

STORAGE NAME: h1967.cpcs.doc

DATE: April 19, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 1967

RELATING TO: Department of Corrections

SPONSOR(S): Committee on Crime Prevention, Corrections & Safety and Representative Needelman

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 6 NAYS 0
 - (2) COUNCIL FOR HEALTHY COMMUNITIES
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

House Bill 1967 addresses several issues involving the Department of Corrections.

The bill amends portions of § 921.161, F.S., to require that all time served (actual physical incarceration) be properly documented by the court or county jail. If such time served is not properly documented, the Department will not be permitted to award credit for the time.

The bill amends § 944.17, F.S. to change references from "sheriff" to "custodian of local jail." The change is designed to accommodate counties where the sheriff is not the custodian of the local jail.

The bill amends § 944.28, F.S., by decreasing the number of correctional employees necessary for disciplinary hearings from two or more employees to one.

The bill amends § 944.35, F.S., by reassigning the responsibility of use-of-force reviews from the warden or regional administrator to the Department's Inspector General.

The bill amends § 945.215, F.S., by providing the Secretary of the Department of Corrections with discretion regarding the spending of monies from the Inmate Welfare Trust Fund.

The bill amends § 948.09, F.S., by requiring offenders who are under community supervision, and who are subject to electronic monitoring, to pay a surcharge that will contribute to the costs of such monitoring.

The bill amends various sections of the statutes to change the terms "correctional institution," and "community correctional centers" (or variations thereof) to the terms "prison" and "work release center."

Except as otherwise provided within the bill, the act will take effect on July 1, 2001.

II. 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

85% Law

Section 944.275(4)(b), F.S., requires that inmates who are sentenced for a crime committed on or after October 1, 1995, must serve 85% of their sentence regardless of the amount of gain time accumulated. When calculating an inmate's tentative release date, based on the 85% requirement, the Department of Corrections is required to include any credits awarded by the court for "time physically incarcerated" in a county jail or other jurisdiction.

Time Served

Section 921.161, F.S., pertains to giving credit to offenders for time served. The statute section provides that a court that imposes a sentence of incarceration must give the defendant credit for any time the defendant spent in jail before the sentence was imposed. Subsection 2 of said section requires that defendants also be given credit for any time that elapses between the issuance of the sentence and the delivery of the prisoner to the custody of the Department of Corrections. If the offender was "at liberty" for any reason after his or her sentencing, such liberty must be explained and documented by the custodian of the local jail. Credits for time served should be provided for in the inmate's sentence or by a certificate issued by the local sheriff.

In cases where the credit awarded by the court does not agree with the sheriff's certification of time served, the Department of Corrections must contact the court and/or county jail to determine the correct amount of time served for which to give credit. According to Department staff, sentencing documentation received by the Department often does not reflect the actual dates and places of incarceration in drug treatment programs or county jails. Because the Department cannot apply anything but actual physical incarceration time when establishing the inmate's minimum "85% date," any additional credit not supported by dates and locations cannot be utilized until confirmation is obtained as to the source of the credit.

Commitment and Transfer of Prisoners

Section 944.17, F.S., pertains to the commitment, classification and transfer of prisoners. References are made frequently throughout subsections 5, 6, and 8 of the statute to the responsibilities of the sheriff with regard to the completion of commitment papers and the transfer of prisoners. There are several counties in Florida where the sheriff is not responsible for, or the custodian of, the local jail. In such counties, the sheriff may still be required to complete paperwork or transport inmates, even though the sheriff may not be the custodian of the jail and may not be properly equipped to handle inmate transportation.

Disciplinary Hearings

Specific instances of inmate misconduct or violations of rules of the Department will result in the forfeiture of some or all of an inmate's gain-time. However, before such forfeiture happens, the inmate must be charged with a specific instance of misconduct and must appear before a disciplinary hearing committee.¹ The disciplinary hearing committee currently consists of at least two persons, one of whom must have the rank of correctional officer lieutenant or higher.² The committee presides over the testimony of witnesses and the introduction of evidence. Upon review of the facts, the committee issues a verdict along with recommendations for appropriate disciplinary action.

According to Department staff, the members of the disciplinary committees are constantly changing, based on time and availability of various officers. As a result of the changing composition of the disciplinary committees, the Department has found inconsistencies in penalties issued for similar offenses.

Use-of-Force Reviews

All incidents which involve the application of physical force upon an inmate or offender must be documented by the officer who applied the force or who made the decision to apply force. An independent report detailing the incident, including date and signature, must be submitted to the warden or regional administrator within 5 days of the incident. The warden or regional administrator will orchestrate an investigation of the use-of-force incident and will approve or disapprove the force used. The approval or disapproval must be in writing. Within 5 days of the completion of the use-of-force investigation, all paperwork and documentation regarding the incident, including the approval or disapproval of the warden or regional administrator, will be forwarded to the regional director. The regional director shall review all submitted paperwork and shall either concur with or disapprove the decision of the warden or regional administrator. Copies of the use-of-force review shall be kept in the inmate's file, and a notation of each use-of-force incident, including outcome, shall be kept in the employee's file.

Inmate Welfare Trust Fund

Section 945.21502(1), F.S., creates the Inmate Welfare Trust Fund (IWTF) within the Department of Corrections. Monies of the trust fund held by the department are for the benefit and welfare of the inmates of the department's institutions. Inmate Welfare Trust Funds are available for visitation and family programs and services in the facilities. The IWTF consists primarily of revenues generated from correctional institution canteen sales and commissions paid to the department by contracted telephone companies providing collect calling services to inmates.

Section 945.215 (1) (d), F.S., prohibits the purchase of cable television service, the rental or purchase of videocassettes or videocassette recorders, or other audiovisual or electronic equipment for the primary purpose of recreation. The statute does not preclude the purchase or rental of electronic or audiovisual equipment for inmate training or educational programs

Electronic Monitoring

Section 948.09(2), F.S., currently requires offenders who are under community control supervision, and are subject to electronic monitoring, to pay a \$1-per-day surcharge, in addition to any other cost of supervision fees. The surcharge, which is deposited in the Department's Operating Trust Fund, is used by the Department of Corrections for purchasing and maintaining electronic monitoring devices.

¹ § 944.28(2)(c), F.S., and Chapter 33-601.104, F.A.C.

² Chapter 33-601.302, F.A.C.

Terminology

The statutes currently refer to penal institutions under the jurisdiction of the Department of Corrections as “correctional institutions” and “community correctional centers.”

C. EFFECT OF PROPOSED CHANGES:

Time Served

HB 1967 amends § 921.161, F.S., by prohibiting the Department from providing credit for time served to offenders unless:

- the time served is properly documented on the sheriff’s certificate, or
- the judge indicates the dates and places of any additional incarceration on the judgment and sentence, or on a separate court order.

In addition to the facts that currently must be certified to the Department by the custodian of the local jail, the bill also requires the certification to include:

- the date of the prisoner’s arrest, or the date on which and name of the agency from which the prisoner was received from another jurisdiction, and
- the dates and reasons for any times the prisoner was at liberty between the date the prisoner was arrested and the date the prisoner was delivered to the Department.

These changes will clarify the exact information that is needed on each sheriff’s certificate to help the courts and the Department when awarding credit for actual, physical incarceration, i.e., time served.

Commitment and Transfer of Prisoners

HB 1967 replaces the word “sheriff” in subsections 5, 6, and 8 of § 944.17, F.S., with the term “custodian of the local jail,” or variations thereof. The bill also makes other clarifying changes within the specified sections to make it clear who has custody of the prisoner during transfers and who is responsible for transporting inmates and for completing certain forms.

Disciplinary Hearings

HB 1967 will decrease the number of people necessary to hold a disciplinary hearing from a committee of at least two people to one person. According to Department staff, this one person will be the designated “disciplinary hearing officer” for the entire institution. The warden of the institution where the inmate misconduct occurred will still have the final authority to approve or disapprove the recommendations of the disciplinary hearing officer. By designating one person to act as the disciplinary hearing officer for each institution, the Department hopes to ensure more consistency in the application of inmate discipline.

Use-of-Force Reviews

HB 1967 will change the review process of use-of-force incidents. All reports documenting the application of physical force upon an inmate will be forwarded, through the warden or circuit administrator, to the office of Inspector General. The inspector general shall conduct a review of each use-of-force incident, rather than the warden or regional administrator, and the inspector general will make recommendations regarding the appropriateness or inappropriateness of the applied force. If the inspector general finds the use-of-force was appropriate, he shall indicate as such in writing, and shall forward his written determination to the warden or circuit administrator. If the inspector general finds the use-of-force to be inappropriate, he shall conduct a complete investigation into the incident and forward the findings of fact to the appropriate regional director for further action.

These changes transfer the responsibility of reviewing use-of-force incidents from the warden, regional administrator, or regional director to the Department’s inspector general. The inspector

general shall review all use-of-force incidents and make the final determination as to appropriateness of the action. If the force was deemed inappropriate, the regional director shall be notified and shall determine appropriate sanctions for the officer involved.

Inmate Welfare Trust Fund

HB 1967 grants greater discretion to the Secretary of the Department of Corrections to purchase items for the benefit of the inmate population, "as deemed appropriate." However, the bill does specify that weight training equipment may not be purchased with monies from the Inmate Welfare Trust Fund. The bill does allow for the purchase of audio visual, electronic, and wellness equipment with the use of monies from the Inmate Welfare Trust Fund.

Electronic Monitoring

HB 1967 requires offenders who are under community control supervision, and who are subject to electronic monitoring, to pay a surcharge that will contribute to the costs of such monitoring. The amendment specifies a range of not less than \$1-per-day to no more than the full cost, per-day, of the monitoring service. The range in the surcharge amount is designed to require offenders who have the means to afford more than a \$1-per-day surcharge to pay what they are actually able to afford.

Terminology

HB 1967 changes the current "penal" terminology from "correctional institution" to "prison" and from "community correctional center" to "work release center."³

D. SECTION-BY-SECTION ANALYSIS:

Section 1

This section amends § 921.161, F.S., which pertains to the awarding of credit for time served. This section requires all time served to be properly documented or credit for such time will not be awarded. (Please see Section II C of the bill analysis for further clarification.)

Section 2

For purposes of incorporating the changes made to § 921.161, F.S., (by section 1 of the bill), this section reenacts § 944.275 of the statutes.

Section 3

This section amends § 944.17, F.S., to clarify who is responsible for completing commitment forms and for transporting inmates when they are delivered to the Department of Corrections for initial commitment or when an inmate is required to appear in court. This section removes the word "sheriff" and replaces it with the phrase "custodian of the local jail," or variations thereof.

Section 4

This section amends § 944.28, F.S., to reduce the number of employees necessary (from two to one) to hold a disciplinary hearing. One disciplinary hearing officer will be designated for each institution. (Please see Section II C of the bill analysis for further clarification.)

³ The following statutes will be affected by these changes: §§ 20.315, 39.806, 57.091, 112.531, 212.04, 229.565, 397.305, 413.051, 414.40, 435.04, 468.302, 496.404, 570.071, 766.314, 776.085, 921.0022, 921.187, 921.188, 943.45, 943.052, 943.085, 943.10, 943.11, 944.012, 944.02, 944.023, 944.026, 944.033, 944.08, 944.09, 944.095, 944.10, 944.11, 944.115, 944.14, 944.151, 944.17, 944.1905, 944.23, 944.24, 944.279, 944.28, 944.281, 944.291, 944.31, 944.32, 944.39, 944.402, 944.44, 944.45, 944.46, 944.47, 944.472, 944.516, 944.611, 944.613, 944.704, 944.711, 944.801, 944.803, 944.8031, 945.025, 945.0311, 945.043, 945.091, 945.215, 945.21501, 945.2502, 945.27, 945.35, 945.6031, 945.6037, 945.72, 945.75, 946.002, 946.205, 946.25, 946.40, 946.504, 946.513, 947.1405, 947.172, 947.174, 947.1745, 948.03, 948.12, 948.51, 948.90, 951.23, 958.04, and 960.001, F.S.

Section 5

This section amends § 944.35, F.S., to require the inspector general to review all use-of-force incidents and make determinations as to whether the applied force was appropriate. (Please see Section II C of the bill analysis for further clarification.)

Section 6 through Section 93

The majority of the changes in these sections are technical in nature, changing the phrase "correctional institution" to "prison" and changing the phrase "community correctional center" to "work release center." Section 71 provides the Secretary of the Department of Corrections with discretion regarding the spending of monies from the Inmate Welfare Trust Fund and also allows for the purchase of audio visual, electronic, and wellness equipment with Inmate Welfare Trust Fund monies. Section 86 requires offenders who are under community supervision, and who are subject to electronic monitoring, to pay a surcharge that will contribute to the costs of the electronic monitoring.

Section 94

This section directs the division of Statutory Revision to not alter any terminology relating to correctional officers or personnel as a result of this act.

Section 95

This section provides an effective date of July 1, 2001, except as otherwise provided in the bill.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Any costs which may be associated with updating letterhead, envelopes, business cards, and signs to reflect the changes in terminology should be minimal and the department has said they can absorb such costs internally.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities 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.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The Department will have to amend their rules relating to inmate discipline in order to reflect the change from a disciplinary committee to a disciplinary hearing officer. Rule-making authority is provided for in current statute language.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

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