

STORAGE NAME: h3527s1.cor

DATE: March 16, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CORRECTIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3527

RELATING TO: Jails

SPONSOR(S): Representative Trovillion and others

COMPANION BILL(S): SB 404 (identical)

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

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

I. SUMMARY:

This bill addresses jails and provides for a criminal penalty for the refusal to obey jail rules and regulations. The bill would authorize an additional criminal penalty for any prisoner who repeatedly, knowingly and willfully refuses to obey certain jail rules and regulations.

This bill substantially amends s. 951.23, F.S.

The fiscal impact upon jails is indeterminate.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The DOC's Oversight of County and Municipal Detention Facilities

Previously, the Department of Corrections set minimum standards for the operation and maintenance of county and municipal detention facilities. More specifically, these minimum standards promulgated by the Department included requirements and procedures regarding the care, custody, treatment, housing, and general handling of jail inmates. (Chapter 33-8, Florida Administrative Code Annotated, 1995) In order to ensure compliance with the standards and regulations established by the Department, the DOC inspected jails at least twice per year as required by rule. Citations were given any violations to the standards.

Since, 1979 the United States Federal District Court has been overseeing the jails and jail conditions in Florida. (*Arias v. Wainwright*, TCA 79-0792 (N.D. Fla.)). There have been consent orders entered into over the course of time pursuant to *Arias* federal class action lawsuit.

In 1981, a consent agreement was reached in the *Arias* case relating to jail conditions. The *Arias* Consent Agreement of June 12, 1981, TCA 79-0792 (N.D. Fla.) resolved the disputes between the parties regarding the duty of the state to conduct jail inspections to maintain the standards set for the operation and maintenance of jails by rules promulgated by the Department of Corrections and the duty of the state to take action to enforce such rules and standards. The dispute alleged several deficiencies in the state jail inspection program. Additionally , the process of correcting cited deficiencies was addressed. Among other things, the agreement required the Department of Corrections to employ a sufficient number of inspectors to fully carry out the terms of the Consent Agreement.

The 1995 legislature passed SB 2050, an appropriations bill, which amended some statutory language relating to the local jail inspections; it amended sections 944.31 and 944.32, Florida Statutes. As a result, all funding to the DOC related to the inspection of county and municipal detention facilities was deleted from the DOC's FY 1995-96 budget. Although the bill was passed by the Legislature, it did not amend or repeal other statutory language that pertained to county and municipal detention facility inspections conducted by the DOC. Therefore, the department had to continue to conduct jail inspections, pursuant to state law, without the funding previously obtained through the state.

In the 1996 legislative session several sections of Chapter 951, F.S., were repealed. (Chapter 96-312, Laws of Florida). The legislative intent was to remove oversight of the county jails by the Department of Corrections (HB 1411).

Specifically, section 951.07, F.S., was repealed. The section read as follows:

951.07 Punishment of prisoner; rules and regulations.--

The flogging or whipping of prisoners in this state is prohibited, but the Department of Corrections may make and enforce suitable and reasonable rules

and regulations for the government of such prisoners while serving sentences in prison camps or jails and enforce the same by solitary confinement, restriction of privileges, or any other humane and reasonable method of punishment. Any prisoner in any jail or prison camp of this state who shall repeatedly, knowingly, and willfully refuse to obey any such reasonable rule or regulation while being subject thereto shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and such punishment shall upon his conviction be in addition to the sentence he is then serving.

Changes to the Regulation of Local Jails

With the repeal of the s. 951.07, F.S., came the abolition of Chapter 33-8 of the Florida Administrative Code. The 1996 legislative session provided through s. 951.23, F.S., a development of model standards for county and municipal detention facilities. Subsection (4) of section 951.23 established a five member workgroup comprised of three appointments from the Florida Sheriffs Association and two from the Florida Association of Counties. By October 1, 1996, each sheriff and chief correctional officer were to adopt, by at a minimum, the model standards with reference to the:

- (1) construction, equipping, maintenance, and operation of county and municipal detention facilities;
- (2) cleanliness and sanitation;
- (3) number of prisoners housed per specified unit of floor space;
- (4) quality, quantity, and supply of bedding furnished;
- (5) quality, quantity, and diversity of food served and the manner in which served;
- (6) furnishing of medical attention and health and comfort items; and
- (7) the disciplinary treatment which may be meted out.

Additionally, s. 951.23 (4), F.S., requires certain standards in the following areas:(a) the reduced custody housing area, (b) the confinement by classification, and (c) the safe handling, storage and dispensing of medicine.

The sheriff or chief correctional officer shall provide that a reduced custody housing area shall be governed by fire and life safety standards which do not interfere with the normal use of the facility and which affect a reasonable degree of compliance with rules of the State Fire Marshal for correctional facilities.

The confinement of prisoners by classification and providing, whenever possible, for classifications which separate males from females, juveniles from adults, felons from misdemeanants, and those awaiting trial from those convicted and, in addition, providing for the separation of special risk prisoners, such as the mentally ill, alcohol or narcotic addicts, sex deviates, suicide risks, and any other classification which the local unit may deem necessary for the safety of the prisoners and the operation of the facility pursuant to degree of risk and danger criteria. Nondangerous felons may be housed with misdemeanants.

A county or municipal detention facility which stocks medicinal drugs in quantities other than individual prescriptions must obtain the services of a consultant pharmacist or dispensing physician and comply with the licensing requirements of chapter 465. A facility which has a valid license pursuant to chapter 465 shall have that part of its medical services relating to procedures for the safe handling and storage of medicinal drugs exempt from the inspection requirements of this section. A facility which maintains only individual prescriptions dispensed by a licensed pharmacist is not required to be licensed under chapter 465.

Florida Model Jail Standards

Standards have been adopted pursuant to s. 951.23(4), F.S., by the Florida Sheriffs' Association and the Association of Counties and filed with the Department of State. The supervision, care, custody, treatment, housing and general handling of inmates are required standards. The standards also address the areas of programs, privileges, security and control, sanitation, contraband and order and discipline.

According to section 4.05 of the standards, each inmate shall be given a copy of the rules and regulations pertaining to inmates. Section 13 details rules and regulations governing the conduct of inmates. Specific attention is given to visitors, as well. The rules and sanctions are posted and made available to each inmate and all visitors.

Section 13 of the model jail standards list the prohibited acts, at a minimum, by each jail. The list is quite extensive and includes acts such as: assaulting or fighting with another person, engaging in sexual acts, escaping, setting a fire, tampering with any locking device, destroying or altering any governmental property, possession of any weapon, rioting, refusing to work, refusing to obey an order of any staff member, lying to a staff member, feigning illness or injury, smoking where prohibited, failure to follow sanitary standards, being in an unauthorized area, gambling, and using abusive or obscene language.

Disciplinary action by a disciplinary committee within the jail is authorized and a general procedure is provided. The rules indicate the procedure for disciplinary action and the method for the establishment and loss of privileges. A list of prohibited acts are given and are not meant to be inclusive. Inmates are notified that in addition to a disciplinary action, they may also be required to pay for damaged, destroyed, or misappropriated property or goods. These rules are to be in accordance with Chapter 33-22.008, Florida Administrative Code.

Disciplinary action is taken to ensure proper conduct by an inmate. The standards provide minimum authority of a disciplinary committee or hearing officer, as well as the inmate facing the rule violation. Disciplinary reports are written for infractions of the rules and notification is provided to the inmate within 24 hours. A disciplinary hearing is scheduled. Disciplinary action is taken to ensure proper conduct by an inmate.

Currently, before an established disciplinary committee or disciplinary hearing officer appointed by the Officer-in-Charge, or a designee, infractions are dealt with. The disciplinary hearing process is also described in section 13 of the standards. The disciplinary committee or hearing officer decides on the disciplinary penalties against

the inmate if the inmate is found in violation of a rule. However, corporal punishment is expressly prohibited.

The rules do not require punishment to be rendered upon an inmate. However, the rules do specify that punishment must not be arbitrary, capricious, nor in the nature of retaliation or revenge. Discipline may consist of many "punishments" or remedial measures. Disciplinary action may include disciplinary of administrative confinement (segregation), loss of gain-time, work assignments, among other options.

Disciplinary segregation may be used as a sanction and shall be proportionate to the offense committed but shall never be greater than 30 days per violation. Section 9.05(b) designates that no inmate shall be compelled to labor more than 10 hours per day nor be subject to punishment for any refusal to labor beyond such limit. Section 951.08, F.S., specifies that the 10 hours shall be the time embraced from leaving to the return of the inmate to the place of detention.

The forfeiture of gain-time for inmates who commit disciplinary infractions is authorized by s. 951.21 (4), Florida Statutes.

Chronic Jail Rule Violators

The Florida Sheriffs Association has noted that the deletion of the authority to charge a repeated rule violator with a second degree misdemeanor was inadvertent. According to the Association, the problem of chronic jail rule violators still exists. The Association sees this problem as a correctional officer safety and job environment issue. It is the position of the Association that neither the gain-time made available to inmates nor the forfeiture of gain-time and other punishments imposed or remedial measures taken by disciplinary committees or hearing officers have not had a significant impact over some inmates to gain rule compliance of jail inmates.

For those inmates who continue to be a problem, the Association believes that the threat of criminal prosecution for repeatedly violating jail rules would force jail-rule compliance by most of the inmates. Restoration of prosecution for repeat rule-violators as second degree misdemeanors is desired by the Florida Sheriffs Association.

Second Degree Misdemeanors

Second degree misdemeanors are punishable under sections 775.082 (4) (b) and 775.083 (1) (e), Florida Statutes. A person who commits a second degree misdemeanor could be punishable by incarceration of up to 60 days in jail and the imposition of a fine of up to \$500.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 3527 would create subsection (11) of s. 951.23, F.S., to provide a criminal penalty for refusing to obey rules and regulations in the county or municipal detention. This creation provides for the reclassification of jail rule infractions.

The bill would reenact previous language which provided for violations of jail rules to be punishable as a second degree misdemeanor as permitted in sections 775.082 and/ or 775.083, F.S.

CS/HB 3527 would permit local jails to prosecute repeat jail-rule offenders for second degree misdemeanor. This would be the same requirements as existed under the previous law.

Specific reference is made to the Florida Model Jail Standards which was required to be developed and adopted by every jail in Florida by October 1, 1996 (subsection (4) of s. 951.23, F.S.). Thus, violating "any rule governing the conduct of inmates" pertains to the rules adopted as authorized in the Florida Model Jail Standards.

In order to prosecute a person for violating this subsection, a prosecutor would have to prove an offender "repeatedly" violated any jail rule pertaining to the conduct of inmates. It would need to be proven the offender "knowingly" and "willfully" repeatedly violated any rule.

This bill proposes to be effective upon becoming law. A jail inmate could only be prosecuted under the offense created in this bill for "repeated" disciplinary infractions committed by the inmate on or after the effective date of this bill, thus avoiding any *ex post facto* violation.

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?

No.

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

The prosecution of violators becomes labor intensive.

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

No.

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?

None.

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

N/A

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

N/A

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?

No.

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?

No.

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

No.

5. Family Empowerment:

- a. If the bill purports 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:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 951.23, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1.

The bill proposes to re-enact a portion of repealed s. 951.07, F.S., as it pertained to jail rules violations only. The bill would make rule offenses punishable as a second degree misdemeanor. New language would be created as a new paragraph under s. 951.23, F.S..

Section 2.

The bill provides for the act to take effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Fiscal Comments.

2. Direct Private Sector Benefits:

See Fiscal Comments.

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

See Fiscal Comments.

D. FISCAL COMMENTS:

Due to the fact misdemeanors are punishable by up to 60 days in jail, there would be an indeterminate impact upon jails. There is a likelihood that prosecution for repeated violations of rules would increase the number of inmate days. Administrative loss of gain-time for violations, if imposed would also lengthen the number of inmate days.

There could also be an indeterminate impact upon the court system. This bill creates a prosecutable offense for acts that may not otherwise rise independently to the level of criminal offense. Escape, battery, arson, extortion, and carrying a concealed weapon are just a few examples.

Personnel costs could also be impacted, due to the possibility of over-time for appearances in court to testify to the repeated violations of jail rules. Over-time may result for other jail personnel who cover duties while other personnel are in court.

The practical and fiscal impact upon jails is indeterminate.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

The bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee Substitute differs from the original bill by making the technical changes to correct language to reflect "prisoner in any county or municipal detention facility" and correcting the reference to model standards.

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VII. SIGNATURES:

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