

STORAGE NAME: h0361a.fpr.doc

DATE: March 26, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FISCAL POLICY & RESOURCES
ANALYSIS**

BILL #: HB 361

RELATING TO: Sentencing

SPONSOR(S): Representative(s) Stansel and Others

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 8 NAYS 0
 - (2) FISCAL POLICY & RESOURCES
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
-

I. SUMMARY:

House Bill 361 would require any inmate who is convicted of a crime committed while incarcerated in the state correctional system to serve the sentence for that crime in the state correctional system or private prison, regardless of whether the new crime(s) is a felony or a misdemeanor. This bill would direct the sentencing court on how to sentence the prisoner when the highest ranking offence is a felony and when the highest ranking offense is a misdemeanor.

This bill amends section 944.17, F.S., to create paragraphs 944.17(3)(b) and (c), F.S.

The Department of Corrections anticipates an insignificant fiscal impact on this bill.

The Criminal Justice Impact Conference has determined that HB 361 would have an insignificant prison bed impact on the Department of Corrections.

The provisions of this bill would 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:

Some inmates in the state correctional system commit new offenses while incarcerated. Such crimes tend to include offenses against correctional officers and other department personnel, other inmates, visitors, and contractors, as well as possession of various forms of contraband. The department maintains that these offenses have a tendency to undermine security and control within the prison environment.

Currently, inmates may be disciplined for such behavior under the rules of the Department of Corrections (DOC). After a hearing, Chapter 33-22, *Florida Administrative Code* allows a disciplinary committee to impose disciplinary infraction penalties on the inmate, the harshest of which include the revocation of accrued gain-time or assignment to disciplinary confinement. Disciplinary confinement areas are small, single-cell prisons within the prison, in which liberties are further restricted.

In addition to pursuing administrative penalties, the DOC may also attempt to prosecute the inmate under existing statutes. In order to do so, DOC refers the case and its investigation to the state attorney in the county where the offense occurred. The prosecutor evaluates the case in light of the criminal statutes and determines what charges to file in the case.

In cases where the inmate enters a plea or is found guilty of a misdemeanor as the highest ranking offense, the trial court is presented with a choice between imposing a sentence which results in no additional period of incarceration, or a period of incarceration for a misdemeanor which extends beyond the point in time the defendant is to be released from prison. Traditionally the misdemeanant is sentenced to county jail, county probation or both.

Section 944.17(3), F.S., requires that "only those persons who are convicted and sentenced in **circuit court** to a cumulative sentence of incarceration of 1 year or more . . . may be received into the department by the state correctional system." As a consequence, courts have been constrained to sentence such a misdemeanant to the local county jail if the sentence is to include incarceration.

In such instances, the inmate is returned to state prison to serve out the remainder of the previously imposed sentence, but the county where the misdemeanor sentence is imposed places a detainer on that inmate. While the previously imposed sentence is being served, the inmate may be moved to another prison at the other end of the state. At the end of the sentence, DOC is compelled to transport the inmate back to the county where the misdemeanor sentence was imposed so the inmate can serve that sentence before DOC provides any of the services and supervision DOC is required to provide. The sheriffs contend this places an extra burden on the counties by requiring them to house prisoners who come from other parts of the state to serve their sentences in a state or private prison which happens to be located in that different county.

C. EFFECT OF PROPOSED CHANGES:

House Bill 361 would create a new paragraph numbered s. 944.17(3)(b), F.S., requiring any inmate incarcerated in the state correctional system who is convicted of any new crime committed during that incarceration to serve the sentence for the newly committed crime in the state correctional system, regardless of whether the new crime(s) is a felony or a misdemeanor. This bill would direct the sentencing court on how to sentence the prisoner when the highest ranking offense is a felony and when the highest ranking offense is a misdemeanor.

The provisions of this bill would take effect on July 1, 2001.

This bill amends s. 944.17, F.S., to create paragraphs 944.17(3)(b) and (c), F.S.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The Department of Corrections would have to absorb any additional cost of continuing to incarcerate inmates who are sentenced to less than one year for a misdemeanor committed while in prison. DOC would not feel any impact for those inmates sentenced for a felony committed while in prison, as those felons would be sentenced to DOC anyway. There could be some negative fiscal impact; however, that is indeterminate. It is anticipated that any increase in cost would be insignificant.

The Criminal Justice Impact Conference has determined that HB 361 would have an insignificant prison bed impact on the Department of Corrections.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Article 10, section 10 of the Constitution of the State of Florida, defines a felony as:

The term "felony" as used herein and in the laws of this state shall mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in the state penitentiary.

The bill requires that any person committing an offense while incarcerated in the state correctional system shall serve time for that offense in a state correctional facility. The bill would mandate that offenders convicted of misdemeanor crimes committed in the state correctional system must serve any additional time in the state prison system.

It could be construed that any offense committed in a state correctional facility would be a felony, under the state Constitution.

An amendment was adopted in committee by the bill sponsor to address the legislative intent of the bill.

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B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

An amendment was adopted on March 15, 2001, by the Committee on Crime Prevention, Corrections & Safety to clarify that a person who commits a misdemeanor while incarcerated in state prison shall not have that crime classified as a felony for the purposes of imposing an enhanced sentence under s. 775.084, F.S.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Allen Mortham Jr.

David DeLaPaz

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

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Doug Pile

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