

STORAGE NAME: h1465.hcc.doc

DATE: April 17, 2001

HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

BILL #: HB 1465

RELATING TO: Sentencing

SPONSOR(S): Representative(s) Wiles and Ball

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 6 NAYS 1
 - (2) CRIMINAL JUSTICE APPROPRIATIONS YEAS 11 NAYS 0
 - (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 14 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

House Bill 1465 amends the current definition of “**prison releasee reoffender**” to include:

- 1) defendants who commit specific crimes, while in Florida, within three years after being released from a correctional institution located *outside the state of Florida*, and
- 2) defendants who commit specific crimes, while in Florida, while on escape status from a correctional institution located *outside the state of Florida*.

The bill provides an effective date of July 1, 2001.

Note: Two amendments were adopted by the Committee on Crime Prevention, Corrections & Safety on March 29, 2001. The first amendment was technical in nature, and the second amendment clarified that the original crime (for which the defendant was incarcerated outside the state of Florida) would have resulted in a Florida prison sentence of more than one year had the crime been committed in Florida.

A third amendment was adopted by the Criminal Justice Appropriations Committee on April 4, 2001. The amendment clarifies that the definition of prison releasee reoffender includes specified individuals who commit burglary of an occupied structure or burglary of a dwelling, *regardless of whether the dwelling was occupied at the time*.

All three amendments are traveling with the bill.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Under the current version of § 775.082(9), F.S., a judge must sentence a person as a prison releasee reoffender if the defendant meets the following criteria:

1) The defendant has committed, or attempted to commit, one or more of a list of violent offenses, including:

- treason,
- murder,
- manslaughter,
- sexual battery,
- carjacking,
- home-invasion robbery,
- robbery,
- arson,
- kidnapping,
- aggravated assault with a deadly weapon,
- aggravated battery,
- aggravated stalking,
- aircraft piracy,
- unlawful throwing, placing, or discharging of a destructive device or bomb,
- any felony that involves the use or threat of any physical force or violence against an individual,
- armed burglary,
- burglary of an occupied structure or dwelling, or
- any felony violation of §§ 790.07, 800.04, 827.03, or 827.071, F.S.,

and

2) the offender committed one of the enumerated offenses within 3 years of being released from a state or private correctional facility in Florida, or while the offender was still incarcerated in Florida or on escape status from a state or private correctional facility in Florida.

The statutes provide legislative intent that prison releasee reoffenders be punished to the fullest extent of the law unless the state attorney determines that extenuating circumstances exist which

preclude the just prosecution of the offender, including whether the victim recommends that the offender not be sentenced as a prison releasee reoffender.

The Fifth District Court of Appeal recently determined that the Prison Releasee Reoffender Act (as § 775.082(9) is referred to) could not be applied to those persons recently released from prisons outside the state of Florida.¹ This is because the statute, as currently worded, applies only to persons who commit an enumerated felony, "within 3 years of being released from a state correctional facility operated by the Department of Corrections or a private vendor."² The court declared that they were "constrained to hold that the language is limited to a correctional facility operated by the Department of Corrections of the State of Florida. Indeed, that nomenclature would not apply in many other states."³

Information from the Bureau of Research and Data Analysis (within the Department of Corrections) indicates that 1,292 post-prison release cases were transferred to Florida from other states and jurisdictions during the last two fiscal years. There are currently 1,507 offenders under active supervision in Florida on post-prison release status from other states. In FY 99-00, 233 "other state" post-prison release offenders were arrested for new felonies. Of these, 27 were sentenced to prison and 6 would have qualified for sentencing (based on offense type) as a prison releasee reoffender under the proposed legislation. In FY 98-99, 188 "other state" post-prison release offenders were arrested for new felonies. Of these 34, were sentenced to prison and 14 would have qualified for sentencing (based on offense type) as a prison releasee reoffender under the proposed legislation.⁴

C. EFFECT OF PROPOSED CHANGES:

House bill 1465 will expand the current definition of "prison release reoffender" to include defendants released, or on escape status, from correctional institutions outside the state of Florida. In other words, criminals recently released from prisons outside of Florida, who commit violent crimes in this state, will be sentenced the same as criminals recently released from Florida prisons.

Correctional institutions located "outside the state of Florida" means correctional institutions in other states, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. This section amends the definition of "prison releasee reoffender" by adding persons released or escaped from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction following incarceration for an offense for which the sentence imposed exceeded one year. Section 1 also makes a technical change by deleting the word "of" and inserting "after" following the phrase "within 3 years". This change is intended to clarify the time period for eligibility for classification as a prison releasee reoffender.

Section2. This section provides an effective date of July 1, 2001.

¹ *Damion v. State*, 743 So.2d 611 (Fla. 5th DCA 1999)

² § 775.082(9)(a)1., F.S.

³ *Damion v. State*, 743 So.2d 611 (Fla. 5th DCA 1999)

⁴ The electronic data available does not provide a reliable method to determine if all offenses were committed within the specified three-year threshold.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has determined that the bill would have an "indeterminate-minimal" impact on prison bed capacity. This means that the impact on prison beds is not quantifiable but expected to be minimal.

III. 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 or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

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

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Two amendments were adopted by the Committee on Crime Prevention, Corrections & Safety on March 29, 2001. The first amendment, through the placement of a comma, clarified that the initial incarceration requirement must be applied to **all** defendants originally housed outside the jurisdiction of Florida (rather than only to those defendants originally housed in foreign jurisdictions.) The second amendment clarified that the original crime (for which the defendant was incarcerated outside the state of Florida) would have resulted in a Florida prison sentence of more than one year had the crime been committed in Florida.

A third amendment was adopted by the Criminal Justice Appropriations Committee on April 4, 2001. The amendment clarifies the definition of prison releasee reoffender to include specified individuals who commit burglary of an occupied structure or burglary of a dwelling regardless of whether the dwelling was occupied at the time.

All three amendments are traveling with the bill.

VI. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Melinda Smith

Staff Director:

David De La Paz

AS REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

Prepared by:

James P. DeBeaugrine

Staff Director:

James P. DeBeaugrine

AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Melinda Smith

Council Director:

Mary Pat Moore
