

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 8, 1998 Revised: _____

Subject: Criminal Offenders

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Erickson</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>WM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 1566, the “Sean French Act,” prohibits a court from placing the following offenders in probation and restitution centers: offenders convicted of certain sexual offenses, offenses involving serious personal injury, and offenses that are capital or life felonies; offenders who have a severe addiction requiring medical treatments; and offenders who are physically unable to work.

Committee Substitute for Senate Bill 1566 substantially amends section 944.026 of the Florida Statutes.

II. Present Situation:

Section 944.026, F.S., requires the Department of Corrections (DOC) to develop, provide, or contract for a statewide system of community-based facilities, services, and programs dealing with the rehabilitation of offenders, which shall include, but is not limited to, probation and restitution centers (PRC’s) throughout the state whereby probationers, drug offender probationers, and community controllees who have violated their terms or conditions, and whose presumptive sentence exceeds 22 months, may be required to attend outpatient substance abuse counseling. The statutory purpose of the PRC’s is to provide the sentencing courts with an alternative to committing offenders to more secure state correctional institutions and to assist in the supervision of probationers, drug offender probationers, and community controllees. The DOC is required to develop and implement procedures to diagnose offenders prior to sentencing, for the purpose of recommending to the sentencing courts suitable candidates for the PRC’s.

Probation and restitution centers are short term residential facilities which provide the courts with an alternative to committing offenders to more secure correctional institutions and provide

assistance in the supervision of probationers and community controllees. The centers provide a controlled setting designed to prepare offenders for advancement or return to community supervision and for eventual release from supervision. Rule 33-24.020, F.A.C.

Probation and restitution centers house felony probationers and community controllees who have violated their terms or conditions of supervision and felony offenders assigned to pretrial intervention programs. These offenders reside in the centers while working, receiving treatment, or attending school. Probation and restitution also provide out-patient substance abuse counseling for offenders on felony probation or community control. *Id.*

Offenders are referred to PRC's in several ways: a direct referral from the courts as a result of the regular sentencing process with a special condition the offender complete the PRC program prior to being placed on community probation or community control supervision; a referral from the courts after failing to make satisfactory progress on probation or community control; a referral by the DOC's probation and parole service's office when it is determined that more structured supervision and control is needed, and a modification of probation to accomplish the referral has been obtained from the court; or a referral as a graduate of the basic training program for youthful offenders when ordered by the court to complete the requirements of a PRC program as a condition of the offender's probation or community control. *Id.*

When contacted by the court regarding the appropriateness of committing an offender to a PRC, staff is required to consider the DOC's guidelines in evaluating the case and making a recommendation. Offenders with the following characteristics are considered to be inappropriate for referral to a PRC: convicted of a sexual battery under s. 794.011, F.S., or any other crime involving serious personal injury; severe alcohol or drug addiction requiring detoxification services or crisis stabilization services; physically unable to work; currently being treated with psychotropic medication; or charged with a capital or life felony. *Id.* Sentencing courts have placed offenders in PRC's who do not meet the DOC's guidelines. Presently there are no statutory restrictions that preclude any offender from placement in a PRC when a court orders such placement.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 1566 may be cited as the "Sean French Act."

Committee Substitute for Senate Bill 1566 prohibits a court from placing in a PRC any offender convicted for committing, attempting to commit, or conspiring to commit: a sexual battery under s. 794.011, F.S.; a felony computer pornography offense; any offense listed in s. 775.21(4)(c), F.S., or s. 943.0435(1)(a), F.S., which relate, respectively, to sexual predators and sexual offenders required to register certain information with law enforcement agencies; or any offense that involved serious personal injury to another person. The offenses listed in s. 775.21(4)(c), F.S., or s. 943.0435(1)(a), F.S., include sexual battery and any other sexual offense under ch. 794, F.S.; a lewd, lascivious, or indecent assault or act upon or in the presence of a child; inducing or promoting a sexual performance by a child; selling or buying a minor for the purpose of inducing

or promoting sexually explicit conduct involving the minor; the felony offense of knowingly selling, renting, loaning, giving away, distributing, transmitting, or showing obscene materials to a minor; luring or enticing a child; procuring a minor for prostitution; and computer pornography.

The CS also prohibits from placement in a PRC any offender who has a severe alcohol or drug addiction that requires detoxification services or crisis stabilization services, as determined by licensed medical personnel; any offender who is physically unable to work; and any offender who is charged with a capital or life felony. The CS tracks and would codify most of the DOC's current guidelines relating to types of offenders excluded from referral to a PRC.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Staff requested that CS/SB 1566 be placed on the agenda of the Criminal Justice Estimating Conference (CJEC). The CJEC had not yet met to consider the fiscal impact of CS/SB 1566. The DOC has prepared a preliminary estimate of the fiscal impact of CS/SB 1566. The DOC analysis states:

The use of the type of mitigation identified in this bill is unknown as the department does not capture with specificity reasons for departure that are not listed in the mitigation reason statute. However, the use must be

infrequent as departures received indicating a non-statutory listed reason for departure are rare. No impact is anticipated.

The DOC analysis also states that “[d]ue to existing internal criteria little impact is anticipated by imposing the proposed PRC exclusions.”

VI. Technical Deficiencies:

None.

VII. Related Issues:

The impetus for this legislation is a case that occurred in Tallahassee involving a former Leon County Sheriff’s Deputy named Marshall Lee “Toby” Frinks. In 1988, Frinks entered a plea of nolo contendere to numerous counts of lewd, lascivious, or indecent assault on a child under sixteen years of age. Judge L. Ralph Smith placed Frinks on probation for 2 years followed by 18 years of probation. The sentence imposed was a downward departure from the sentencing guidelines. The sentencing order states that the basis for the departure was Frinks’ age and the absence of a criminal record, the showing of support from relatives and friends for Frinks’ rehabilitation, and that Frinks had a psychiatric disorder for which he was receiving treatment and prison would impede the treatment, which Judge Smith characterized as being better than what Frinks would receive in prison. Prosecutors unsuccessfully appealed the sentence.

This case generated and continues to generate considerable attention because of Frinks’ law enforcement background, the nature of his offenses, the sentence imposed by Judge Smith, and the fact that various public officials submitted testimonials in support of Frinks.

In 1997, Judge J. Lewis Hall found that Frinks violated his probation by making prohibited telephone contact with Sean French, one of Frinks’ victims, during the latter half of 1990 through 1992. Mr. French has come forward publicly to speak about the Frinks’ case and the act bears his name. Judge Hall modified Frinks’ probation conditions to require that he spend all of 1998 in a PRC in or near Tampa. Like the original sentencing decision, this decision generated considerable controversy, not only because Frinks avoided a prison term but because of his placement in a PRC which also houses youthful offenders. This placement was made despite the objections of the DOC.

In 1998, Frinks was charged with violating his probation. The allegations are that Frinks violated his probation conditions by actually and intentionally touching the unclothed buttocks of another male offender at the PRC without that offender’s consent, and that a probation specialist obtained from Frinks certain writings that are patently offensive to prevailing standards in the adult community as a whole. A hearing has not yet been held on the alleged violations.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
