

STORAGE NAME: h0253s1.ca

DATE: March 2, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: CS/HB 253

RELATING TO: County and Municipal Jails

SPONSOR(S): Committee on Corrections and Representative Trovillion

COMPANION BILL(S): CS/SB 292 (i)

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

- (1) CORRECTIONS YEAS 7 NAYS 0
- (2) CRIME AND PUNISHMENT YEAS 6 NAYS 0
- (3) COMMUNITY AFFAIRS
- (4) CRIMINAL JUSTICE APPROPRIATIONS
- (5)

I. SUMMARY:

The Committee Substitute (CS) for the bill provides that gain-time awarded to county prisoners by board of county commissioners is optional. The CS deletes the requirement that the policy of county commissioners regarding extra "good-time" credit for meritorious conduct to county prisoners be awarded according to the policy of the Department of Corrections.

The CS provides that it is a second degree misdemeanor for a county or municipal prisoner to knowingly and willfully, on two or more occasions, refuse to obey any rule of conduct governing prisoners adopted as set forth in the Florida Model Jail Standards. The CS also provides punishment for a violation of this section will be added to the sentence that the prisoner is serving at the time of the offense.

This bill does not appear to have a direct fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

GENERAL BACKGROUND:

Gain-time: A tool used to encourage satisfactory inmate behavior. Awards of gain-time are made according to statutory eligibility and the inmate's own behavior while in custody. It amounts to "time off" for good behavior. Gain-time has been in existence in Florida since 1889. It is awarded by the county and can be forfeited for escape, violations of state law, or any rules or regulation of the board or institution.

Meritorious Good-time: Awarded to an inmate for an outstanding deed. The maximum award is 60 days.

STATUTORY BACKGROUND:

Subsection 951.21(1), Florida Statutes: Requires commutation of time for good conduct (gain-time) of county prisoners when no charge of misconduct has been sustained against the county prisoner. The statute provides that five days per month must be deducted during the first and second years of the sentence; ten days per month deducted during the third and fourth years of the sentence and fifteen days per month off the fifth and all succeeding years of the sentence. Whenever there is no sustained charge of misconduct against a prisoner, the deduction is deemed earned and the prisoner is entitled to credit for a month as soon as the prisoner has earned the allowable time. A county prisoner under two or more cumulative sentences shall be allowed commutation as if they were all one sentence.

Subsection 951.21(2), Florida Statutes: Requires forfeiture of all commutation which has accrued by a county prisoner for each sustained charge of escape or attempted escape, mutinous conduct, or other serious misconduct. The board of county commissioners may set aside the forfeiture of gain time for escape providing the prisoner voluntarily returns without expense to the state or county.

Subsection 951.21(3), Florida Statutes: Allows a board of county commissioners to adopt a policy, upon the recommendation of the warden or sheriff, to allow extra good-time credit for meritorious conduct or exceptional industry to county prisoners. The policy must comply with existing Department of Corrections (Department) policy for such awards for state prisoners.

[Note: In 1996, the Legislature removed from the Department of Corrections the authority and responsibility for setting standards for county jails, for inspecting jails for compliance, and for investigating incidents in county jails.]

Subsection 951.21(4), Florida Statutes: Requires that any or part of the gain-time earned by a county prisoner and any extra gain-time allowed to the county prisoner, is subject to forfeiture by the board of county commissioners upon the recommendation of the sheriff or warden for violation of any state law; or any rule or regulation of the board or of the institution.

Subsection 951.23, Florida Statutes, 1998 Supplement: Provides the following:

- Defines county and municipal detention facilities.
- Requires the Department, in conjunction with the administrators of county detention facilities, to develop an instrument for the collection of information from the administrator of each county detention facility. Provides that, whenever possible, the information must be transmitted by the county detention administrator to the Department electronically or in a computer readable format. The information must be provided to the Department on a monthly basis and must include certain specified criteria. Provides for the analysis and use of the collected information.
- Provides standards for sheriffs and chief correctional officers.

- Provides for fire safety inspections.
- Provides requirements and standards for the removal of prisoners to another county or municipality.
- Provides requirements for the use of reduced custody housing areas.
- Provides authorization for the Department to provide, upon request of the sheriff or the chair of the county board of county commissioners (in a county in which the sheriff is not a constitutional officer), certain types of specified assistance to the local government.
- Provides authorization, guidelines and standards for inmate commissary and welfare fund.
- Clarifies that nothing in this section prohibits the governing board of a county or municipality to enter into an agreement with the Department authorizing the Department to inspect the local detention facilities. Specifies that such inspections are consultative in nature and for the purpose of advising the local governing bodies concerning compliance with standards adopted by the detention facility's chief correctional officer. Specifies that any fees collected by the Department pursuant to the agreement must be deposited into the Grants and Donations Trust Fund and must be used to pay the cost of the services provided by the Department to monitor the local detention facilities. **This subsection is repealed effective October 1, 1999.**

[**Note:** The 1996 Legislature deleted s. 952.07, Florida Statutes, as part of a bill to remove the responsibility for establishing jail standards and inspecting jails from the Department of Corrections.]

Florida Model Jail Standards: In 1996, Section 951.23(4), Florida Statutes, provided for the establishment of a five member working group made up of three persons appointed by the Florida Sheriffs Association and two persons appointed by the Florida Association of Counties to develop model standards for county and municipal detention facilities. Section 951.23(4), Florida Statutes, also requires each sheriff and chief correctional officer to adopt, at a minimum, the model standards with reference to such topics as the construction, equipment, maintenance and operation of county and municipal detention facilities. This working group developed the "Florida Model Jail Standards". Chapter 13 of these standards provides a list of prohibited acts for the purpose of controlling the behavior of prisoners in county jails. The list of prohibited acts contains many items which are also statutory offenses.

B. EFFECT OF PROPOSED CHANGES:

[**Note:** HB 253 was passed as a committee substitute (CS) by the Committee on Corrections. CS/HB 253 was passed with 4 amendments by the Committee on Crime & Punishment.]

The effect of CS/HB 253 with its 4 amendments is as follows:

- Authorizes boards of county commissioners with the discretion to grant gain-time for good conduct to county prisoners when no charge of misconduct has been sustained against the county prisoner and eliminates the current mandatory requirement of granting gain-time for good conduct of county prisoners.
- Places a cap of 5 days per month on the extra good-time allowance an inmate may be awarded for meritorious conduct or exceptional industry. The award is made upon the recommendation of the warden or sheriff, based upon adopted county policy.

[**Note:** Section 2 of HB 253 created a new paragraph in subsection 951.23, Florida Statutes, 1998 Supplement, making it a second degree misdemeanor for a county prisoner or a municipal prisoner in a county detention facility or municipal facility to knowingly and willfully, on 2 or more occasions, refuse to obey any rules governing the conduct of prisoners adopted under subsection (4) of chapter 13 of the Florida Model Jail Standards. **This section of HB 253 was deleted and**

replaced, by amendment, with the actual language of subsection (4) of chapter 13 of the Florida Model Jail Standards.]

- Specifies that is a second degree misdemeanor for a county or municipal prisoner in a county prison facility knowingly, on 2 or more occasions, violate a posted jail rule governing the conduct of a prisoner, if the rule prohibits any of certain specified criteria. Punishment for violation of the specified criteria must run consecutive to any other sentence.

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?

Yes.

CS/HB 253, Section 1: Authorizes the board of county commissioners to adopt a policy to commute time for good conduct of county prisoners. Authorizes the board of county commissioners, upon recommendation of the warden or sheriff, to adopt a policy to allow extra good-time allowance, in addition to gain-time, for meritorious conduct or exceptional industry.

Amendment 1 to CS/HB 253, section 1: Limits the amount of extra good-time allowance to be awarded to county prisoners to a maximum of 5 days per month.

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

Yes. See statement above.

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

Yes. CS/HB 253, eliminates the mandatory grant of gain-time for good conduct of county prisoners.

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

No 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?

N/A

- (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?

N/A

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:

Sections 951.21(1); 951.21(3), Florida Statutes, and section 951.23, Florida Statutes, 1998 Supplement.

E. SECTION-BY-SECTION ANALYSIS:

Section 1, as amended by Committee on Crime & Punishment amendment 01 and 02:

Provides that the granting of gain-time for good conduct by a board of county commissioners is discretionary, not mandatory. Places cap of 5 days on extra good-time allowance.

Section 2, as amended by Committee on Crime & Punishment amendments 03 and 03a:

Establishes a second degree misdemeanor for a second violation of specified jail rules, as follows:

- Assaulting any person;
- Fighting with another person;
- Threatening another with bodily harm, or any offense against another person or property;
- Extortion, blackmail, protection, demanding or receiving money or anything of value in return for protection against others to avoid bodily harm, or under threat of informing;
- Engaging in sexual acts with others;
- Making sexual proposals or threats to another;
- Indecent exposure;
- Making sexual proposals or threats to another;
- Indecent exposure;
- Escape;
- Attempting or planning escape;

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- Wearing a disguise or mask;
- Setting a fire;
- Destroying, altering, damaging or defacing government property or the property of another person;
- Stealing (theft);
- Tampering with or blocking any locking device;
- Adulteration of any food or drink;
- Possession or introduction of any explosive, ammunition, firearm or weapon;
- Possession of contraband;
- Misuse of authorized medication;
- Loaning of property or anything of value for profit or increased return;
- Possession of anything not authorized for retention or receipt by the inmate and not issued to them through regular institutional channels;
- Mutilating or altering issued clothing, bedding, linen or mattresses;
- Rioting;
- Encouraging other to riot;
- Engaging in or encouraging a group demonstration;
- Refusing to work;
- Encouraging others to refuse to work or participating in work stoppage;
- Refusing to obey a reasonable order of any staff member;
- Unexcused absence from work or any assignment;
- Malingering, feigning an illness or injury;
- Failing to perform work as instructed by a supervisor;
- Insolence toward a staff member;
- Lying or providing a false statement to a staff member;
- Conduct which disrupts or interferes with the security or orderly running of the institution;
- Counterfeiting, forging, or unauthorized reproduction of any document, article, or identification, money, security, or official paper;
- Participating in an unauthorized meeting or gathering;
- Being in an unauthorized area;
- Failure to follow safety or sanitation regulations;
- Using any equipment or machinery contrary to instructions or posted safety standards;

- Failing to stand count;
- Interfering with the taking of count;
- Interfering with the taking of count;
- Making intoxicants or being intoxicated;
- Smoking where prohibited;
- Using abusive or obscene language;
- Gambling, preparing or conducting a gambling pool, possession of gambling paraphernalia;
- Being unsanitary or untidy; failing to keep one's person and one's quarters in accordance with posted standards;
- Tattooing or self-mutilation;
- Unauthorized use of mail or telephone;
- Unauthorized contacts with the public;
- Correspondence or conduct with a visitor in violation of posted regulations;
- Giving or offering any official or staff member a bribe, or anything of value;
- Giving money or anything of value to, or accepting money or anything of value from another inmate, a member of their family, or their friend.

Punishment for a violation of this subsection must run consecutive to any other sentence.

Section 3: Provides effective date of July 1, 1999.

III. FISCAL ANALYSIS & 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:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

To the extent to which prisoners are charged with rule violations in county jails, there will be an *indeterminate but likely insignificant fiscal impact* as a result of this committee substitute with amendments. Further, if county commissioners decide not to commute time for good conduct, this will have a fiscal impact on the county. Because the committee substitute does not create or increase felony penalties it does not have a fiscal impact on the Department of Corrections.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties and 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:

Florida Sheriffs Association: The Florida Sheriffs Association supports this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee Substitute of Committee on Corrections: On January 20, 1999, the House Committee on Corrections adopted a committee substitute for HB 253, making the following changes:

Amendment #1: Deleting the words "any prisoner" and replacing the words with "county prisoner" and "municipal prisoner."

Amendment #2: Deleting the words "the model standards" and inserting the words "chapter 13 of the Florida Model Jail Standards". This change clarifies that the statute intends to punish a second violation of the rules adopted pursuant to the Florida Model Jail Standards.

Amendments Approved by Committee on Crime and Punishment to CS/HB 253: The House Committee on Crime and Punishment met February 17, 1999 when Representative Trovillion offered the following amendments to CS/HB 253:

Amendment #1: Clarifies that if a board of county commissioners decides to grant commutation of time for good conduct, the board must grant five days per month for the first and second years of the sentence, ten days per month off the third and fourth years of the sentence and fifteen days per month off the fifth and succeeding years of the sentence.

Amendment #2: Caps the amount of extra good-time allowance for meritorious conduct that a board of county commissioners is permitted to grant to a prisoner to five days per month.

Amendment #3: Establishes that it is a second degree misdemeanor for a second violation of applicable jail rules, deletes the reference to subsection 4 of Chapter 13 of the Florida Model Jail Standards which defined the applicable jail rules, and lists the applicable 51 jail rules.

Amendment #3a, amending amendment #3: Clarifies that the punishment for a violation of this subsection must run consecutive to any other.

The House Committee on Crime and Punishment passed all four of the amendments which are *traveling with* the committee substitute. A fifth amendment which dealt with strip searches was withdrawn by the sponsor, Representative Hart.

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

Prepared by:

Leslie Sweet

Staff Director:

Ken Winker

AS REVISED BY THE COMMITTEE ON CRIME AND PUNISHMENT:

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