

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 408

SPONSOR: Criminal Justice Committee and Senator Crist

SUBJECT: DOC/Criminal Investigations

DATE: January 29, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Favorable/CS
2.	Wilson	Wilson	GO	Favorable
3.			APJ	
4.			AP	
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 408 amends the statute describing the powers and duties of the Office of the Inspector General in the Department of Corrections (department). The Secretary of the department would be permitted to designate persons within the Inspector General’s Office as law enforcement officers. A designee would have to be an experienced prison inspector or law enforcement officer who holds law enforcement certification from the Criminal Justice Standards and Training Commission. This would empower designees to arrest persons for law violations uncovered in criminal investigations related to department operations.

The CS also provides that the department will maintain a Memorandum of Understanding with the Department of Law Enforcement (FDLE) for purposes of notifying FDLE of certain serious incidents and providing for investigation of the incident by FDLE.

The CS also changes the reporting requirements for use of force incidents to require that department employees who use force against an inmate must prepare and sign a report within one day of the incident, and requires review of the report by the inspector general with additional investigation if appropriate.

The provisions of this CS become effective upon becoming law.

This CS substantially amends the following sections of the Florida Statutes: 944.31 and 944.35(2).

II. Present Situation:

The department has 97 inspectors located throughout the state. These inspectors are all certified as correctional officers. Their duties include criminal and administrative investigation of matters related to the department, including conduct of employees, inmates, and visitors. Forty of the 97 inspectors are already certified law enforcement officers pursuant to s. 943.1395, F.S., although they have no authority to act as such on behalf of the department. A certified correctional officer must complete an additional 286 hours of law enforcement training to be eligible for certification as a law enforcement officer.

Currently, the department's inspectors conduct criminal investigations up to the point of arrest pursuant to s. 944.31, F.S. When an inspector determines that there is probable cause to arrest, he or she may detain the suspect, but has to request a law enforcement agency to make the arrest. The inspector is only authorized to detain persons on property owned or leased by the department.

No agency has inspectors in its Inspector General's Office with authority to act as law enforcement officers. However, several agencies have separate law enforcement arms outside of the Inspector General's Office.

The department and FDLE currently maintain a Memorandum of Understanding for the department to notify FDLE of certain serious incidents and for FDLE to investigate those incidents. This memorandum is not required by statute.

Under the current statute, department employees who are involved in the use of physical force against an inmate or an offender supervised by the department in the community must prepare and sign a written report within five days of the incident. The report is sent to the warden (in the case of inmates) or the regional administrator (in the case of an offender supervised by the department in the community). The warden or regional administrator makes an investigation, approves or disapproves the use of force, and forwards it to the regional director within five days. The regional director must concur or disapprove in writing, and copies of the report and the result are placed in the offender's file and the employee's personnel file. By administrative rule, the department requires review of use of force reports by the Inspector General's Office, with additional investigation required if the use of force is found to be inappropriate.

III. Effect of Proposed Changes:

The CS amends s. 944.31, F.S., to give the Secretary of the department authority to designate persons within the Inspector General's Office as law enforcement officers. This designation is for the purpose of investigating any incident occurring on department property or involving a matter over which the department has jurisdiction. A designee must be certified as a law enforcement officer under s. 943.1395, F.S., and have at least three years experience as an inspector with the Inspector General's Office or as a law enforcement officer. A designee would have authority to arrest persons who commit a felony on property owned or leased by the department. An offender who has escaped or absconded may be arrested even if the offense does not occur on department property. The arrested person must be surrendered to the sheriff of the county in which the arrest is made, just as detained persons are surrendered under the current

statute. However, the arrested person may now be transported to the sheriff's office by the department rather than requiring the presence of a deputy at the department property to arrest the detained person.

The CS also amends s. 944.31, F.S., to require the department to maintain a Memorandum of Understanding with FDLE for purposes of notifying FDLE and providing for the investigation of certain serious incidents as agreed upon between the departments. The CS provides that the memorandum must include, but is not limited to, reporting and investigation of suspicious deaths and major organized criminal activity. The departments currently have such an agreement, and the CS codifies and mandates the practice.

The CS also amends s. 944.35(2), F.S., to change the required time frames and process for reporting the use of physical force by a department employee against an inmate or an offender supervised by the department in the community. The time for the employee to file a written report is reduced from five days to one day. The warden (in the case of an inmate) or the circuit administrator (in the case of an offender supervised by the department in the community) must forward the report and related documentation to the Office of the Inspector General. The inspector general must conduct a review and make a recommendation as to whether the use of force was appropriate or inappropriate. If the inspector general determines that the use of force was appropriate, the employee's report and the inspector general's written determination of appropriateness must be forwarded to the warden or circuit administrator. If the inspector general finds that the use of force was inappropriate, the inspector general must conduct a complete investigation of the incident and forward the report to the regional director for further action. This process is substantially the same as that currently followed by the department pursuant to administrative rule.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Forty of the 97 inspectors are already certified law enforcement officers. It would cost approximately \$36,000 to cross-train the remaining 57 inspectors to make them qualified for certification. All prison inspectors are currently classified as special risk state employees, so there would be no additional impact on benefits and retirement. The other provisions of the CS would have no significant economic impact. To the extent that affected officers believe they have been elevated to law enforcement officer status by statute they may have a claim for higher salary and other non-economic benefits. "Related Issues," below discusses another aspect of this situation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Correctional officers are represented in collective bargaining by the Police Benevolent Association through its Security Services Unit. Law enforcement officers, except for special agents in the Department of Law Enforcement, are represented in like matters by the International Union of Police Associations. An effect of this bill could provide for a representation transfer of the affected officers from one union to another upon attainment of law enforcement officer status. Adherence to the provisions of ch. 447, F.S., is required by both management and labor to avoid charges of unfair labor practices. The Department of Management Services acts as the state labor negotiator on behalf of agencies of the executive branch exclusive of the Department of the Lottery and the university system.

VIII. Amendments:

None.