

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1975 (formerly PCB PS 04-34) Criminal Justice Standards and Training Commission
SPONSOR(S): Public Safety & Crime Prevention Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1792

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety & Crime Prevention</u>	<u>17 Y, 0 N</u>	<u>Cole</u>	<u>De La Paz</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, the Criminal Justice Standards and Training Commission (CJSTC) is comprised of nineteen members as outlined in s. 943.11(1)(a), F.S. The bill amends the make up of the CJSTC by allowing the Attorney General to appoint a designee, instead of a designated assistant to serve in his or her place. This could allow someone not employed by the Attorney general to serve on the CJSTC. The bill deletes the requirement that the Commissioner of Education serve on the commission. It also allows the Governor to appoint one extra officer who, along with the current four, must hold the rank of sergeant or below. Currently, one of the four officers may hold a rank higher than sergeant. The total number of commissioners will not change.

Section 943.1395(5), F.S. requires law enforcement agencies to conduct internal affairs investigations if it has cause to believe the officer has been convicted of a felony, a misdemeanor involving perjury or making a false statement, received a dishonorable discharge from the Armed Forces, or failed to maintain good moral character. It also requires the agency to submit those findings to CJSTC. HB 1975 provides the CJSTC the authority to inspect an agency's records to ensure current law is being applied accurately and properly.

The records of CJSTC investigations are currently exempt from public records requests until probable cause has been determined or the investigation has become inactive. HB 1975 provides that an officer, or their attorney, may review any documents or information regarding the investigation 30 days prior to the findings being presented to a probable cause panel.

HB 1975 creates an additional twelve member panel comprised of six officers and six criminal justice managers, appointed by the CJSTC chair, to provide biannual input on recommendations concerning disciplinary guidelines. There is no current policy or procedure that does this.

There does not appear to be any fiscal impact to this bill.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1975.ps.doc
DATE: April 21, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Composition of the Criminal Justice Standards and Training Commission

The Criminal Justice Standards and Training Commission was established pursuant to s. 943.11, F.S., and has a number of responsibilities relating to training, certification, and discipline of full-time, part-time, and auxiliary law enforcement officers, correctional officers, and correctional probation officers.

Section 943.11(1)(a), F.S., specifies that the commission is to have a membership of 19 composed of the following persons:

- the Secretary of the Department of Corrections or designated assistant,
- the Attorney General or designated assistant,
- the Commissioner of Education or designated assistant,
- the Director of the Florida Highway Patrol,
- 3 county sheriffs,
- 3 chiefs of police,
- 4 law enforcement officers who are not a sheriff or chief of police, and 3 of whom hold the rank of sergeant or below,
- 2 correctional officers, including one administrator of a state correctional institution and 1 officer holding the rank of sergeant or below,
- 1 training center director,
- 1 person in charge of a county jail, and,
- 1 Florida resident who does not fall into any of the other categories.

The positions filled by the sheriffs, chiefs of police, law enforcement officers, correctional officers, training center director, county jail administrator, and citizen member are appointed by the Governor.

Investigations and Sanctions in Disciplinary Actions

One of the commission's primary functions is the review of agency disciplinary actions and administration of appropriate administrative sanctions in instances when an officer is found in violation of Florida Statutes or commission standards. Section 943.1395(5), F.S., requires an employing agency to conduct an internal investigation if it has cause to suspect that an officer is not in compliance with, or has failed to maintain compliance with ss. 943.13(4) or (7), F.S.

Section 943.13, F.S., sets forth minimum qualifications for employment or appointment as law enforcement or correctional officers. Specifically, s. 943.13(4), F.S., requires that the officer not have been convicted of

any felony or of a misdemeanor involving perjury or false statement, or have received a dishonorable discharge from the Armed Forces. Section 943.13(7), F.S., additionally states that an officer must have “good moral character.”

If the employing agency finds that the officer was not in compliance, the investigative report and supporting information must be submitted to the commission according to commission rules. The employing agency is also required to inform the commission of the separation of an officer from employment for any reason. Section 943.1395(6), F.S., requires the commission to investigate the circumstances of the separation to determine whether there are grounds to revoke the officer’s license or to take other disciplinary action. The commission is also required to investigate cases that are referred by the Governor and is permitted to investigate other verifiable complaints. The commission indicates that approximately 65 percent of investigations are generated by reports from employing agencies that report disciplinary action taken against certified officers.

Section 943.1395(6), F.S., mandates revocation of the certification of an officer who has been convicted of any felony or misdemeanor involving perjury or false statement, or who has received a dishonorable discharge from the United States Armed Forces.

Section 943.1395(7), F.S., provides a range of disciplinary actions that result in revocation or suspension of a license of an officer determined not to have maintained good moral character. The statute sets forth permissible penalties ranging from the least severe penalty of issuance of a reprimand to the most severe penalty of revocation of certification.

Pursuant to s. 943.1395(8), F.S., the commission has adopted rules for administering disciplinary action, including penalties and aggravating and mitigating factors that may be considered. The commission has adopted Rule 11B-27.005, F.A.C., to establish penalties for specific offenses. Rule 11B-27.005, F.A.C., also sets forth aggravating and mitigating factors that are to be considered by the commission in setting a penalty.

If an employing agency takes disciplinary action against an officer and the officer’s employment is continued or reinstated, the commission may appoint a probable cause panel to review the sustained charges and penalty. If the penalty administered by the agency conforms to the disciplinary penalty provided by commission rule s. 943.1395(8)(c), F.S., provides that the commission is to notify the officer and the employing agency that no further action is to be taken. In practice, the commission considers aggravating and mitigating factors and may take further action if certain factors are present.

Criminal Justice Professionalism Program

Section 943.09, F.S., established the Criminal Justice Professionalism Program within the Department of Law Enforcement. The staff of this division within FDLE serves as the staff for the Criminal Justice Standards and Training Commission and among other duties, reviews the agency action and disciplinary penalty in a case and makes a recommendation to the commission for the consideration of the commission, usually by a “Probable cause panel” appointed by the commission chair.¹ The Professionalism Program also administers the FDLE Academy and Leadership Center.

Effect of Proposed Changes

This bill changes the composition of the Criminal Justice Standards and Training Commission. The Attorney General will be allowed to appoint a “designee,” rather than a “designated assistant,” which can be someone who is not employed by the agency. The Commissioner of Education will no longer be

¹ s. 943.1395 (8)(c), F.S.

represented on the Commission. The number of law enforcement officers on the commission will be increased from four to five, with all required to hold the rank of sergeant or below. Previously, one of the four officers could be above the rank of sergeant.

The bill authorizes the commission to inspect the employing agency's records to ensure compliance with s. 943.1395(5), F.S., which requires agency investigation of officers who are suspected of not meeting the requirements of ss. 943.13(4) and (7), F.S. (misdemeanor involving perjury or false statement, any felony, or moral character issues).

The bill also provides for a tolling of the time limits on the commission's investigation and determination of matters that may lead to an officer's certification revocation under s. 943.1395(6)(a), F.S., when an appeal is pending. It also provides for an officer or his or her attorney to review documents and other related information gathered during the investigation, not more than 30 days before the results are presented to a probable cause panel.

The bill requires the commission to conduct a workshop to "receive public comment" and evaluate disciplinary guidelines and penalties every other year. A twelve-member advisory panel appointed by the commission chair will make recommendations to the commission concerning disciplinary guidelines. The panel will be composed of six officers and six representatives of criminal justice management positions.

Under the provisions of the bill, if an employing agency disciplines an officer but keeps the officer employed, the Criminal Justice Professionalism Program, rather than a probable cause panel will review the agency action for compliance with commission rules. The review is made mandatory. The commission is authorized to adopt rules establishing the notification procedures provided in s. 943.1395(8)(d), F.S.

C. SECTION DIRECTORY:

Section 1: Amends s. 943.11, F.S. relating to the make up of the CJSTC.

Section 2: Amends s. 943.1395, F.S. relating to the duties of the CJSTC.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not Applicable.

D. FISCAL COMMENTS:

There does not appear to be any fiscal impact to the state or local government in this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rule making authority to the CJSTC to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Public Safety & Crime Prevention Committee adopted an amendment on April 15, 2004 that amended the language giving FDLE rulemaking authority to implement provisions of the bill.