

STORAGE NAME: h1129s1.cj

DATE: April 7, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1129

RELATING TO: Correctional Work Programs

SPONSOR(S): Representatives Peadar, Bainter, Healey, Fischer, Morroni, Clemons, and Culp

STATUTE(S) AFFECTED: ss. 212.08, 283.31, 946.503, 946.504, 946.505, 946.509, 946.511, 946.512, 946.513, 946.515, 946.518, 946.516, 945.04, 946.009, F.S.

COMPANION BILL(S): None.

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

- (1) CORRECTIONS YEAS 6 NAYS 0
- (2) CRIMINAL JUSTICE APPROPRIATIONS
- (3)
- (4)
- (5)

I. SUMMARY:

Committee Substitute for House Bill 1129 would amend several sections of the Florida Statutes relating to correctional work programs operated by Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). Amendments would include:

- redefining the types of property in which the Department of Corrections and PRIDE have ownership interest should a work program be terminated or the corporation dissolved.
- revising the priority assignment of inmates to work programs.
- repealing the requirement that at least 60% of the inmates assigned to PRIDE and Prison Industry Enhancement (PIE) programs be within 10 years of their release dates.
- revising the authority of the Auditor General to conduct audits of PRIDE and requiring the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct performance audits.
- creating a sales tax exemption for products sold by PRIDE.
- providing that certain PRIDE monies be deposited into the Correctional Work Program Trust Fund instead of the Department of Corrections' Grants and Donations Trust Fund.

The provision exempting PRIDE from collection of sales tax will have a fiscal impact of (\$0.3) million on General Revenue in FY 1997-98, and a negative insignificant fiscal impact on the Solid Waste Management Trust Fund and the Local Government Half-cent Sales Tax Trust Fund in that FY. The exemption will result in a negative insignificant impact to General Revenue, the Solid Waste Management Trust Fund, and the Local Government Half-cent Sales Tax Trust Fund in FY 1998-99.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Inmate Labor Requirement

Section 946.002, F.S., 1996 Supplement, requires every able-bodied prisoner to work. Inmates can be assigned to a variety of work and self-improvement programs within the department, which include:

- (1) institutional work (e.g., food preparation and laundry);
- (2) outside work squads that perform manual labor, such as road work and landscaping, for state agencies and city and county governments; and
- (3) prison industries.

Inmates working in prison industries are assigned either to a program operated by Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) or a Prison Industry Enhancement (PIE) program operated by the Department of Corrections.

PRIDE Programs

Since 1981, prison industry programs have been operated by PRIDE, a private non-profit corporation authorized by Chapter 946, Florida Statutes, to lease and manage prison industries. The department is required to lease the "buildings, land, furnishings, equipment, and other chattels used in the operation of each correctional work program" to PRIDE. s. 946.504, F.S., 1996 Supp. Further, it was the Legislature's intent that all correctional work programs of the department be leased to PRIDE by July 1, 1985. s. 946.502(3), F.S., 1996 Supp.

Currently, PRIDE operates programs in 22 prisons and 2 county jails and employs about 2300 to 3000 inmates on a daily basis (out of a total prison population of around 64,000). PRIDE is also authorized by statute to contract with the private sector to conduct PIE programs in prisons. s. 946.006(3), F.S., 1996 Supp. To date, PRIDE has been approved by the department to operate two PIE programs in the state.

PIE Programs

In 1994, the Legislature authorized the department to participate in the federal Prison Industry Enhancement (PIE) program, which allows private sector businesses to operate inside of prisons and employ inmates. In March, 1995, the U.S. Department of Justice approved the department as the certified agency responsible for designating PIE programs in this state. All contracts for PIE programs, including those intending to be operated by PRIDE, must receive the department's approval. Three PIE programs are currently operating, which are employing about 54 inmates statewide.

Assignment of Inmates to PRIDE and PIE Programs

Section 946.511, Florida Statutes, governs the assignment of inmates to correctional work programs. Inmates are evaluated by department staff during the reception process to determine their skills and needs. They are assigned to work and other programs based on the evaluation and length of time that the inmate will be in the department's

custody. Assignments to meet the needs of the work requirements of the department, including existing contracts with the Florida Department of Transportation, currently take priority over the assignment of inmates to PRIDE.

In addition, state law restricts the types of inmates who can be assigned to PRIDE and PIE programs. Effective January 1, 1996, at least 60 percent of inmates assigned to PRIDE or PIE programs must be within ten years of their tentative release dates. s. 945.04(4), F.S. According to the department, current inmate assignments to PRIDE and PIE programs statewide are as follows:

Sentence Length	Number of Inmates Assigned	Percentage Assigned
0 to 5 years	1192	50%
5 to 10 years	398	17%
> 10 years	340	14%
Life	441	19%
TOTAL	2371	100%

Operational Guidelines for Correctional Work Programs

Section 946.009, Florida Statutes, 1996 Supplement, requires the department to establish operational guidelines for correctional work programs, conduct evaluations of such programs, and consult with private labor and management for program development. Similar language relating to the evaluation of inmates for assignment to work programs is found in section 946.511, Florida Statutes. A reference to conducting systematic evaluations of work programs in accordance with section 20.315(16), Florida Statutes, is obsolete due to repeal of that subsection. In addition, the department consults with organized labor and local private industry prior to implementation of PIE programs based on federal guidelines for such programs.

Legal Restrictions on the Sale of PRIDE Products

Federal law prohibits the transportation in interstate commerce or from any foreign country of prisoner-made goods, wares or merchandise. Ashurst-Sumners Act of 1948, 18 U.S.C.A. 1761 (1991 and Supp. 1996). The federal prohibition specifically does not apply to:

- (1) agricultural commodities,
- (2) parts for farm machinery repair;
- (3) commodities manufactured in a federal or state institution for use by the federal government or any state or political subdivision; and
- (4) goods manufactured, produced or mined by prisoners participating in federally authorized PIE programs.

As a result of federal and state law, PRIDE's sales are limited primarily to state agencies. State law requires state agencies to purchase services or products produced

by inmates in PRIDE programs when such services or products are certified by the Division of Purchasing to meet comparable performance specifications and price and quality requirements specified under section 287.042(1)(f), Florida Statutes, 1996 Supplement (Procurement of Personal Property and Services). The 1996 Legislature, in an attempt to allow PRIDE to expand its markets, authorized PRIDE to furnish or sell goods or services to foreign entities or their agents and to sell agricultural products that are processed to private entities.

Lease of Facilities

The original legislation transferring the operation of correctional work programs from the department to a nonprofit corporation (PRIDE) required the department to lease "the buildings, land, furnishings, equipment, and other chattels used in each correctional work program." Ch. 83-209, L.O.F. (codified at s. 946.504(1), F.S). Should a correctional work program operated by PRIDE be terminated or the corporation dissolved, state law provides that all property subsequently purchased or otherwise acquired by PRIDE in connection with its correctional work programs is to revert back to full ownership of the department. This reversion occurs unless PRIDE intends to use the property in another correctional work program. "Property" includes "all funds, buildings, land, furnishings, equipment, and other chattels." s. 946.505, F.S.

The value of the state's property has increased yearly as PRIDE has improved state-owned buildings and other properties. According to PRIDE, as of 1996, over \$18.6 million has already been invested in state lands and facilities.

Section 946.503, Florida Statutes, 1996 Supplement, defines "facilities" for purposes of Part II of Chapter 946 as "the buildings, land, equipment, and other chattels used in the operation of an industry program." This definition currently makes no distinction between facilities located on state property, which may revert to the department if a PRIDE program is terminated or the corporation dissolved, and "facilities" which are connected to correctional work programs in private prisons and county jails. PRIDE is authorized to contract with private contractors and city and county authorities operating correctional facilities to operate correctional work programs. s. 946.5025, F.S., 1996 Supp.

Financial and Performance Audits of PRIDE

Auditor General

Section 283.31, Florida Statutes, requires that the Auditor General conduct, once every three years, a financial-related and performance audit of PRIDE. The audit is to include a review of the printing that PRIDE has done for state agencies. The review is to include the cost of materials, labor and overhead, as well as the amount of profit made by PRIDE for such printing. The Auditor General recently completed an operational audit of PRIDE for the period July 1, 1994 through February 29, 1996. State of Florida Auditor General, *Operational Audit of the Prison Rehabilitative Industries and Diversified Enterprises, Inc.* (Report No. 12859, December 12, 1996).

Currently, PRIDE has print divisions in four correctional institutions that account for 15 percent of the total inmates worked in PRIDE programs and represented almost 9 percent of PRIDE's total sales in fiscal year 1994-95. While Chapter 946, Florida Statutes, exempts state agency purchases of PRIDE goods and services from the

provisions of Chapter 287, Part I, Florida Statutes (Procurement of Personal Property and Services), which include competitive bidding requirements, this exemption does not apply to printing purchases. s. 283.33(4), F.S. As part of the audit process, the Auditor General reviews PRIDE's records relating to developing and estimating printing project bids and for allocating overhead costs.

Further, section 946.516(3), Florida Statutes, 1996 Supplement, requires the Auditor General to biennially conduct a financial and performance audit of PRIDE, which shall be conducted in conjunction with an independent audit conducted by the corporation's auditors. Accordingly, as part of its latest audit of PRIDE, dated December 12, 1996, the Auditor General reviewed the sufficiency of independent annual financial audits conducted for the 1993-94 and 1994-95 fiscal years. Auditor General, *Operational Audit 2*.

The most recent audit of PRIDE conducted by the Auditor General focused on the following areas: PRIDE's management's planning efforts (program goals, objectives, and performance measures); the employment of non-inmates in PRIDE work programs; the corporation's use of accounting principles established for nongovernmental entities; the self-sufficiency of the industries program; and the operations of the print division. Findings and recommendations were issued in each of these areas.

OPPAGA

The Office of Program Policy Analysis and Government Accountability (OPPAGA) was established by the 1994 Legislature to review the performance of state agencies under performance-based budgeting and to increase the visibility and usefulness of performance audits. The office was staffed by transferring the Program Audit Division staff of the Auditor General's Office to OPPAGA. The office is a unit of the Auditor General's office, but operates independently and reports to the Legislature.

OPPAGA conducts studies and issues a variety of reports, such as program evaluations and performance audits. In its evaluations, OPPAGA may examine, among other issues, whether a program is effectively serving its intended purpose and operating within current revenue resources.

Department of Corrections' Trust Funds

Grants and Donations Trust Fund

Section 946.512, Florida Statutes, requires PRIDE to establish a compensation plan for inmate workers and provides for a specific amount to be paid to the department to be credited to the inmates workers' accounts and to satisfy court-ordered payments, including restitution. In addition, the corporation is to pay a specific amount to be deposited into the department's Grants and Donations Trust Fund and appropriated annually. According to PRIDE, the corporation pays approximately 1.5 percent of its annual gross sales to the department, which is deposited into this trust fund and used to offset costs of the department's services. Contributions to the state totaled \$1,164,362 in 1995 and \$726,517 in 1996. Pride of Florida, *Annual Report* (1996) (Clearwater, Florida).

Correctional Work Program Trust Fund

The Correctional Work Program Trust Fund was recreated by the 1996 Legislature without modification. Chapter 96-317, L.O.F. This fund, which is administered by the department, finances the operation of correctional work programs. Industrial enterprises provide the major source of revenue. In 1996, the Legislature authorized a loan of \$500,000 from the Inmate Welfare Trust Fund to this trust fund to be used primarily to fund PIE programs. s. 946.008, F.S., 1996 Supp.

Sales Tax Issues Relating to PRIDE

Section 212.08, Florida Statutes, 1996 Supplement, specifies exemptions from the sales tax imposed by Chapter 212. Sales made to federal and state governmental agencies, as well as cities and counties, are exempt from sales taxation when payment is made directly to the dealer by the governmental entity. s.212.08(6), F.S., 1996 Supp.

Section 946.515, Florida Statutes, 1996 Supplement, authorizes PRIDE to sell inmate-produced services or items to federal and state agencies, political subdivisions, foreign governments or to any contract vendor for such agencies or any subcontractor of a contract vendor. Currently, items produced by PRIDE and authorized for sale are not specifically exempt from sales taxation. In 1996, an amendment to codify such an exemption was placed on Senate Bill 624, relating to taxation; however, the bill, which included numerous provisions, was vetoed by the Governor.

Recently, questions have been raised as to whether PRIDE's sales to contract vendors are exempt from sales taxation. The Department of Revenue issued a notice of proposed sales tax assessment against PRIDE in 1995. The department has agreed to abate further proceedings pending action by the 1997 Legislature to approve a sales tax exemption for PRIDE. Legislative approval would provide the specific statutory authority necessary for exempt status. Since 1983, when PRIDE began operating, its customers, primarily government agencies or departments, have not paid sales tax on products and services sold by PRIDE.

B. EFFECT OF PROPOSED CHANGES:

Committee Substitute for House Bill 1129 would amend several sections of the Florida Statutes relating to correctional work programs operated by PRIDE (Prison Rehabilitative Industries and Diversified Enterprises, Inc.).

Part II of Chapter 946, Florida Statutes, would be amended to:

- redefine the types of property relating to correctional work programs that the department is required to lease to PRIDE and which would revert back to the state if a program is terminated or the corporation dissolved. While the state would retain ownership interest in all land and buildings currently existing or subsequently constructed, PRIDE would retain ownership in all equipment, furnishings and other chattels, other than those originally leased from the department.
- redefine the term "facilities" to restrict its application to buildings and land on state-owned property. This change would allow PRIDE to separate "fixed" assets on state property from "other assets" which will be used in private prisons or in county jails.

- provide that the top priority for assigning inmates to programs, which is to meet the needs of the work requirements of the department, would include meeting the needs of revenue generating contracts. "Revenue-generating contracts" would be defined to include contracts with the Department of Transportation, PRIDE, private sector businesses for purposes of PIE programs, and federal, state or local governmental entities using inmate labor for construction. This change would place inmate assignments to PRIDE, which currently do not take priority over assignment of inmates to perform work contracted by the Department of Transportation, on par with the work needs of the department.
- shift the deposit of funds currently paid by PRIDE into the department's Grants and Donations Trust Fund into the Correctional Work Program Trust Fund to be used for correctional work programs, including PIE programs.
- allow PRIDE to sell services or items produced in correctional work programs to any person, firm, or business entity if not prohibited by federal law. This change from the current reference in statute to "sales to any person, firm, or business entity if authorized by federal law" (emphasis added) would appear to be a technical change only, conforming to the fact that federal law generally "prohibits" such sales and provides specific exemptions.
- eliminate the authority of the Auditor General to conduct performance audits of PRIDE and shift that responsibility to the Office of Program Policy Analysis and Government Accountability (OPPAGA). A performance audit would be required by December 31, 1999, and after that date, at the request of the Joint Legislative Auditing Committee.
- retain the authority of the Auditor General to conduct financial audits of PRIDE, but would require an audit by December 31, 2001, and after that date, once every five years or at the request of the Joint Legislative Auditing Committee.

Part I of Chapter 946, Florida Statutes, relating to correctional work programs conducted by the department, would be amended to :

- repeal section 946.009, Florida Statutes, 1996 Supplement, requiring the department to establish operational guidelines for correctional work programs, to conduct evaluations of them, and to seek the advice of private labor and management to assist in developing work programs.

Section 945.04(4) Florida Statutes, relating to inmate labor, would be amended to:

- repeal the requirement that at least 60% of the inmates assigned to PRIDE and PIE programs must be within 10 years of their tentative release dates.

Section 212.08, Florida Statutes, 1996 Supplement, relating to sales tax exemptions, would be amended to:

- provide a specific sales tax exemption for products authorized for sale by PRIDE. This exemption would apply retroactively to July 1, 1983.

Section 283.31, Florida Statutes, relating to executive agency printing, would be amended to:

- delete the requirement that the Auditor General conduct a financial-related and performance audit of PRIDE once every three years and include a review of the printing that PRIDE has done for state agencies.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill increases the authority of the Department of Corrections to assign inmates to PRIDE and PIE programs, regardless of their sentence length.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The statutory requirement for the Auditor General to conduct a financial and performance audit of PRIDE once every three years is revised and the performance audit responsibility is shifted to the Office of Program Policy Analysis and Government Responsibility (OPPAGA).

(3) any entitlement to a government service or benefit?

A shift in trust fund monies from the Grants and Donations Trust Fund to the Correctional Work Program Trust Fund could possibly reduce monies available to help offset the department's costs of providing services.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

The statutory requirement for the Auditor General to conduct a financial and performance audit of PRIDE once every three years is revised and the performance audit responsibility is shifted to the Office of Program Policy Analysis and Government Responsibility (OPPAGA).

(2) what is the cost of such responsibility at the new level/agency?

There is no estimated cost resulting from the shift in audit function.

(3) how is the new agency accountable to the people governed?

OPPAGA will produce written reports, which will be available to the public, to substantiate its performance audit findings.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

In granting PRIDE a sales tax exemption on products sold to entities not exempt from payment of sales tax on purchases, the amount of tax revenues collected by the state will be reduced.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill increases the ability of PRIDE to retain ownership in certain assets (i.e., furnishings, equipment and other chattels, and funds) should a correctional work program be terminated or the corporation dissolved.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill removes the state's authority to impose sales tax on products authorized for sale by PRIDE.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

<u>Revenues</u>	<u>FY 1997-98</u>
Retroactive Sales Tax Exemption:	
General Revenue Fund	(\$0.3m)
Solid Waste Management Trust Fund	(insig.)

During the 1996 session, the retroactive sales tax exemption for PRIDE. was passed by the Legislature in SB624, which was later vetoed by the Governor. In reviewing SB624 the Revenue Estimating Conference projected that the exemption would have a non-recurring impact of (\$0.3m) on General Revenue.

2. Recurring Effects:

<u>Revenues</u>	<u>FY 1997-98</u>	<u>FY 1998-99</u>
Retroactive Sales Tax Exemption:		
General Revenue Fund	(insig.)	(insig.)
Solid Waste Management Trust Fund	(insig.)	(Insig.)
Revenue Shift Between Trust Funds:		
Correctional Work Program Trust Fund	(\$0.7m)	(\$0.7m)
Grants & Donations Trust Fund	\$0.7m	\$0.7m
See section D., Fiscal comments.		

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A.1. and A.2. above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

<u>Revenues</u>	<u>FY 1997-98</u>
Retroactive Sales Tax Exemption:	
Local Govt. Half-cent Sales Tax T.F.	(insig.)

During the 1996 session, the retroactive sales tax exemption for PRIDE was passed by the Legislature in SB624, which was later vetoed by the Governor. In reviewing SB624 the Revenue Estimating Conference projected that the exemption would have a negative insignificant non-recurring impact on the Local. Govt. Half-cent Sales Tax Trust Fund.

2. Recurring Effects:

<u>Revenues</u>	<u>FY 1997-98</u>	<u>FY 1998-99</u>
Retroactive Sales Tax Exemption:		
Local Govt. Half-cent Sales Tax T.F.	(insig.)	(insig.)

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

The bill provides several benefits to the PRIDE corporation including: the benefit of the sales tax exemption which applies retroactively to July 1, 1983, the ability to retain certain equipment, furnishings, and other chattels which would otherwise revert to the department upon termination of its lease, and the ability to receive priority assignment of inmates on par with the work needs of the department.

3. Effects on Competition, Private Enterprise and Employment Markets:

To the extent that PRIDE receives benefits not available to its competitors, it could have a competitive advantage over those competitors.

D. FISCAL COMMENTS:

Section 946.512, F.S., currently requires PRIDE to pay a specific amount (1.5% of annual gross sales) to be deposited into the Grants and Donations Trust Fund. Pursuant to this requirement, PRIDE has, since 1991, contributed about \$1.3 million annually which has been used to help offset the department's cost of providing services. As of the date of this analysis PRIDE has not deposited any revenues into the Trust Fund for FY 1996-97.

The bill requires these funds previously deposited by PRIDE into the Grants and Donations Trust Fund to be paid to the Correctional Work Program Trust Fund to be used to finance the operations of correctional work programs. A shift in trust fund monies from the Grants & Donations Trust Fund to the Correctional Work Program Trust Fund could potentially reduce monies available to help offset the department's cost of providing services.

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.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenue.

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

This bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute deletes language requiring the Department of Corrections to obtain written consent from PRIDE before producing goods or services in its correctional work programs that are substantially similar to those produced by PRIDE.

The committee substitute retains the Auditor General's authority under current law to conduct a financial audit of PRIDE, but provides for an audit by December 31, 2001 and

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once every 5 years after that date, or at the request of the Joint Legislative Auditing Committee.

The committee substitute provides a specific date of December 31, 1999 for the performance audit of PRIDE to be completed by OPPAGA.

The committee substitute provides a definition of "revenue-generating contracts" for purposes of prioritizing assignment of inmates to correctional work and education programs.

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

Prepared by:

Legislative Research Director:

Rhesa H. Rudolph

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AS REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

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