

EARLY RELEASE OF NON-VIOLENT OFFENDERS CAN BE...

“SMART JUSTICE”

Governor's Veto Cites “Unwarranted Exception” to 85% Sentence Law



by
Reggie
Garcia

An almost unanimous vote by the Republican-led Florida Legislature for a bill to help “nonviolent offenders” who are substance abusers reenter society reflects an emerging budget, political, policy and bi-partisan consensus some call “smart justice.” Florida’s most credible government watch-dog group, Florida TaxWatch and its Center for Smart Justice, supported the bill as a good start.

CS/CS/CS for HB 177 (HB 177) passed the Senate 40-0 and the House of Representatives 112-4 during the recently-concluded legislative session. The bill was sponsored by Senator Ellyn Bogdanoff (R-Ft. Lauderdale) and Representative Ari Porth (D-Coral Springs). The legislation directed the Florida Department of Corrections (FDOC) to administer a “nonviolent offender” reentry program designed to divert these inmates from extended incarceration when a reduced sentence followed by intensive substance abuse treatment may have the same deterrent



effect, rehabilitate the offender, and reduce recidivism.¹

STRICT ELIGIBILITY CRITERIA LIMITS SCOPE

Although there are 102,000 inmates in state prison, FDOC estimated only 337 inmates (less than 1 percent) would be eligible this year.² Inmates must:

- ▶ be a nonviolent offender, defined as convicted of a third-degree felony under ch. 810, F.S. or any other felony offense that is not a “forcible felony” as defined in s. 776.08, F.S.

- ▶ have served at least one half of their sentence, and
- ▶ be identified as having a need for substance abuse treatment.³

THE FDOC’S SELECTION IS BASED ON NINE CONSIDERATIONS

Under current law, the FDOC already provides “reentry programs” such as substance abuse treatment; educational and academic programs; career and technical education; and faith- and character-based programs. The FDOC also provides inmates



RICK SCOTT
GOVERNOR

April 6, 2012

Secretary Ken Detzner
Secretary of State
Florida Department of State
R.A. Gray Building
500 S. Bronough Street
Tallahassee, Florida 32399

Dear Secretary Detzner:

By the authority vested in me as Governor of the State of Florida, under the provisions of Article III, Section 8, of the Constitution of Florida, I do hereby veto and transmit my objections to Committee Substitute for Committee Substitute for Committee Substitute for House Bill 177 enacted during the 114th Session of the Legislature of Florida, since statehood in 1845, during the Regular Session of 2012 and entitled:

An act relating to Inmate Reentry...

Justice to victims of crime is not served when a criminal is permitted to be released early from a sentence imposed by the courts. Florida's sentencing laws have helped reduce Florida's crime rate to a 40-year low. This bill would permit criminals to be released after serving fifty percent of their sentences, thus creating an unwarranted exception to the rule that inmates serve eight-five percent of their imposed sentences.

For the reason stated above, I withhold my approval of Committee Substitute for Committee Substitute for Committee Substitute for HB 177, and do hereby veto the same.

Sincerely,

Rick Scott
Governor

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who are within 12 months of their release with the "100-Hour Transition Training Program" to help with job readiness, family issues, continuing education, legal responsibilities and other guidance. Building on these existing reentry programs, the legislature tasked the FDOC to "screen" and "select" eligible offenders based on nine considerations:

- ▶ the history of disciplinary reports,
- ▶ criminal history,
- ▶ severity of the offender's addiction,

- ▶ criminal behavior related to substance abuse,
- ▶ participation in GED and other educational, technical, work, vocational or self-rehabilitation programs,
- ▶ results of risk assessment
- ▶ outcome of past participation in substance abuse treatment programs
- ▶ possibility of rehabilitation, and
- ▶ likelihood the program will achieve or exceed the same public safety, budget savings and reduced recidivism as continued incarceration.⁴

THE SENTENCING COURT
MUST APPROVE AN
OFFENDER'S SELECTION AND
SENTENCE MODIFICATION

Using the discretion already exercised in all classification and security decisions, the FDOC selects the offenders and must notify the state attorney (who can file an objection within 15 days) and obtain the sentencing court's approval.⁵ Within 30 days the court must consider any relevant facts—including the nine factors *already* considered by the FDOC—and these six additional criteria:

- ▶ The prior evidence and sentencing report
- ▶ record of arrests not resulting in convictions
- ▶ other evidence of unlawful conduct or violence
- ▶ family and community ties, employment history and mental health
- ▶ likelihood of success, and
- ▶ likelihood of future criminal conduct.⁶

Upon approval by the FDOC and the court, the offender must successfully complete six months in the reentry program—to include a "full substance abuse assessment" and an adult education program. Once completed, the offender is eligible for a sentence modification, release from prison and to be put on drug-offender probation.

GOVERNOR'S VETO
STOPS BILL

Exercising his prerogative under Article III, Section 8, of the Florida Constitution, Gov. Rick Scott vetoed HB 177 on April 6, 2012, stating:

"Justice to victims of crime is not served when a criminal is permitted to be released early from a sentence imposed by the courts. Florida's sentencing laws have helped reduce Florida's crime rate

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to a 40-year low. This bill would permit criminals to be released after serving 50 percent of their sentences, thus creating an unwarranted exception to the rule that inmates serve 85 percent of their imposed sentences.”⁷

The Florida Sheriffs Association and the Florida Police Chiefs Association encouraged the veto. The veto will serve as a “road map” as legislators consider this and other high-profile criminal justice and corrections issues during the 2013 session. Florida’s crime rate is down and prisons are closing or consolidating to reflect 12,000 empty beds. The FDOC’s budget of almost

\$2.1 billion for fiscal year 2012 includes daily costs or “per diem” of between \$43 and \$54 to incarcerate an adult male.⁸ With another very frugal budget expected next year and corrections policy a top priority—inmate reentry for non-violent offenders will continue to be hotly- debated. ■

¹ CS/CS/CS for HB 177, Engrossed 1 (HB 177), an act relating to inmate reentry, pages 4 and 5.

² Final Bill Analysis for HB 177 dated March 15, 2012, House of Representatives, Fiscal Comments, page 6.

³ HB 177, page 4.

⁴ HB 177, pages 5 and 6.

⁵ HB 177, page 7.

⁶ HB 177, pages 7 and 8.

⁷ Governor’s Veto Letter to Secretary of State dated April 6, 2012.

⁸ Conference Report on HB 5001, the General Appropriations Act, page 126 (Ch. 2012-118, Laws of Florida).