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DATE: February 26, 2002

HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

BILL #: CS/HB 1559
RELATING TO: Corrections
SPONSOR(S): Representative(s) Kravitz
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 YEAS 15 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Recently the First District Court of Appeal held that an alien being civilly detained at a county jail did not qualify as a "prisoner" under Chapter 944, F.S., and therefore could not be charged with the crime of escape. Current law does not classify a person as a prisoner unless he or she has been convicted and sentenced by a court and committed as provided by law, or arrested and in the lawful custody of any law enforcement official.

Council Substitute for HB 1559 redefines the term "prisoner" as used in the Florida Corrections Code (Chapter 944, F.S.). The council substitute classifies a person as a prisoner if he or she:

- is under civil or criminal arrest and in the custody of any law enforcement official, or
- has been committed to, or is detained in, any municipal, county, state, or private correctional facility, or
- has been committed to the custody of the Department of Corrections, pursuant to lawful authority.

The bill has no fiscal impact.

The bill has an effective date of July 1, 2002.

Note: The bill was made a council substitute by the Council for Healthy Communities on February 26, 2002. This analysis addresses the issues of the council substitute.

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 checked="" type="checkbox"/> | N/A <input 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:

Council Substitute for HB 1559 broadens the current definition of "prisoner," thereby allowing more persons to fall under the "prisoner" definition and consequently be considered and treated as prisoners.

B. PRESENT SITUATION:

Section 944.02(6), F.S., defines the term "prisoner" for purposes of the Corrections Code (Chapter 944, F.S.). A prisoner is a person who is either

- 1) under arrest and in the lawful custody of a law enforcement official; or
- 2) convicted and sentenced by any court and committed to any municipal or county jail or state prison, prison farm, or penitentiary, as provided by law; or
- 3) convicted and sentenced by any court and committed to the custody of the Department of Corrections as provided by law.

Section 944.40, F.S., provides that it is a second-degree felony for a prisoner to escape from confinement in a prison, jail, private correctional facility, road camp, or other penal institution operated by or under contract with the state, a county, or a municipality. The statute also criminalizes a prisoner's escape while working upon public roads or being transported to or from a place of confinement.

In Villegas-Alen v. State, 797 So.2d 1 (Fla. 1st DCA 2000), the First District Court of Appeal overturned the conviction of an alien who had escaped from civil detention in the Bay County Jail Annex pending deportation by the Immigration and Naturalization Service. The court found that Villegas-Alen's commitment to the jail was not the result of conviction and sentence by a court, and that he was not under arrest at the time of the escape. The court concluded that he was not a prisoner as defined in s. 944.02, F.S., and therefore he could not be convicted of escape pursuant to s. 944.40, F.S.

C. EFFECT OF PROPOSED CHANGES:

The council substitute would amend the definition of prisoner by removing the requirement that a person be convicted and sentenced by a court, and also by clarifying that a person is considered a prisoner if he or she is under arrest, regardless of whether it is a civil or criminal arrest.

As a result, the definition of "prisoner" would apply to a person who:

- is under arrest, either civil or criminal, and in the lawful custody of any law enforcement official, or
- has been committed or detained, pursuant to lawful authority, to any municipal or county jail, state prison, prison farm, or penitentiary, regardless of whether the commitment resulted from conviction and sentence by a court, or
- has been committed, pursuant to lawful authority, to the custody of the Department of Corrections.

It is anticipated that the council substitute would address the type of situation presented in the Villegas-Alen case so that persons committed to or detained in correctional facilities pursuant to civil or administrative authority would be subject to prosecution for escape.

The council substitute would not affect persons who are committed for treatment pursuant to the Baker Act (ss. 394.451-.4789, F.S.). Such persons would not fit within the broadened definition of prisoner because they are not committed to a municipal or county jail, state prison, prison farm, or penitentiary. Mentally ill persons who are civilly committed (either voluntarily or involuntarily) under the Baker Act are sent to a receiving or treatment facility, which are either local or state hospitals. Therefore, a person who escapes from involuntary placement under the Baker Act would not be subject to prosecution for escape unless there is an independent basis for the charge.

It is not anticipated that the expanded definition of prisoner could be construed to include sexually violent predators who are civilly committed to the custody of the Department of Children and Family Services pursuant to ss. 394.910-.931, F.S. These persons are not committed to a municipal or county jail, state prison, prison farm, or penitentiary, nor is the Department of Children and Family Services considered a law enforcement agency. As a practical matter, civilly committed sexually violent predators are already subject to prosecution for escape under the provisions of s. 394.927, F.S.

D. SECTION-BY-SECTION ANALYSIS:

Please see Section C, "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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 council substitute does not require counties or municipalities to spend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The council substitute 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 council substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The original bill amended the current definition of "prisoner" by striking current statute language that requires a person to be *convicted* of a crime and *sentenced* by a court, prior to commitment to a correctional facility. Therefore, under the original bill, a person had to be either be under arrest, or

committed to a correctional facility to be considered a prisoner. It was unclear, under the original bill, whether a person who was being “detained” in a correctional facility (as was the situation in the Villegas-Alen case) could be considered a prisoner if he or she was not officially “committed” to the facility.

This concern was addressed through a strike-everything amendment adopted by the Committee on Crime Prevention, Corrections & Safety. The amendment clarified that persons who are committed to, or *detained in*, correctional facilities, pursuant to lawful authority, are considered prisoners. The amendment also clarified that persons who are under arrest, *whether civil or criminal*, and who are in the lawful custody of a law enforcement officer, are considered prisoners. The strike-everything amendment traveled with the bill to the Council for Healthy Communities, where it was incorporated into a council substitute on February 26, 2002.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

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Trina Kramer

AS REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

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