

**STORAGE NAME:** h1347.cor

**DATE:** April 4, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CORRECTIONS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 1347

**RELATING TO:** State Correctional System

**SPONSOR(S):** Representative Martinez

**STATUTE(S) AFFECTED:** ss. 944.279, 944.31, 944.35, 944.472, and 944.473, F.S.

**COMPANION BILL(S):** None

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) CORRECTIONS
  - (2)
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

House Bill 1347 would amend several sections of Chapter 944, Florida Statutes, relating to the state correctional system. Changes would include:

- allowing the Department of Corrections to impose other disciplinary actions, in addition to gain time forfeiture, against prisoners who file lawsuits deemed by the court to be frivolous;
- revising the duties of the department's inspector general and authorizing that office to inspect and audit private correctional facilities;
- eliminating the requirement that use of force reports be maintained in the file of a department employee who used force against an inmate or authorized the use of such force; and
- providing statutory authority for substance abuse testing of inmates based on reasonable suspicion.

According to the Department of Corrections, the bill may have some fiscal impact related to development of a substance abuse testing program; however, it is estimated to be minimal.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**Lawsuits by Prisoners**

Section 944.279, F.S., 1996 Supplement, provides that prisoners who file frivolous or malicious lawsuits in state or federal court or who knowingly provide false information to a court are subject to forfeiture of gain time or the right to earn gain time. The finding as to whether a claim is frivolous or malicious or whether false information has been provided may be made by the court at any time. A written copy of the court's finding must be forwarded to the appropriate institution or facility for disciplinary action.

Section 944.279, F.S., 1996 Supplement, does not specify what constitutes a frivolous or malicious lawsuit for purposes of gain time forfeiture; however, section 57.085, F.S., 1996 Supplement, addressing actions filed by prisoners who have been declared indigent and have been granted a waiver of costs, provides the following considerations for a court to use in making that finding. A claim is deemed frivolous or malicious if it:

- has no arguable basis in law or fact;
- reasonably appears intended solely to harass a party filed against;
- is substantially similar to a previous claim in that it involves the same parties or arises from the same operative facts as a previous claim;
- has little likelihood of success on its merits; or
- contains allegations of fact that are fanciful or not credible.

Section 944.28, F.S., 1996 Supplement, provides the specific circumstances under which a prisoner may lose all or part of gain time that has been earned. Those circumstances include a finding by the court that a prisoner has brought a frivolous or malicious lawsuit or has knowingly provided false information to the court. The statute also sets forth procedures for declaring forfeiture of gain time, which include notice to the prisoner, a hearing before a disciplinary committee authorized by rules promulgated by the Department of Corrections, and approval of the committee's findings by the superintendent of the institution and the department.

The Department of Corrections is authorized to promulgate rules relating to disciplinary procedures and punishment. s. 944.09(1)(c), F.S., 1996 Supp. The current rules provide for notice to an inmate who is being investigated for a disciplinary infraction and an opportunity to be heard at a disciplinary hearing. Final disciplinary action is reviewed and approved by the superintendent, regional probation administrator or regional director. Rule 33-22.009, F.A.C. (1995).

Disciplinary procedures that can be imposed for violating rules of the department range from reprimands, loss of privileges (e.g., routine mail, visitation or telephone privileges) and extra work assignments to more serious sanctions, such as disciplinary confinement and loss of accrued gain time. Rule 33-22.008, F.A.C. (1995).

Currently, the department's disciplinary procedures and punishment outlined in the departmental rules do not apply to the filing of frivolous or malicious lawsuits or

knowingly providing false information to a court. The only penalty for such acts involves forfeiture of gain time prescribed by statute.

### **Inspector General Duties**

Section 944.31, F.S., 1996 Supplement, establishes the powers and duties of the Department of Corrections' Inspector General. The Inspector General shall:

- be responsible for prison inspection and investigation, internal affairs investigations, inmate grievances, and management reviews;
- inspect each correctional institution or any place in which state prisoners are housed, worked, or kept for, among other things, cleanliness, sanitation, safety and comfort, quality and supply of bedding and food, the number and condition of prisoners, and the general conditions of each institution.
- see that all departmental rules and regulations are strictly observed and followed by all persons connected with the state's correctional system;
- coordinate and supervise the work of inspectors throughout the state; and
- be responsible for criminal and administrative investigation of matters relating to the department.

The inspector general may:

- enter any place where prisoners in this state are kept and privately consult with any prisoner; and
- in criminal or administrative investigations, consult privately with any prisoner or staff member and detain any person for a criminal violation.

### **Internal Audits and Management Reviews**

Section 20.055(5), F.S., 1996 Supplement, establishes the Office of Inspector General in each state agency and sets forth duties and responsibilities. These duties include directing, supervising, and coordinating audits, investigations, and management reviews relating to the programs and operations of the state agency.

Agency inspectors general are to conduct financial, compliance, electronic data processing and performance audits of the agency, and may be directed to perform audits of a special program, function, or organizational unit by the agency head. s. 20.055(5), F.S., 1996 Supp. Additional responsibilities relating to both internal audits conducted by the Inspector General and those conducted by the Auditor General are set forth in the statute.

The Office of the Inspector General conducts management reviews of each correctional facility on a biennial basis, with self-reviews conducted by the institution during the interim year. A typical management review involves a 3-4 day visit to the institution by a team that reviews all aspects of institutional operations, using over 1200 standards. A corrective action plan is devised to address any identified deficiencies or problems with a required follow up by the regional office.

Since August, 1996, the Inspector General's Office has been compiling information provided by management reviews in a data management system. This system will enable

the department to more quickly evaluate compliance, compare facilities, and evaluate standards and corrective actions.

### **Security Audits**

Section 944.151, F.S., provides legislative intent that the Department of Corrections shall be responsible for the security of correctional institutions and facilities. The statute provides for establishment of a security review committee, whose members are appointed by the secretary of the department and must include the inspector general. The statute further specifies responsibilities of the committee relating to both state and private correctional institutions.

The committee is required, among other things, to establish an inspection schedule for each state and private correctional institution in order to inspect buildings and structures for security deficiencies. The committee is also required to conduct announced or unannounced security audits of each state and private correctional institution annually and must evaluate the physical plant, landscaping, fencing, security alarms and perimeter lighting, and inmate classification and staffing policies.

Beginning in July, 1997, the department has plans to begin conducting unannounced security audits of all state correctional facilities at least once a year.

### **Contraband Interdiction**

A Contraband Interdiction Unit was established in December, 1993 within the Office of the Inspector General. The unit's goal is to prevent the introduction of contraband, such as drugs and alcohol, into the state correctional facilities. The unit conducts unannounced operations at department facilities and inspects employees, visitors, and inmates with a chemical detection system called IONSCAN. Procedures for the interdiction process have been established by a policy and procedure directive issued by the department.

According to the department, the contraband interdiction unit makes unannounced visits to about one third of the state's correctional facilities on an annual basis. The contraband interdiction unit has visited private correctional facilities on two occasions to conduct its operations.

### **Investigations**

Each state agency inspector general is required under section 20.055, F.S., 1996 Supplement, to conduct, supervise and coordinate investigations "designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct and other abuses in state government." According to the department, criminal investigations are referred to the appropriate State Attorney's office for prosecution, while administrative and internal affairs investigations are referred to management for appropriate follow-up action.

The Inspector General's role in conducting investigations in private correctional facilities has been very limited. According to the Correctional Privatization Commission, internal

investigations are handled by the private facility staff. The Inspector General would possibly be involved when a conflict of interest by a private facility staff investigator exists.

### **Monitoring of Private Facilities Under Contract With the Correctional Privatization Commission**

Chapter 957, F.S., provides that contracts with private vendors for the operation of private correctional facilities must provide for a full-time contract monitor. s. 957.04(1)(g), F.S., 1996 Supp. The Correctional Privatization Commission (the "commission") uses an on-site monitor at each of the four private correctional facilities currently under contract. The monitor is expected to make several visits to various parts of the facility each day for observation. The on-site monitors, who are employed by the commission, submit monthly reports as well as quarterly reports, which follow up on any problems or discrepancies that surface in the monthly reports.

For purposes of monitoring, the contract monitors use standards that, while similar to those used by the department in its management reviews, are not as numerous in many areas and are adapted to the private correctional facilities operation. Certain areas, such as inmate grievances, use of force, and disciplinary reports, are considered to be of such importance that they are monitored on a monthly basis. According to the commission, copies of both monthly and quarterly monitoring reports are forwarded to the department.

Further, the commission contracts for an independent annual monitoring of each private facility in which adherence to American Correctional Association (ACA) standards and contract compliance are reviewed. According to the independent monitor, an initial review is conducted after a facility has been open for about 4 months, followed by reviews on an annual basis. The independent monitor typically spends 7-10 days on-site, including weekends, reviewing all aspects of the facility. While there is some acknowledged duplication of the monitoring that occurs on a monthly and quarterly basis, the independent monitor provides a "second opinion" of the conditions at the facility. Annual monitoring reports containing the monitor's findings are prepared for the commission.

### **Monitoring of the Private Facility Under Contract With the Department of Corrections**

Gadsden Correctional Institution, the only private prison under contract with the Department of Corrections, does not have an on-site monitor. Monitoring assignments have been assigned to regional personnel. The department contracts with the same independent monitor used by the Correctional Privatization Commission for on-site visits of this institution every three months. The monitor reviews adherence to the terms of the contract only.

### **Recent Accreditation Reviews of Private Facilities**

State law requires contracts for private correctional facilities under chapter 957 to include a requirement for accreditation by the American Correctional Association (ACA).

s. 957.04(1)(c), F.S., 1996 Supp. When a correctional facility applies for accreditation status with the American Correctional Association (ACA), the ACA sends a team to audit the facility and review policies and procedures, programs, and overall operation of the facility. There are over 400 accreditation standards that are used to evaluate a facility. Typically, the initial ACA audit is not done until a facility has been open for at least 12 months.

Both Moore Haven Correctional Facility and Bay Correctional Facility were visited by ACA audit teams in the fall of 1996. Accreditation was conferred on these facilities in January, 1997. Gadsen Correctional Institution has just recently received accreditation from the ACA.

### **Management Reviews of Private Correctional Facilities**

As stated above, the Office of the Inspector General conducts management reviews of each correctional facility on a biennial basis, with self-reviews conducted by the institution during the interim year. While the private correctional facilities have been scheduled for a department management review, the Corrections Privatization Commission opposes management reviews of those facilities as being duplicative of the reviews that the on-site monitors currently conduct.

The commission also opposes the department's authority to conduct management reviews of its facilities based on section 957.04(1)(e), F.S., 1996 Supplement, which provides that:

The commission may waive any rule, policy, or procedure of the department related to the operations standards of correctional facilities that are inconsistent with the mission of the commission to establish cost-effective, privately operated correctional facilities.

In its 1996 Annual Report, the Florida Corrections Commission recommended amending section 944.31, F.S., 1996 Supplement, to exclude performance management reviews by the department of private correctional facilities under contract with the Correctional Privatization Commission. The commission recommended, however, that sworn investigators from the department be given express statutory authority to conduct criminal investigations in all private correctional facilities. Florida Corrections Commission, *1996 Annual Report* (November 1, 1996).

### **Use of Force Reports**

Section 944.35, F.S., 1996 Supplement, establishes procedures for reporting and investigating incidents of physical force used by department employees against inmates. Employees who apply physical force to an inmate or an offender under community supervision or persons who are responsible for making the decision to use force are required to prepare a written report of the incident within 5 days of the occurrence. The report is then forwarded to the superintendent or regional administrator, who investigates the incident and provides written approval or disapproval of the force used.

The employee's report, together with the superintendent's or regional administrator's written evaluation, is reviewed by the regional director, who must concur in the evaluation or disapprove it. Copies of the employee's report, the superintendent's or

regional administrator's evaluation, and the regional director's review must be kept in the file of the inmate or offender under supervision as well as in the employee's personnel file.

### **Inmate Substance Abuse Testing**

The Drug-Free Corrections Act of 1992 mandates that the department establish procedures to randomly select and test inmates for drug and alcohol use through urinalysis or other noninvasive procedure. ss. 944.472 and 944.473, F.S. Departmental rules for the substance abuse testing program set forth procedures and enumerate penalties for positive test results, including forfeiture of gain time. Rule 33-3.0065, F.A.C. (1996); Rule 33-22.012, F.A.C. (1995). The department is also required to report certain information about the random substance abuse testing program (e.g., the number of positive and negative test results obtained) in its annual report. s. 944.473(3), F.S.

The department randomly tests 10% of the Florida prison population every month. According to the department, since random drug testing began, the percentage of positive tests has declined every year, from 5.89% in fiscal year 1993-94, to 3.3% in fiscal year 1995-96. The most common drug detected is cannabis (88% of all positive results in fiscal year 1995-96).

By rule, the department may take blood, urine and saliva from inmates and test it to determine the presence of "alcohol, narcotics or dangerous drugs where there is clear indication that such evidence will be found." Rule 33-3.0065(3)(c)10., F.A.C. (1995). The department also bases its current policy of "for cause" substance abuse testing on departmental rules authorizing disciplinary procedures for the unauthorized use of drugs or alcohol, as evidenced by positive test results or observable behavior. See Rule 33-22.012, F.A.C.(1995).

Currently, however, no statutory authority exists for the department to conduct substance abuse testing based on a "reasonable suspicion" standard. The department has developed guidelines relating to such testing, which have not been implemented. According to the guidelines, "for cause" testing would mean drug testing based on a belief that an inmate is using or has used unauthorized drugs or alcohol drawn from specific facts and reasonable inferences drawn from those facts in light of experience. Such facts and inferences would be based on observable phenomena and certain types of evidence that an inmate has used drugs. The guidelines also specify procedures for preparing incident reports and testing of specimens.

#### **B. EFFECT OF PROPOSED CHANGES:**

House Bill 1347 would amend several sections of Chapter 944, Florida Statutes, relating to the state correctional system.

Section 944.279, F.S., 1996 Supplement, would be amended to:

- allow the Department of Corrections to impose disciplinary procedures authorized by rule on a prisoner who has been found by a court to have brought a frivolous or malicious lawsuit or who has knowingly provided false information to the court. This revision would allow the department to use penalties such as

disciplinary confinement in addition to the penalty of gain time forfeiture authorized under current law.

Section 944.31, F.S., 1996 Supplement, would be amended to:

- revise the duties of the inspector general enumerated in the statute to include contraband interdiction and internal audit.
- revise the duties of the inspector general enumerated in the statute to include auditing, conducting investigations of, and reviewing compliance with standards of the state correctional systems, including privatized facilities.
- provide that the inspector general may, instead of shall, inspect, review or audit each correctional institution or any place where state prisoners are housed, worked or kept within the state.
- require the inspector general to coordinate and supervise the work of reviewers and auditors, subject to the auditing duties and responsibilities already established in state law (s. 20.055(5), F.S., 1996 Supp.).
- authorize reviewers and auditors of the inspector general's staff to enter any place where prisoners in the state are kept for document and record review relating to prison operation and administration.
- revise the inspector general's responsibility to conduct criminal and administrative investigations to include conducting those types of investigations in private correctional facilities.

Section 944.35, F.S., 1996 Supplement, would be amended to:

- remove the requirement that a copy of a report regarding an incident of use of force against an inmate be maintained in the file of the employee who used or authorized the use of such force. As a result, a copy of a use of force report and accompanying evaluations and reviews would be maintained only in the inmate's file.

Sections 944.472 and 944.473, F.S., would be amended to:

- expand the original legislative intent underlying the Drug-Free Corrections Act of 1992 to include the establishment of a substance abuse testing program based on reasonable suspicion.
- require the department to establish a reasonable suspicion drug and alcohol testing program and to adopt rules relating to its operations and procedures.
- require the department, as part of its annual report, to include certain information about the reasonable suspicion substance abuse tests (e.g., the number of positive and negative test results obtained).



C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The Department of Corrections will be required to modify existing departmental rules to incorporate various changes made in the bill and will be required to promulgate new rules relating to reasonable suspicion substance abuse testing.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill increases the ability of the department to impose additional sanctions, such as disciplinary confinement, on inmates who file frivolous lawsuits or provide false information to the court.

The bill increases the responsibilities of the department's inspector general to conduct investigations of and to inspect and audit private correctional facilities.

The bill decreases the department's paperwork responsibilities by eliminating the need to maintain a copy of a use of force report in the employee's file.

The bill increases the department's authority to test inmates for drug and alcohol use by statutorily authorizing reasonable suspicion testing.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

The bill does not eliminate or reduce an agency or program.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill, in authorizing the department to impose additional sanctions on an inmate who is deemed by the court to have filed a frivolous lawsuit or provided false information, could potentially discourage inmates from filing claims, legitimate or otherwise.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill, in providing the department's inspector general with greater access to private correctional facilities for inspection, investigation and audit purposes, arguably creates state interference with the operation of those facilities.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

The bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

**D. SECTION-BY-SECTION RESEARCH:**

None.

**III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

**1. Non-recurring Effects:**

According to the Department of Corrections, there will be some cost attached to developing a reasonable suspicion substance abuse testing program; however, the cost is estimated to be minimal.

**2. Recurring Effects:**

According to the Department of Corrections, this bill will have a limited fiscal impact if the department increases the overall disciplinary actions taken against inmates who file frivolous lawsuits; however, court costs could be reduced if frivolous lawsuits decrease.

According to the department, revising the duties of the inspector general will result in no additional cost to the department.

According to the department, eliminating the requirement to maintain copies of use of force reports in employees' files will result in a cost savings to the department by reducing paper and file maintenance in the personnel section.

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Total Revenues and Expenditures:

See III. A. 1 and 2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds.

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority of counties or municipalities to raise revenue.

**C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of state tax shared with counties and municipalities.

**V. COMMENTS:**

Section 1 of the bill contains a provision passed by the 1996 Legislature authorizing the forfeiture of earned gain-time or the right to earn gain time for prisoners who are deemed by a court to have filed frivolous or malicious lawsuits or provided false information. "Prisoner," as it is defined under Chapter 944, Florida Statutes, and applied to this provision, includes persons who are not only convicted and sentenced by a court but also, those who are under arrest and in the custody of the department awaiting trial. There could be some constitutional problems relating to due process and equal protection if pre-trial detainees are subject to this statute.

A similar provision in a recently enacted federal law provides for the forfeiture of gain-time for the filing of frivolous lawsuits by offenders convicted of a crime and incarcerated in a federal correctional facility. 23 U.S.C. sec. 1932 (1995) (The Prison Litigation Reform Act of 1996). An amendment is suggested to restrict the application of section 944.279, F.S., 1996 Supplement, to "any prisoner convicted of a crime and who is incarcerated for that crime or who is being held in custody pending extradition or sentencing."

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

None.

**VII. SIGNATURES:**

**COMMITTEE ON CORRECTIONS:**

Prepared by:

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