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DATE: January 28, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 409
RELATING TO: DOC/Criminal Investigations
SPONSOR(S): Representative(s) Bilirakis
TIED BILL(S): None

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

- (1) STATE ADMINISTRATION
- (2) CRIME PREVENTION, CORRECTIONS & SAFETY
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

Current law provides for the Office of the Inspector General within the Department of Corrections (DOC). The Office of the Inspector General is responsible for prison inspection and investigation, internal affairs investigations, and management reviews, and supervises the work of inspectors throughout the state. Inspectors are allowed to enter any facility at any time, and are permitted to consult and confer with any prisoner privately and without molestation during their inspections. The Inspector General and inspectors are additionally responsible for criminal and administrative investigation of matters relating to the DOC. In conducting such investigations, the inspectors may consult and confer with any prisoner or staff member, and may detain any person for violations of the criminal laws of the state.

HB 409 permits the Secretary of the DOC to designate persons within the Office of the Inspector General as certified law enforcement officers for the purpose of conducting any criminal investigations that either occur on property owned or leased by the department, or that involve matters over which the DOC has jurisdiction. These certified law enforcement officers can only conduct criminal investigations and arrest inmates or correctional staff members for crimes classified as a felony.

Current law provides for certain procedures and time requirements to follow if an employee of the DOC applies physical force upon an inmate or offender under the control of the DOC, and the warden or regional administrator is responsible for conducting an investigation on the use of physical force. HB 409 changes the current requirement that the warden or the regional administrator complete an investigation on the use of force, instead requiring the Office of the Inspector General to conduct such an investigation.

There currently exists a written memorandum of understanding between the Florida Department of Law Enforcement and the DOC which makes the DOC responsible for notifying FDLE when certain situations occur at state correctional facilities. HB 409 places in statute the requirement that a memorandum exist between these two departments, yet this bill does not specify what the memorandum must contain.

HB 409 does not appear to have a fiscal impact on local governments, yet it may have an impact on state government. Please see the "Economic Impact and Fiscal Analysis Statement."

See "Other Comments" section for concerns regarding this bill as well as for supporting comments.

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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:

Inspector General and Inspectors of the Department of Corrections

Chapter 944, F.S., pertains to the state correctional system and the responsibilities of the Department of Corrections (DOC). The DOC is responsible for the security of the correctional institutions and facilities, and the Secretary of the DOC must execute specific responsibilities in order to maintain secure facilities.¹

Section 944.31, F.S., outlines the powers and duties of the DOC’s Inspector General. The Office of the Inspector General is responsible for prison inspection and investigation, internal affairs investigations, and management reviews. Each correctional institution, or any place in which state prisoners are housed or worked, is subject to inspection, and such facilities are inspected for cleanliness, sanitation, safety and comfort, quality of the bedding, diversity of the food, the number of prisoners, and the overall condition of the facility. The Office of the Inspector General coordinates and supervises the work of inspectors throughout the state. Inspectors are allowed to enter any facility at any time, and are permitted to consult and confer with any prisoner privately and without molestation during their inspections.

The Inspector General and inspectors are additionally responsible for criminal and administrative investigations² of matters relating to the DOC. In conducting such investigations, the inspectors may consult and confer with any prisoner or staff member, and *may detain any person for violations of the criminal laws of the state*. Such detention may occur only on properties owned or leased by the DOC, and the detained person must be surrendered without delay to the sheriff of the county in which the detention occurs. A formal complaint must be subsequently filed against the detainee.³ Upon completing an investigation of a correctional institution, the inspector must complete a full report, and one copy of the report must be filed both with the DOC and with the officer in charge of

¹ These responsibilities include appointing a security review committee, establishing a periodic schedule for the physical inspection of buildings and structures to determine security deficiencies, conducting announced and unannounced comprehensive security audits of all state and private correctional institutions, and adopting and enforcing minimum security standards and policies. Section 944.151, F.S.

² An “administrative investigation” means any allegation where an employee has violated any rule, policy, or procedure that was not a violation of a criminal statute but could result in disciplinary action being taken against the employee. This definition was provided by the staff of the Department of Correction’s Office of Legislative Affairs on January 17, 2002.

³ Section 944.31, F.S.

the correctional institution. These reports are public records and accordingly are subject to public inspection.

Authorized Use of Force

Section 944.35, F.S., discusses when it is appropriate for an employee of the DOC to apply physical force upon an inmate or an offender supervised by the DOC.⁴ Any employee of the DOC who either applies physical force or was responsible for making the decision to apply physical force upon an inmate or an offender, must prepare, date, and sign an independent report within five working days of the incident. The report must be delivered to the warden or the regional administrator, who must then conduct an investigation and ultimately disapprove or approve of the force used. The employee's report, together with the results of the investigation, must then be forwarded to the regional director within five working days from the date of the completion of the investigation. The regional director either concurs or disapproves of the warden's or regional administrator's evaluation, and then places a copy of his or her own review in the files of the inmate or offender. A notation of the incident is also kept in the file of the DOC employee.

Memorandum of Understanding

There is a memorandum of understanding (memorandum) between the Florida Department of Law Enforcement (FDLE) and the DOC regarding the allocation of responsibility when certain events occur at state correctional facilities.⁵ The underlying principle behind this memorandum is that the DOC is responsible for notifying FDLE under particular circumstances. The memorandum provides for two distinct categories: (a) mandatory notification and FDLE response, and (b) mandatory notification and discretionary FDLE response/involvement.

Mandatory Notification and FDLE Response

If any of the following events occur, the Inspector General of the DOC must ensure that the proper FDLE contact person is notified, and investigative involvement and forensic assistance *must* be initiated by FDLE:

- The homicide, suicide, shooting death, or suspicious death of (a) an inmate while in the care, custody, or control of the DOC, or (b) a correctional staff member, or any other person, while on institutional property, or in connection with the care, custody, or control by DOC staff over inmates while off institutional property.
- The infliction of life-threatening injuries in which death is imminent or likely upon an inmate, a member of correctional staff, or any non-inmate, as a result of a physical confrontation between correctional staff and one or more inmates, while on institutional property or when otherwise under the control of the DOC.

Mandatory Notification and Discretionary FDLE Response/Involvement

The primary difference between this category and "mandatory notification and FDLE response" is that under this category, *FDLE may waive involvement in any instance where FDLE finds that*

⁴ This can only lawfully occur when and to the extent it reasonably appears necessary. For example, an employee may apply physical force to defend himself or herself, to prevent a person from escaping a state institution when such person is being lawfully detained, to prevent damage to property, to administer medical treatment, or when medical treatment is necessary to protect the health of any other persons.

⁵ There is no statutory provision authorizing such an agreement.

assistance is unnecessary. If any of the following events occur, the Inspector General of the DOC must ensure that the proper FDLE contact person is notified, and FDLE must *review* the provided information to determine whether FDLE investigative or forensic involvement is necessary.

- The infliction of life-threatening injuries in which death is imminent or likely upon an inmate as a consequence of a physical confrontation between inmates, while on institutional property or when otherwise under the control of the DOC. *This differs from the prior category in that this event involves confrontation between two inmates.*
- The receipt by the Inspector General of the DOC of a credible complaint or significant evidence of the occurrence or existence of major organized criminal activity involving inmates or correctional staff at one or more institutions.

The remainder of the memorandum deals with the logistics of implementing the notification and response procedures. For example, the ranking DOC institutional supervisor or inspector must ensure that a secure crime scene perimeter is maintained until proper authorities arrive; the State Attorney must be notified as soon as reasonably possible after FDLE is notified; and if FDLE should decide not to assist the DOC, the Inspector General of the DOC and the Executive Office of the Governor's Chief Inspector General must be notified.

If FDLE is to provide assistance, FDLE assumes operational direction of both the investigation and any forensic assistance, yet FDLE may request one or more inspectors assigned by the DOC to act as liaisons. The DOC is to retain overall direction and responsibility for any *internal* or *administrative* investigations; however, the memorandum clearly specifies that any criminal investigative efforts take precedence over any internal or administrative investigations conducted by the DOC.

This memorandum represents an agreement between FDLE and the DOC, and any change or amendment to the agreement must be in writing and signed by authorized personnel.⁶

C. EFFECT OF PROPOSED CHANGES

Inspector General and Inspectors of the Department of Corrections

HB 409 permits the Secretary of the DOC to designate persons within the Office of the Inspector General as certified law enforcement officers for the purpose of conducting any criminal investigations that either occur on property owned or leased by the department, or that involve matters over which the DOC has jurisdiction.⁷ These law enforcement officers must be certified pursuant to s. 943.1395, F.S.,⁸ and must have a minimum of three years experience as an inspector or as a law enforcement officer. *Current law does not require inspectors to be certified law*

⁶ Memorandum of Understanding between the Florida Department of Law Enforcement and the Department of Corrections. A copy was provided to the House Committee on Corrections by the Florida Department of Law Enforcement on April 13, 2000, accompanied by a letter signed by Commissioner James T. Moore and Program Legal Advisor Joseph S. White.

⁷ Section 945.025, F.S., outlines the jurisdiction of the Department of Corrections. The department has supervisory and protective care, custody, and control of the inmates, buildings, grounds, property, and all other matters pertaining to the following Department of Corrections' facilities and programs for the imprisonment, correction, and rehabilitation of adult offenders: adult correctional institutions, youthful offender institutions, Mental Health Treatment Facility, Probation and Restitution Center; Department of community correctional centers; and vocational centers.

⁸ Section 943.1395, F.S., deals with the certification for employment or appointment of a law enforcement officer. The Criminal Justice Standards and Training Commission exists within the Department of Law Enforcement, and is responsible for certifying individuals as law enforcement officers.

enforcement officers. In fact, if an individual is hired by the DOC as an inspector, and was certified as a law enforcement officer in a previous professional position, this individual would currently lose his or her certification when working for the DOC because the DOC does not provide any recertification options.

HB 409 provides that the certified law enforcement officers have the authority to arrest, without a warrant, any person for a violation of the criminal laws of the state involving any offense classified as a felony. *HB 409 does not authorize the law enforcement officers to arrest any person for any violations classified as a misdemeanor.*⁹ This bill further allows persons designated as law enforcement officers to make arrests of persons against whom arrest warrants have been issued, including arrests of offenders who have escaped from custody. The bill *implies* that these arrests of persons against whom warrants have been issued must occur on DOC property or must involve matters over which the DOC has jurisdiction; however, an argument could be made to the contrary.

Current law provides that inspectors may consult and confer with any prisoner or staff member privately during investigations, and may detain any person for violation of any criminal laws. The language of HB 409 still permits inspectors, not certified as law enforcement officers, to **consult and confer** with any prisoner or staff member, yet **HB 409 removes the authority of inspectors who are not certified law enforcement officers to detain any individual.**

HB 409 limits the responsibilities of inspectors who are certified as law enforcement officers to conduct only criminal investigations. The Florida Statutes require that inspectors conduct both administrative and criminal investigations. Pursuant to a conference with the Secretary of the DOC, the DOC wants *all inspectors to be certified law enforcement officers.*¹⁰ If this occurs, it is unclear from the language of HB 409 which inspectors will be responsible for conducting administrative investigations¹¹, since this bill strictly limits inspectors certified as law enforcement officers to conduct only criminal investigations.

Authorized Use of Force

Current law provides that any DOC employee, following any use of force upon an inmate or upon an offender supervised by the DOC, must prepare an independent report within five working days and deliver it to the warden of the correctional facility or the regional administrator. The warden or the regional administrator is then responsible for completing a written approval or disapproval, and within five working days from the completion of the investigation, forwarding this document to the regional director. HB 409 requires that the DOC employee must complete an independent report within *one* working day and deliver it to the warden or the *circuit administrator*¹², who must then forward the report and all appropriate documentation to the Office of the Inspector General. *HB 409 does not specify the time frame within which the warden or circuit court administrator must forward the report to the Office of the Inspector General.*

⁹ Pursuant to conference with the Secretary of the Department of Corrections, the department expressly desires that the certified law enforcement officers have the authority to arrest persons for only those crimes classified as a felony. January 9, 2002.

¹⁰ Pursuant to conference with the Secretary of the Department of Corrections on January 9, 2002.

¹¹ An "administrative investigation" is defined as any allegation where an employee has violated any rule, policy, or procedure that was not a violation of a criminal statute but could result in disciplinary action being taken against the employee. This definition was provided by staff of the Department of Correction's Office of Legislative Affairs on January 17, 2002.

¹² The circuit administrator differs from the regional administrator in that there are 20 circuit administrators in the State of Florida and only 4 regional administrators. There is one circuit administrator for each circuit court division in the State of Florida, for the circuit administrator works closely with the circuit court. Pursuant to a telephone conversation with staff of the Department of Correction's Office of Legislative Affairs, January 17, 2002.

HB 409 provides that after the Office of the Inspector General receives the report, the Inspector General must conduct a review and make recommendations regarding the appropriateness or inappropriateness of the use of force. If the Inspector General decides that the use of force was appropriate, the employee's report and a report completed by the Inspector General are forwarded to the warden or circuit administrator. If the Inspector General decides that the use of force was inappropriate, the Inspector General must conduct a complete investigation of the incident and forward the findings of fact to the appropriate regional director for further action. Copies of the employee's report and the Inspector General's findings are then placed in the files of the inmate or the offender, and a notation of the incident and the outcome are placed in the employee's file.

*Essentially, HB 409 changes the current requirement that the warden or regional administrator complete an investigation on the use of force, instead requiring the Office of the Inspector General to conduct such an investigation.*¹³ The Secretary of the DOC believes that requiring the Office of the Inspector General to conduct these investigations provides more of an independent review.¹⁴

Memorandum of Understanding

HB 409 places in statute the requirement that the DOC maintain a memorandum of understanding with the Department of Law Enforcement. Because HB 409 does not specify what the memorandum of understanding must contain, the contents can change at the discretion of the two departments. A written memorandum of understanding does currently exist between the two departments.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Forty of the 97 inspectors are already certified law enforcement officers. It would cost approximately \$36,000 to certify the remaining 57 inspectors. All prison inspectors are currently classified as special risk state employees, so there would be no additional impact on benefits and retirement.¹⁵ The DOC has stated that it can cover the cost of the certification of these 57 inspectors with existing agency resources, and no additional funds are necessary to maintain the certification of the other 40 inspectors.¹⁶

¹³ The regional administrator and regional director are employees of the Department of Corrections.

¹⁴ Pursuant to conference with the Secretary of the Department of Corrections on January 9, 2002.

¹⁵ CS/SB 408, Senate Staff Analysis and Economic Impact Statement. Criminal Justice Committee and Senator Crist. December 4, 2001.

¹⁶ Pursuant to a telephone conversation with staff of the Department of Correction's Office of Legislative Affairs, January 15, 2002.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The DOC stated that certifying inspectors as law enforcement officers will not require an increase in salary for such individuals.¹⁷ However, it is possible that by requiring higher qualifications for inspectors, these individuals will negotiate higher pay.

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:

None.

C. OTHER COMMENTS:

The Florida Police Chiefs Association wrote a resolution supporting this legislation.¹⁸

¹⁷ Pursuant to conference with the Secretary of the Department of Corrections on January 9, 2002.

¹⁸ The Florida Police Chiefs Association Resolution 2001-02, adopted January 14, 2001, by the Board of Directors of the Florida Police Chiefs Association. A copy of the resolution was provided by the Department of Correction's Legislative Affairs Office.

The Florida Sheriffs Association, in a later dated March 1, 2001, support this legislation. "We believe this authority extended to designated DC staff will enhance the investigative work they do as well as allow them to become a more professional and productive member of the criminal justice system, which benefits us both."¹⁹

HB 1457 and SB 1708 were proposed during the 2001 legislative session and contained similar language to that contained in HB 409. HB 1457 died in the Committee on Crime Prevention, Corrections, and Safety on May 4, 2001, and SB 1708 died in messages on May 4, 2001.

Concerns may arise that the Sheriffs' Offices will no longer be conducting certain investigations, and instead such investigations will become the responsibility of the DOC. Concerns may also arise regarding the memorandum of understanding between the DOC and FDLE, as this bill does not specify what this memorandum must contain.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Lauren Cyran, M.S.

J. Marleen Ahearn, Ph.D., J.D.

¹⁹ Letter addressed to Michael W. Moore, Secretary of the Department of Corrections, March 1, 2001, signed by J.M. "Buddy" Phillips, Executive Director of the Florida Sheriffs Association. A copy of the letter was provided by the Department of Correction's Legislative Affairs Office.