

SENATE BILL REPORT

SB 6400

As Reported By Senate Committee On:
Human Services & Corrections, February 07, 2008

Title: An act relating to moral guidance of incarcerated persons.

Brief Description: Establishing programs for the moral guidance of incarcerated persons.

Sponsors: Senator Carrell.

Brief History:

Committee Activity: Human Services & Corrections: 1/29/08, 2/07/08 [DPS, w/oRec].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6400 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Carrell and McAuliffe.

Minority Report: That it be referred without recommendation.

Signed by Senators Brandland and Marr.

Staff: Shani Bauer (786-7468)

Background: In 2007 the Legislature passed ESSB 6157 and dedicated over \$30 million to programs designed to prepare offenders for reentry such as basic education, substance abuse treatment, and job training. In addition to traditional reform solutions, some states have begun implementing faith-based models, as well as secular programs that emphasize moral development and character building.

In 2003, Florida opened a state-operated correctional institution dedicated exclusively to a faith- and character-based approach to rehabilitation. The Urban Institute (Institute) has conducted an outcome analysis of Florida's program. While the Institute concludes that the program appears to have a positive impact on recidivism, they acknowledge that enough time has not passed to provide adequate results for review and that a self-selection bias is inherent in the results.

The courts have also reviewed the constitutionality of these programs at some length, with the most recent decision coming from the 8th Circuit Court of Appeals. In order to meet constitutional requirements for the separation of church and state, courts have held that the program must meet three objectives:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- 1) The program must be faith-neutral. That is, the program should be geared to a wide variety of faiths and include secular programs as well.
- 2) Inmate participation must be entirely voluntary; and
- 3) Direct government funding may not be used for religious activities and the program must have adequate safeguards against the diversion of public funds to religious activities.

The Department of Corrections (DOC) currently appoints chaplains for correctional institutions around the state. Institutional chaplains are responsible for conducting religious services, coordinating religious activities, and giving religious and moral instruction to inmates. In addition to institutional chaplains, DOC employs three Native American Program Specialists who attend to the spiritual needs of Native American inmates. DOC also utilizes contract chaplains on a part-time basis to minister to inmates of their own faiths/denominations.

When a lawsuit is brought against any state official, employee, volunteer, or foster parent arising from the good faith performance of the person's duties, the person may request the Attorney General to defend the action at the expense of the state. If the Attorney General finds that the person was acting in good faith, the request must be granted. If the court finds that the person was acting within the scope of his or her official duties, any judgment against the person may only be collected against the state and not against the individual property of the person. Chaplains employed by contract with DOC do not qualify as a state official, employee, or volunteer and therefore may not request that the Attorney General defend them in a lawsuit.

Summary of Bill: The bill as referred to committee was not considered.

SUMMARY OF BILL (Recommended Substitute): Moral and Character Building Residential Program: DOC must establish an oversight committee to develop an interagency plan to provide voluntary, nondenominational moral and character-building residential services and supports for offenders incarcerated in prison.

The plan must include:

- identification of existing state and community-based programs for building moral character;
- identification of methods to improve collaboration for existing programs;
- recommendations for new services or programs;
- identification of evidence-based practices and areas for research to support the long-term provision of moral and character building services and programs;
- a plan for offering both nondenominational and secular programming; and
- a system to prevent the diversion of public funds to religious activities.

Committee membership is prescribed. The committee must seek input from the public, including faith-based communities, state institutions for higher education, and the business community. The plan must be developed by June 30, 2010 with an interim report due to the appropriate committees of the Legislature by January 1, 2009.

DOC Chaplains: The Secretary of DOC must appoint institutional chaplains for its institutions. Where volunteers are not available, DOC may employ contract chaplains to meet the religious needs of inmates.

Institutional chaplains will act as religious program coordinators for all faith groups represented within the DOC. Institutional or contracted chaplains must have qualifications consistent with community standards of their given faith group and are not required to violate the tenets of their faith when acting in an ecclesiastical role.

Whether a chaplain serves by contract, employment, or is a volunteer, DOC may not compel a chaplain to provide personal liability insurance as a condition of employment and the chaplain may request the Attorney General to authorize the defense of any proceeding for damages instituted against the chaplain.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): Removes the requirement that the department gather specialized data in identifying evidence based practices to support moral and character-building services. Removes provisions requiring a given number of chaplains per the number of offenders at an institution. Removes provision that a chaplain only be required to provide services, practices and materials to an offender who the chaplain recognizes as a member of his or her religion. Removes immunity from civil liability for chaplains. Adds language to clarify that a chaplain is not required to violate the tenets of his or her faith when acting in an ecclesiastical role.

Appropriation: None.

Fiscal Note: Requested on January 22, 2008.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: We have been here before on the issue of adding more chaplains back to DOC. As a result of the middle management squeeze three years ago, many correctional chaplain positions were purged. This has had a negative effect on prison inmates. Chaplains can have a positive impact on individual offender's lives, and have a larger impact on the how the prison runs. Those positions should be restored. Subjective criteria for determining the qualifications of chaplains should be eliminated to the extent possible.

Poverty and education alone are not the answer to criminality. This is an effort to get the faith community involved in reentry. Faith based units are constitutional if they are based on clearly defined paramaters. There is also a housekeeping matter with regard to supervisory chaplains that should be cleaned up in RCW 72.01.240. This bill provides offenders with another potential tool to assist offenders with successful transition. If the Legislature truly believes in redemption, it should also abolish capital punishment.

CON: The bill asks DOC to straddle a very thin line between the religious and the secular in establishing a moral and character based living unit inside the prison. This will likely be an invitation for litigation. DOC currently operates therapeutic communities in several prisons

that do not pose the same legal challenges as these proposed units. Notwithstanding, the bill only requires DOC to study the issue, which it is amenable to doing.

The data collection required by Section 2 is not information that is available today, nor easy to acquire. The costs of collection are reflected in the fiscal note. DOC cannot support the addition of chaplains as it is not contained in the Governor's budget. It is, however, our intent to seek additional chaplain positions in the next biennial budget. Requiring DOC to hire contract chaplains is problematic. The liability protection provisions appear to be overly broad. DOC agrees that contract chaplains should have the protection of the Attorney General.

Persons Testifying: PRO: D. Pablo Stanfield, Friends Committee on WA Public Policy; Bruce Brummond, Character Construction Company; Karen Pohlo, King County Jail; Charles L. Akes, Religion Advisory Board; Jim Tharpe, Unity House; Dr. Larry Polikoff, citizen; Greg Garringer, Department of Corrections; Gary Friedman, Religious Services Advisory Committee; Antonio Cube, WA State Catholic Conference; Yoshe Revelle, global citizen.

CON: Eldon Vail, Department of Corrections.