Amends s. 948.16, F.S., relating to misdemeanor pretrial substance abuse education and treatment intervention program.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

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 expands the number of potential participants in county-funded misdemeanor pretrial substance abuse education and treatment intervention programs. This may have a positive fiscal impact on local governments because persons who successfully complete such programs have their criminal charges dismissed and may not be sentenced to time in local jails. However, counties may need to expend funds to expand their misdemeanor pretrial substance abuse education and treatment programs if more people are eligible to participate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program. There may be a positive fiscal impact on treatment providers if more people are eligible to participate in such programs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. For the sake of continuity it is suggested that s. 562.111, F.S. (underage possession of alcohol) be referenced on line 24 of the bill.
2. Currently, only persons who have been charged with a misdemeanor for possession of a controlled substance or drug paraphernalia *and who have not been previously convicted of a felony* nor been admitted to a pretrial program, are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

The bill expands the list of persons eligible for admission into such programs to include persons charged with nonviolent, nontraffic-related misdemeanors who have an identified substance abuse problem. However, as drafted, the bill is unclear as to whether these persons are eligible to participate in the pretrial program if they have been previously convicted of a felony.

3. As drafted the bill allows persons who have been charged with a misdemeanor for possession of a controlled substance without a valid prescription under s. 499.03(2) or (3), F.S., to participate pretrial substance abuse education and treatment intervention program. However, the "possession of a controlled substance without a valid prescription" offense is found in s. 499.03(1), F.S., not 499.03(2) and (3), F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 183

2012

1 A bill to be entitled
 2 An act relating to misdemeanor pretrial substance
 3 abuse programs; amending s. 948.16, F.S.; providing
 4 that a person who is charged with a nonviolent,
 5 nontraffic-related misdemeanor and identified as
 6 having a substance abuse problem or a person who is
 7 charged with certain other designated misdemeanor
 8 offenses, and who has not previously been convicted of
 9 a felony, may qualify for participation in a
 10 misdemeanor pretrial substance abuse program;
 11 providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Paragraph (a) of subsection (1) of section
 16 948.16, Florida Statutes, is amended to read:

17 948.16 Misdemeanor pretrial substance abuse education and
 18 treatment intervention program.—

19 (1)(a) A person who is charged with a nonviolent,
 20 nontraffic-related misdemeanor and identified as having a
 21 substance abuse problem or a person who is charged with a
 22 misdemeanor for possession of a controlled substance or drug
 23 paraphernalia under chapter 893, prostitution under s. 796.07,
 24 possession of alcohol while under 21 years of age, or possession
 25 of a controlled substance without a valid prescription under s.
 26 499.03(2) or (3), and who has not previously been convicted of a
 27 felony ~~nor been admitted to a pretrial program,~~ is eligible for
 28 voluntary admission into a misdemeanor pretrial substance abuse

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29 education and treatment intervention program, including a
30 treatment-based drug court program established pursuant to s.
31 397.334, approved by the chief judge of the circuit, for a
32 period based on the program requirements and the treatment plan
33 for the offender, upon motion of either party or the court's own
34 motion, except, if the state attorney believes the facts and
35 circumstances of the case suggest the defendant is involved in
36 dealing and selling controlled substances, the court shall hold
37 a preadmission hearing. If the state attorney establishes, by a
38 preponderance of the evidence at such hearing, that the
39 defendant was involved in dealing or selling controlled
40 substances, the court shall deny the defendant's admission into
41 the pretrial intervention program.

42 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 189 Unauthorized Copying of Recordings

SPONSOR(S): Young and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 432

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Smith <i>JS</i>	Cunningham <i>SC</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 540.11, F.S., contains a variety of provisions making it unlawful, based on specified circumstances and subject to certain exceptions, to make and sell unauthorized copies of another person's creative work. This practice is often referred to as "piracy."

Subparagraph (3)(a)3. of the statute provides that it is unlawful for a person to:

Knowingly, for commercial advantage or private financial gain, sell or resell, offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for such purposes, any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, unless the outside cover, box, or jacket clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.

The penalty for violating the above provision ranges from a 1st degree misdemeanor to a 3rd degree felony, depending on the circumstances of the offense.

The bill requires those who violate s. 540.11(3)(a)3., F.S., to make restitution to any owner or lawful producer of a master recording that has suffered injury resulting from the offense, or to the authorized trade association representing that owner or lawful producer. The bill specifies that the order of restitution must be based on the aggregate wholesale value of lawfully manufactured and authorized recordings corresponding to the number of nonconforming recordings involved in the offense unless a greater value can be proven. The order of restitution must also include investigative costs.

The bill also amends s. 775.089, F.S., relating to restitution, to include a victim's trade association in the definition of the term "victim."

This bill does not appear to have a fiscal impact and is effective October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Unauthorized Copying of Recordings

Section 540.11, F.S., contains a variety of provisions making it unlawful, based on specified circumstances and subject to certain exceptions, to make and sell unauthorized copies of another person's creative work. This practice is often referred to as "piracy."

Subparagraph (3)(a)3. of the statute provides that it is unlawful for a person to:

Knowingly, for commercial advantage or private financial gain, sell or resell, offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for such purposes, any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, unless the outside cover, box, or jacket clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.

A person who violates the above provisions commits a 1st degree misdemeanor, punishable as provided in s. 775.082, F.S.,¹ by a fine of up to \$25,000, or both.² However, the following enhanced penalties apply in the following circumstances:

- If the offense involves at least 1,000 unauthorized articles embodying sound or at least 65 unauthorized audiovisual articles during any 180-day period, the offense is a 3rd degree felony, punishable as provided in s. 775.082, F.S.,³ by a fine of up to \$250,000, or both.
- If the offense involves more than 100 but less than 1,000 unauthorized articles embodying sound or more than 7 but less than 65 unauthorized audiovisual articles during any 180-day period, the offense is a 3rd degree felony, punishable as provided in s. 775.082, F.S., by a fine of up to \$150,000, or both.
- If the offense is a second or subsequent conviction of either of the above, the offense is a 3rd degree felony, punishable as provided in s. 775.082, F.S., by a fine of up to \$250,000, or both.⁴

The criminal provisions of s. 540.11, F.S., do not apply to:

- Any broadcaster who, in connection with, or as part of, a radio, television, or cable broadcast transmission, or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording.
- Any person who transfers such sounds in the home for personal use and without compensation for such transfer.
- Any not-for-profit educational institution or any federal or state governmental entity, if certain conditions exist.⁵

Restitution

Section 775.089, F.S., requires a judge to order a defendant to make restitution to a victim for damage or loss caused directly or indirectly by the defendant's offense and damage or loss related to the defendant's criminal episode. Restitution must be ordered unless the judge finds clear and compelling reasons not to do so.⁶ The purpose of restitution is two-fold: (1) it acts to compensate the victim; and

¹ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year. *See* section 775.082, F.S.

² Section 540.11(3)(b), F.S.

³ A third degree felony is punishable by up to five years imprisonment. *See* section 775.082, F.S.

⁴ *Id.*

⁵ Section 540.11(6), F.S.

⁶ Section 775.089, F.S.

(2) serves the rehabilitative, deterrent, and retributive goals of the criminal justice system.⁷ Thus, the prime concerns underlying restitution are to give the perpetrator of a crime an opportunity to make amends, and to make the victim whole again, to the extent it is possible to do so.⁸

Currently, s. 775.089(1)(c), F.S., defines "victim" as "each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, and the victim's next of kin if the victim is deceased as a result of the offense."

Effect of the Bill

The bill requires those who violate s. 540.11(3)(a)3., to make restitution to any owner or lawful producer of a master recording⁹ that has suffered injury resulting from the offense, or to the authorized trade association representing that owner or lawful producer.

The bill requires the order of restitution to be based on the aggregate wholesale value of lawfully manufactured and authorized recordings corresponding to the number of nonconforming recordings involved in the offense unless a greater value can be proven. The order of restitution must also include investigative costs.

The bill also amends the definition of the term "victim" in s. 775.089, F.S., to include a victim's trade association if the offense is a violation of s. 540.11(3)(a)3., F.S., and the victim has granted the trade association written authorization to represent the victim's interests in criminal legal proceedings and to collect restitution on the victim's behalf.

B. SECTION DIRECTORY:

Section 1. Amends s. 540.11, F.S., relating to unauthorized copying of phonograph records, disk, wire, tape, film, or other article on which sounds are recorded.

Section 2. Amends s. 775.089, F.S., relating to restitution.

Section 3. Provides that the act shall take effect October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

⁷ 15B Fla. Jur 2d Criminal Law s. 2886 (citing *Kirby v. State*, 863 So.2d 238 (Fla. 2003)).

⁸ *Id.* (citing *L.O. v. State*, 718 So.2d 155, (Fla. 1998)).

⁹ Section 540.11(1), F.S., defines the term "master recording" as "the original fixation of sounds upon an article from which copies can be made."

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There will be a fiscal impact on persons and entities that violate s. 540.11(3)(a)3., F.S., and are ordered to pay restitution.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill uses the terms "lawful producer" and "trade association" without providing definitions. Given that this bill substantially relates to the music industry, "lawful producer" may have a particularly confusing interpretation, because "producer" is a music industry-specific term.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 189

2012

1 A bill to be entitled
 2 An act relating to unauthorized copying of recordings;
 3 amending s. 540.11, F.S.; requiring restitution by
 4 persons who knowingly commit certain violations
 5 relating to recordings for commercial advantage or
 6 private financial gain; authorizing recovery by a
 7 trade association representing the owner or lawful
 8 producer of a recording; providing for calculation of
 9 a restitution amount; amending s. 775.089, F.S.;
 10 providing that a crime victim entitled to restitution
 11 may include a trade association representing the owner
 12 or lawful producer of a pirated recording in certain
 13 circumstances; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Subsection (3) of section 540.11, Florida
 18 Statutes, is amended to read:

19 540.11 Unauthorized copying of phonograph records, disk,
 20 wire, tape, film, or other article on which sounds are
 21 recorded.—

22 (3)(a) It is unlawful:

23 1. To sell or offer for sale or resale, advertise, cause
 24 the sale or resale of, rent, transport or cause to be rented or
 25 transported, or possess for any of these purposes any article
 26 with the knowledge, or with reasonable grounds to know, that the
 27 sounds thereon have been transferred without the consent of the
 28 owner.

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2. To sell or offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for any of these purposes any article embodying any performance, whether live before an audience or transmitted by wire or through the air by radio or television, recorded without the consent of the performer.

3. Knowingly, for commercial advantage or private financial gain to sell or resell, offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for such purposes, any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, unless the outside cover, box, or jacket clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.

(b)1. A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, by a fine of up to \$250,000, or both if the offense involves at least 1,000 unauthorized articles embodying sound or at least 65 unauthorized audiovisual articles during any 180-day period or is a second or subsequent conviction under either this subparagraph or subparagraph 2. of this subsection.

2. A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, by a fine of up to \$150,000, or both if the offense involves more than 100 but less than 1,000 unauthorized articles embodying sound or more than 7 but less than 65 unauthorized audiovisual articles during any 180-day period.

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3. A person who otherwise violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082, by a fine of up to \$25,000, or both.

4. A person who violates subparagraph (a)3. shall be ordered to make restitution to any owner or lawful producer of a master recording that has suffered injury resulting from the crime, or to the trade association representing such owner or lawful producer. The order of restitution shall be based on the aggregate wholesale value of lawfully manufactured and authorized recordings corresponding to the number of nonconforming recordings involved in the offense unless a greater value can be proven. The order of restitution shall also include investigative costs relating to the offense.

Section 2. Paragraph (c) of subsection (1) of section 775.089, Florida Statutes, is amended to read:

775.089 Restitution.—

(1)

(c) The term "victim" as used in this section and in any provision of law relating to restitution means each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, ~~and~~ the victim's next of kin if the victim is deceased as a result of the offense, and the victim's trade association if the offense is a violation of s. 540.11(3)(a)3. and the victim has granted the trade association written authorization to represent the victim's interests in criminal legal proceedings and to collect


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85 | restitution on the victim's behalf.


86 | Section 3. This act shall take effect October 1, 2012.

Substance Abuse Treatment Programs



House Criminal Justice Sub Committee Presentation on Substance Abuse Treatment for Offenders

October 18, 2011



Drug Treatment for Offenders Works

- Research shows treatment for offenders decreases future drug use and criminal behavior
- Prison-bound offenders who receive treatment rather than incarceration see lower recidivism and reoffending rates
- Inmates who participate in drug treatment as part of work release are three times as likely to remain drug free
- Increases in admissions to treatment are associated with reductions in crime rates
- Increases in admissions to substance abuse treatment are associated with reduced incarceration rates



Florida Department of Corrections Contracted Drug Treatment

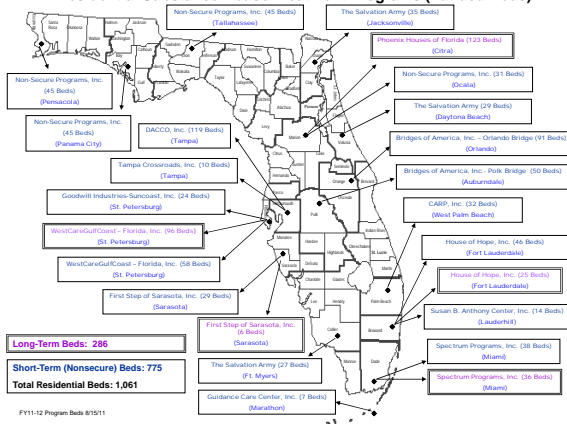
- Community Based Residential Substance Abuse
- Institutional Substance Abuse Treatment
- Transition Drug Treatment (some with work release)



Community Based Residential Substance Abuse

- Probationers with Continued Substance Abuse Problem
- Court Ordered
- 1,061 beds in 21 communities across Florida; down from 1,967 beds in 2003
- Short Term - 6 months (775 beds)
- Long Term - up to 18 months (286 beds)
- Upon employment- offender pays fines, restitution, child support, partial cost of care

Residential Substance Abuse Treatment Programs (Funded Beds)





Institutional Drug Treatment

- New inmates screened at reception for substance abuse problem and drug history
- Inmates available for program 36 months prior to end of sentence
- 1,689 slots divided across 19 institutions; down from 4,772 slots in 2002.
- All contracted except 45 DOC operated slots
- Two Models: Intensive Outpatient (4 to 6 months) & Residential Therapeutic Community (9 to 12 months)



Transitional Drug Treatment

- Step down from institution to community
- Includes intensive programming and job skills components
- 844 beds across seven programs
- Inmates available for program 36 months prior to end of sentence; community custody status
- Paired with Work Release Programs
- Contracted to community providers



Non-Secure Programs, Inc.

Kimberly Keeton Spence

To be eligible for admission:

1. The offender must be under the legal supervision of the Department of Corrections and court ordered into the treatment program.
2. The offender must have been screened to be in need of either short or long term residential substance abuse treatment and have sufficient time remaining on their period of supervision to allow them to meet successful completion requirements.

The following cases are inappropriate for treatment:

1. Offenders with a history of arson or fire-starting.
2. Offenders with a history of sexual offenses.
3. Offenders with a serious history of violence.

TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
6:30AM	WAKE-UP	WAKE-UP	WAKE-UP	WAKE-UP	WAKE-UP		
7:00AM	B-FAST/BRK	B-FAST/BRK	B-FAST/BRK	B-FAST/BRK	B-FAST/BRK		
7:30AM	CLEAN UP	CLEAN UP	CLEAN UP	CLEAN UP	CLEAN UP	WAKE-UP	WAKE-UP
8:00AM	MEN/Meditation WOMEN/Exercise	MEN/Meditation WOMEN/Exercise	MEN/Meditation WOMEN/Exercise	MEN/Meditation WOMEN/Exercise	MEN/Meditation WOMEN/Exercise	B-FAST/BRK	B-FAST/BRK
8:30AM	MEN/Exercise WOMEN/Meditation	MEN/Exercise WOMEN/Meditation	MEN/Exercise WOMEN/Meditation	MEN/Exercise WOMEN/Meditation	MEN/Exercise WOMEN/Meditation	CLEAN UP	CHURCH (Optional)
9:00AM	LIFE SKILLS	PSYCH-ED PHASE I & II	LIFE SKILLS	EXPERIENTIAL OR PROCESS	EXPERIENTIAL OR PROCESS	BREAK	↓
10:00AM	↓	↓	↓	↓	↓	FAMILY GRP.	BREAK
10:30AM	BREAK	BREAK	BREAK	↓	↓	↓	BRUNCH
11:00AM	PROCESS PHASE I & II	PROCESS PHASE I & II	PROCESS PHASE I & II	BREAK	BREAK	↓	BRK/CLEAN
12:00PM	LUNCH	LUNCH	LUNCH	LUNCH	LUNCH	LUNCH	FREE TIME
12:30PM	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN	↓
1:00PM	FILM GRP/ STAFFING	MRTIAUTO-BIO	FACILITY CLEAN UP	PSYCH-ED PHASE I & II	PSYCH-ED PHASE I & II	VISITATION	↓
2:30PM	↓	BREAK	BREAK	BREAK	BREAK	↓	↓
3:00PM	BREAK	MRTIAUTO-BIO	FACILITY CLEAN UP	CO-DEPENDENCY	RECREATION	BREAK	↓
3:30PM	FILM PROCESS	↓	↓	↓	↓	↓	↓
4:30PM	BREAK	BREAK	BREAK	BREAK	IN DORM	IN DORM	IN DORM
5:00PM	DINNER	DINNER	DINNER	DINNER	DINNER	DINNER	DINNER
5:30PM	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN
6:30PM	GED LEVEL I & II	WOMEN/CASELOAD	COMMUNITY	GED LEVEL I & II	CASELOAD	AA MEETING	↓
7:30PM	↓	BIG BOOK STUDY	STUDY HALL IN DORM	↓	FACILITY GRP OR BIG BOOK STUDY	MOVIE NIGHT	NA MEETING
8:00PM	REFLECTIONS	REFLECTIONS	REFLECTIONS	REFLECTIONS	REFLECTIONS	REFLECTIONS	REFLECTIONS
9:30PM	CLEAN UP	CLEAN UP	CLEAN UP	CLEAN UP	CLEAN UP	CLEAN UP	CLEAN UP
10:00PM	BREAK	BREAK	BREAK	BREAK	BREAK	BREAK	BREAK
10:30PM	LIGHTS OUT	LIGHTS OUT	LIGHTS OUT	LIGHTS OUT	↓	↓	LIGHTS OUT
11:30PM							

***Groups that are bolded are to be counted toward counseling hours, plus individual, on ITC sheet.

TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
8:30AM	WAKE-UP	WAKE-UP	WAKE-UP	WAKE-UP	WAKE-UP		
7:00AM	B-FAST/BRK	B-FAST/BRK	B-FAST/BRK	B-FAST/BRK	B-FAST/BRK		
7:30AM	CLEAN UP	CLEAN UP	CLEAN UP	CLEAN UP	CLEAN UP	WAKE-UP	WAKE-UP
8:00AM	GET READY	GET READY	GET READY	GET READY	GET READY	B-FAST/BRK	B-FAST/BRK
8:15AM	Job Search for Females or Employment					CLEAN UP	CHURCH (Optional)
9:00AM						BREAK	↓
10:00AM						FAMILY GRP.	BREAK
10:30AM						↓	BRUNCH
11:00AM						↓	BRK/CLEAN
12:00PM	LUNCH	LUNCH	LUNCH	LUNCH	LUNCH	LUNCH	FREE TIME
12:30PM	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN	↓
1:00PM	GET READY	GET READY	GET READY	GET READY	GET READY	VISITATION	↓
1:15PM	Job Search for Males or Employment					↓	↓
3:00PM						BREAK	↓
4:30PM						IN DORM	IN DORM
5:00PM	DINNER	DINNER	DINNER	DINNER	DINNER	DINNER	DINNER
5:30PM	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN	BRK/CLEAN
6:30PM	GED LEVEL I & II	WOMEN/CASELOAD	COMMUNITY	GED LEVEL I & II	CASELOAD	** AA MEETING	↓
7:30PM	↓	PROCESS PHASE II & IV AFTERCARE	PSYCH-ED PHASE II & IV	↓	FACILITY GRP OR ISSUE PHASE II & IV	OUTSIDE MEETING	OUTSIDE MEETING/ NA MEETING
8:00PM	REFLECTIONS	REFLECTIONS	REFLECTIONS	REFLECTIONS	REFLECTIONS	REFLECTIONS	REFLECTIONS
9:30PM	CLEAN UP	CLEAN UP	CLEAN UP	CLEAN UP	CLEAN UP	CLEAN UP	CLEAN UP
10:00PM	BREAK	BREAK	BREAK	BREAK	BREAK	BREAK	BREAK
10:30PM	LIGHTS OUT	LIGHTS OUT	LIGHTS OUT	LIGHTS OUT	↓	↓	LIGHTS OUT
11:30PM							

** Only attend inside AA meeting, if not attending outside meeting that night.

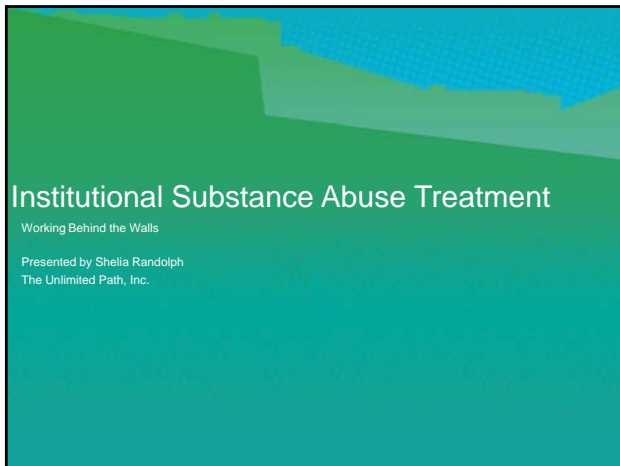
***Groups that are bolded are to be counted toward counseling hours, plus individual, on EBC sheet.

SAMPLE OF Level 1 & 2 GROUP TOPICS COVERED IN TREATMENT

"We"	Codependency Part III	Criminal Thinking Part I
Disease Concept.	Values Clarification	Criminal Thinking Part II
Progression &	Johan's Window	"Losing Isaiah"
Dependence	Stress Management Part I	Codependency Part VIII
Personality Inventory	Stress Management Part II	Open and Hidden Pressures to
Problem Solving	"Clean & Sober"	Drink/Use
Experiential Group	Codependency Part IV	Practical Problem Solving and
"Days of Wine &	Psychopharmacology I	Goals
Roses"	Psychopharmacology II	Parenting Skills I
Codependency Part I	Process of Relapse	Parenting Skills II
Twelve Steps &	Assertiveness Part I	Domestic Violence I
Traditions	Assertiveness Part II	Domestic Violence II
"Process of Recovery	"Play It Forward"	Time Management
Surrender.	Codependency Part V	Coping Skills for Anger and
Resistance, &	Sexuality in Recovery	Resistant
Compliance	Shame & Guilt	Forgiveness
ABC's of Emotion	Spirituality vs. Religion	Relapse Prevention Part I
Part I	Healthy Relationships Part I	Today's Living
ABC's of Emotion	Healthy Relationships Part II	Issues Group
Part II	"The Story of Us"	Relapse Prevention Part II
Experiential Groups	Codependency Part VI	Physical and Emotional Self
"Bill W."	Job Readiness & Resume	Care
Codependency Part II	Building	Life Style Changes
Character Defects	Boundaries	Fear
Step One	HIV/AIDS	"How is That Funny"
Cravings	Grief	Sponsorship
Anger Management	Money Management	Recovery Programs &
Part I	"The Lost Weekend"	Resources
Anger Management	Codependency Part VII	
Part II	Communication Skills	
"28 Days"	Defense Mechanisms	







Intensive Outpatient Programming – Behind the Walls

Program Duration	Number of Institutions	Number of Inmates Served
4 to 6 month duration	12	760 males 120 females

There are currently two community providers of intensive outpatient programming. The Unlimited Path of Central Florida and Community Education Centers. Both providers have agreed to increase our intensive outpatient slots from 20 per counselor to 25 per counselor.

Number of Inmate Slots with Increase	=	More Services
1000 males 145 females		



Services Provided In Intensive Outpatient

Targeting Offenders who have High/Moderate Risks and Needs
 Enrollees are typically higher custody levels
 Evidence-based programs are utilized:

- Texas Christian University Mapping-Enhanced Counseling
- Living In Balance by Hazelden
- Money Smart by FDIC
- Anger Management from SAMSHA
- InsideOut Dads, etc.
- Victim Impact: Listen and Learn
- Within My Reach by PREP

Making a better community.

Family Initiative:
 Where possible with institutional support, family visitation and family therapy has begun with our intensive outpatient programs. A counselor meets with the offender and his family members to discuss re-entry issues and resolve old disputes. Treatment means more and there is less wiggle room for the offender when "telling his story" when families participate!

Residential Therapeutic Community— Behind the Walls

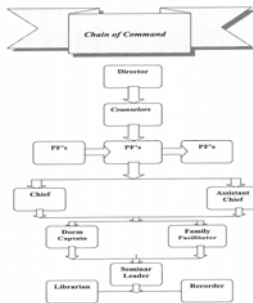
Program Duration	Number of Institutions	Number of Inmates Served
9 to 12 month duration	4	544 males

There are currently two community providers of Residential Therapeutic Communities. The Unlimited Path of Central Florida and Community Education Centers.

Residential Therapeutic Communities

Targeting Offenders who are in last 18 months of sentence

Enrollees are all provided Thinking for a Change curriculum proven to change antisocial thinking patterns along with the other evidenced-based curriculums previously mentioned for intensive Outpatient.



Voluntary Literacy – Added Value



Successes

Substance Abuse Treatment is an integral part of the re-entry movement

Linkages with Community Resources Greatly Improved

Serving Offenders at the End of their Sentence

Able to Contact/Continually Support the Offender Upon Release

Need Principle: What We Need to Treat

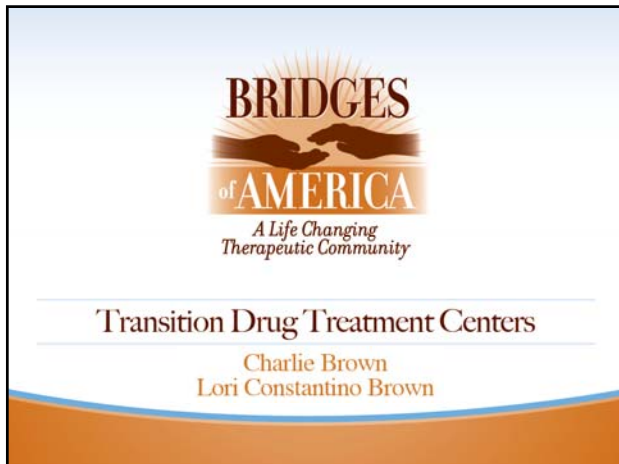
By assessing and targeting criminogenic needs for change, agencies can reduce the probability of recidivism:

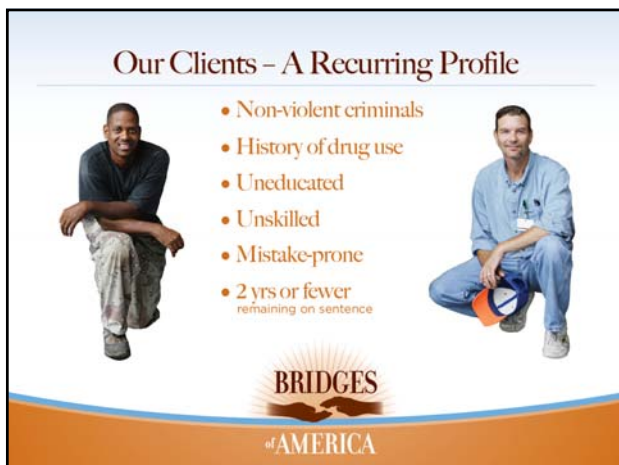
Criminogenic
Antisocial Attitudes
Antisocial Friends
Substance Abuse
Lack of Empathy
Impulsive Behavior

- **Pennsylvania Parole Violator Study*:**
 - Successes and failures did not differ in difficulty in finding a place to live after Release
 - Successes & failures equally likely to report eventually obtaining a job
- *Conducted by Pennsylvania Dept. of Corrections

Source: Ed Latessa, Ph.D, U. of Cincinnati, Second Chance Reentry Conference, 2011, Understanding the Risk and Needs Principles and their Application to Offender Reentry







The Bridge Program



Holistic approach to each individual

- Substance abuse treatment
- Education
- Family development
- Faith
- Life skills training
- Counseling
- Job training

BRIDGES

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Transition to the Workplace

Employment & Re-entry education

Industry Skills Training

- Culinary Arts Certification
- A+ Computer Certification
- Electrician program

Partnerships

- Community partners
- Bridges-to-Business
- Technical institute training programs



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Securing Employment



- Develop
valuable skills
- Learn responsibility
and accountability
- Earn savings
- Send money home
to support families

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How They Re-enter

- Changed and motivated
- Prepared with life skills and financial savings
- Reconnected to family and community
- Productive, contributing members of society

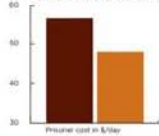


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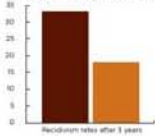
What it Means to the State

Tax Savings. Public Safety. Reduced Criminal Behavior.

Lower costs to taxpayer



Better results each year



82%

Success Rate – Those who complete community drug treatment recidivate at far lower rates within 3 years

BRIDGES
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Criminal Justice Subcommittee

Tuesday October 18th, 2011

9:00 AM

404 HOB

AMENDMENT PACKET

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 173 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Criminal Justice
Subcommittee

Representative Pilon offered the following:

Amendment (with title amendment)

Remove lines 112-179 and insert:

Section 4. Subsection (3) of section 985.601, Florida
Statutes, is amended and subsection (11) is added to section
985.601, Florida Statutes, to read:

985.601 Administering the juvenile justice continuum.—

(3)(a) The department shall develop or contract for
diversified and innovative programs to provide rehabilitative
treatment, including early intervention and prevention,
diversion, comprehensive intake, case management, diagnostic and
classification assessments, individual and family counseling,
shelter care, diversified detention care emphasizing
alternatives to secure detention, diversified probation, halfway
houses, foster homes, community-based substance abuse treatment
services, community-based mental health treatment services,

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 173 (2012)

Amendment No. 1

community-based residential and nonresidential programs, and
environmental programs, ~~and programs for serious or habitual~~
~~juvenile offenders~~. Each program shall place particular emphasis
on reintegration and conditional release for all children in the
program.

(11) At the secretary's discretion, the department is
authorized to pay up to \$5,000 toward the basic funeral expenses
for a youth who dies while in the custody of the department and
whose parents or guardians are indigent and unable to pay such
expenses and for which there is no other source of funding
available.

Section 5. Paragraphs (a), (b), (c), (d), (e), and (g) of
subsection (5) of section 985.0301, Florida Statutes, are
amended to read:

985.0301 Jurisdiction.—

(5)(a) Notwithstanding ss. 743.07, 985.43, 985.433,
985.435, 985.439, and 985.441, and except as provided in ss.
985.461 and ~~7~~ 985.465, ~~and 985.47~~ and paragraph (f), when the
jurisdiction of any child who is alleged to have committed a
delinquent act or violation of law is obtained, the court shall
retain jurisdiction, unless relinquished by its order, until the
child reaches 19 years of age, with the same power over the
child which the court had before the child became an adult. For
the purposes of s. 985.461, the court may retain jurisdiction
for an additional 365 days following the child's 19th birthday
if the child is participating in transition-to-adulthood
services. The additional services do not extend involuntary

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 173 (2012)

Amendment No. 1

47 court-sanctioned residential commitment and therefore require
48 voluntary participation by the affected youth.

49 (b) Notwithstanding ss. 743.07 and 985.455(3), ~~and except~~
50 ~~as provided in s. 985.47,~~ the term of any order placing a child
51 in a probation program must be until the child's 19th birthday
52 unless he or she is released by the court on the motion of an
53 interested party or on his or her own motion.

54 (c) Notwithstanding ss. 743.07 and 985.455(3), ~~and except~~
55 ~~as provided in s. 985.47,~~ the term of the commitment must be
56 until the child is discharged by the department or until he or
57 she reaches the age of 21 years. Notwithstanding ss. 743.07,
58 985.435, 985.437, 985.439, 985.441, 985.455, and 985.513, and
59 except as provided in this section ~~and s. 985.47,~~ a child may
60 not be held under a commitment from a court under s. 985.439, s.
61 985.441(1)(a) or (b), or s. 985.455 after becoming 21 years of
62 age.

63 (d) The court may retain jurisdiction over a child
64 committed to the department for placement in a juvenile prison
65 or in a high-risk or maximum-risk residential commitment program
66 to allow the child to participate in a juvenile conditional
67 release program pursuant to s. 985.46. The jurisdiction of the
68 court may not be retained after ~~beyond~~ the child's 22nd
69 birthday. However, if the child is not successful in the
70 conditional release program, the department may use the transfer
71 procedure under s. 985.441(4).

72 (e) The court may retain jurisdiction over a child
73 committed to the department for placement in an intensive
74 residential treatment program for 10-year-old to 13-year-old

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 173 (2012)

Amendment No. 1

75 offenders, in the residential commitment program in a juvenile
76 prison or in a residential sex offender program, ~~or in a~~
77 ~~program for serious or habitual juvenile offenders as provided~~
78 ~~in s. 985.47 or s. 985.483~~ until the child reaches the age of
79 21. If the court exercises this jurisdiction retention, it shall
80 do so solely for the purpose of the child completing the
81 intensive residential treatment program for 10-year-old to 13-
82 year-old offenders, in the residential commitment program in a
83 juvenile prison, or in a residential sex offender program, ~~or~~
84 ~~the program for serious or habitual juvenile offenders~~. Such
85 jurisdiction retention does not apply for other programs, other
86 purposes, or new offenses.

87 ~~(g)1. Notwithstanding ss. 743.07 and 985.455(3), a serious~~
88 ~~or habitual juvenile offender shall not be held under commitment~~
89 ~~from a court under s. 985.441(1)(c), s. 985.47, or s. 985.565~~
90 ~~after becoming 21 years of age. This subparagraph shall apply~~
91 ~~only for the purpose of completing the serious or habitual~~
92 ~~juvenile offender program under this chapter and shall be used~~
93 ~~solely for the purpose of treatment.~~

94 ~~2. The court may retain jurisdiction over a child who has~~
95 ~~been placed in a program or facility for serious or habitual~~
96 ~~juvenile offenders until the child reaches the age of 21,~~
97 ~~specifically for the purpose of the child completing the~~
98 ~~program.~~

99 Section 6. Subsection (2) of section 985.688, Florida
100 Statutes, is amended to read:

101 985.688 Administering county and municipal delinquency
102 programs and facilities.—

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 173 (2012)

Amendment No. 1

(2) A county or municipal government may develop or contract for innovative programs that provide rehabilitative treatment with particular emphasis on reintegration and conditional release for all children in the program, including halfway houses and community-based substance abuse treatment services, mental health treatment services, residential and nonresidential programs, and environmental programs, ~~and programs for serious or habitual juvenile offenders.~~

T I T L E A M E N D M E N T

Remove lines 10-17 and insert:
985.601, F.S.; deleting obsolete references; authorizing the department, at the secretary's discretion, to pay up to a specified amount toward the basic funeral expenses for a youth who dies while in the custody of the department and whose parents or guardians are indigent and for which no other funding is available; amending s. 985.0301, F.S.; conforming a cross-reference; deleting obsolete references; amending s. 985.688, F.S.; deleting obsolete references; providing an effective date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 177 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

1 Committee/Subcommittee hearing bill: Criminal Justice

2 Subcommittee

3 Representative Porth offered the following:

4
5 **Amendment**

6 Remove lines 109-123 and insert:

7 (3) (a) The department shall screen offenders committed to
8 the department for eligibility criteria to participate in the
9 reentry program. In order to be eligible, an offender must be a
10 nonviolent offender, served at least one-half of his or her
11 original sentence, and have been identified as having a need for
12 substance abuse treatment. When selecting participants for the
13 reentry program, the department shall consider the offender's
14 criminal history and the possible rehabilitative benefits that
15 substance abuse treatment, educational programming, vocational
16 training, and other rehabilitative programming might have on the
17 offender.

18 (b) If an offender meets the eligibility criteria, is
19 selected by the department, and space is available in the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 177 (2012)

Amendment No. 1

20 | reentry program, the department shall request the sentencing
21 | court to approve the offender's participation in the reentry
22 | program.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 183 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)

ADOPTED AS AMENDED _____ (Y/N)

ADOPTED W/O OBJECTION _____ (Y/N)

FAILED TO ADOPT _____ (Y/N)

WITHDRAWN _____ (Y/N)

OTHER _____

Committee/Subcommittee hearing bill: Criminal Justice

Subcommittee

Representative Moraitis offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (1) of section 948.16, Florida Statutes, is amended to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program.—

(1)(a) A person who has not previously been convicted of a felony and who is charged with a nonviolent, nontraffic-related misdemeanor and identified as having a substance abuse problem or who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under chapter 893, prostitution under s. 796.07, possession of alcohol while under 21 years of age under s. 562.111, or possession of a controlled substance without a valid prescription under s. 499.03(1), and ~~who has not previously been convicted of a felony nor been~~

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 183 (2012)

Amendment No. 1

20 ~~admitted to a pretrial program,~~ is eligible for voluntary
21 admission into a misdemeanor pretrial substance abuse education
22 and treatment intervention program, including a treatment-based
23 drug court program established pursuant to s. 397.334, approved
24 by the chief judge of the circuit, for a period based on the
25 program requirements and the treatment plan for the offender,
26 upon motion of either party or the court's own motion, except,
27 if the state attorney believes the facts and circumstances of
28 the case suggest the defendant is involved in dealing and
29 selling controlled substances, the court shall hold a
30 preadmission hearing. If the state attorney establishes, by a
31 preponderance of the evidence at such hearing, that the
32 defendant was involved in dealing or selling controlled
33 substances, the court shall deny the defendant's admission into
34 the pretrial intervention program.

35 Section 2. This act shall take effect July 1, 2012.
36
37

38 -----
39 **T I T L E A M E N D M E N T**

40 Remove lines 4-9 and insert:

41 that a person who has not previously been convicted of a felony
42 and is charged with a nonviolent, nontraffic-related misdemeanor
43 and identified as having a substance abuse problem or a person
44 who is charged with certain other designated misdemeanor
45 offenses, may qualify for participation in a