

STORAGE NAME: hb 253

DATE: January 19, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CORRECTIONS
ANALYSIS**

BILL #: HB 253

RELATING TO: County and Municipal Jails

SPONSOR(S): Representative Trovillion

COMPANION BILL(S): Identical SB 292

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

- (1) CORRECTIONS
 - (2) CRIME AND PUNISHMENT
 - (3) COMMUNITY AFFAIRS
 - (4) CRIMINAL JUSTICE APPROPRIATIONS
 - (5)
-

I. SUMMARY:

This bill addresses three issues concerning county and municipal jails. First, it provides that the gain-time granted to county prisoners be at the discretion of the board of county commissioners. Second, it deletes a requirement that extra good-time allowance for meritorious conduct or exceptional industry awarded to county prisoners comply with existing Department of Corrections' policy for state prisoners. Lastly, a knowing and willing refusal to obey rules governing prisoner conduct, by any prisoner in a county and municipal jail, may be prosecuted as a second degree misdemeanor.

The first change moves the granting of gain time by county commissioners from mandatory to discretionary.

The second change deletes the requirement that boards of county commissioners, when adopting policy for extra good time allowances for meritorious conduct or exceptional industry for county and municipal prisoners, be in accordance with the existing policy of the Department of Corrections for such awards for state prisoners.

The third change is the addition of subsection (11) to s. 951.23 F.S., which provide that prisoners in a county or municipal correctional facility who on two or more violations violate a conduct rule in the Florida Jail Model Standards may be punished as a second degree misdemeanor.

To the extent to which prisoners are charged with rule violations under this bill, there will be an indeterminate but likely insignificant fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Presently, boards of county commissioners are required to grant commutation of time served in jails for good conduct to county prisoners when no charge of misconduct has been sustained against the county prisoner.

In addition, a board of county commissioners may adopt policy, upon the recommendation of the warden or sheriff, for extra good-time allowance for meritorious conduct or exceptional industry awarded to county prisoners. Such a policy must comply with existing Department of Corrections policy for such awards for state prisoners. Therefore, the policy adopted by the board of county commissioner for county and municipal jails must be consistent with the same awards for state prisoners. However, in 1996, the Legislature removed from the state Department of Corrections, the authority and responsibility for setting standards for county jails, inspecting jails for compliance, and investigating incidents in county jails.

Prior to the changes regarding the inspections of county jails, s. 952.07, F.S., made it a second degree misdemeanor for a county prisoner to violate any rule in the jail. This section also prohibited the whipping and flogging of county prisoners. The 1996 Legislature deleted s. 952.07, F.S., as part a bill to remove the responsibility for establishing jail standards and inspecting jails from the Department of Corrections.

Pursuant to s. 951.23(4), F.S., by October 1, 1996, each sheriff and chief correctional officer were required to adopt, at a minimum, the model standards promulgated by a five member working group consisting of three persons appointed by the Florida Sheriffs Association (FSA) and two persons appointed by the Florida Association of Counties (FAC).

This working group developed the Florida Model Jail Standards. Chapter 13 of these standards provide a list of prohibited acts for the purpose of controlling the behavior of prisoners in county jails. The list of prohibited acts contains items of which many are codified as criminal offenses within Florida's criminal laws. The model rules further provide for the establishment of a disciplinary committee at each jail who will hold hearings, make rulings, and recommend to the Officer-In-Charge (OIC) of the jail as to the appropriate disposition. The OIC may not increase the disciplinary penalties recommended disciplinary committee.

Corrections committee staff contacted several jail and community correctional facilities to determine how discipline is currently being handled and whether any facility had utilized the repealed provision of s. 951.07, F.S., as a disciplinary measure. Several respondents noted that county correctional officers utilize their creativity and expertise to administratively control rule violations. Denying visitation, reducing canteen privileges, limiting out-going mail and phone calls, and denying access to television and recreational activities are some of the methods currently employed by correctional officers to control rule violations. Serious rule violations are handled by administrative segregation following a hearing on the alleged rule violation. When the behavior that constitutes a rule violation is also a statutory criminal violation, the prisoner is then

charged and prosecuted with that crime. For example, a prisoner intentionally striking another inmate or staff could be prosecuted for a battery.

B. EFFECT OF PROPOSED CHANGES:

Discretionary Gain Time

The bill provides that boards of county commissioners would have the discretion to grant time for good conduct to county prisoners when no charge of misconduct has been sustained against the county prisoner.

Removal of " In Accordance with Department of Corrections Policy"

The 1996 Legislature amended s. 951.23, F.S. to delete reference to Department of Corrections rules that concern the operation and maintenance of county jails. However, s. 951.21(3), F.S., requires boards of county commissioners to set the policy for extra good-time allowance for meritorious conduct or exceptional industry in accordance with Department of Correction's policy. This bill deletes "in accordance with the existing policy of the Department of Corrections for such awards for state prisoners," from s. 951.21(3), F.S. This deletion will make this section consistent with other statutory provisions that removed Department of Corrections oversight of county jails.

Addition of Section 11 to F.S. 951.23

This bill adds subsection (11) to s. 951.23, F.S., where it will become a second degree misdemeanor for any prisoner in a county detention facility or municipal detention facility to knowingly and willfully, on two or more occasions, to refuse to obey any rule governing the conduct of prisoners adopted under subsection (4) of s. 951.21, F.S., and as set forth in the model standards for county and municipal detention facilities. In addition, subsection (11) provides for the punishment to be added to the sentence that the prisoner is serving at the time of the offense.

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?

This bill may create and increase the authority of the statewide jail standards workgroup to make rules. The addition of subsection (11) to s. 951.23, F.S., may increase the rule making authority of this workgroup since it appears that the workgroup has the discretion to change or modify the Florida Model Jail Standards at will.

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

Under this bill, two refusals to obey any rule will be a second degree misdemeanor. Prosecuting this offense may add new responsibilities, obligations or work for the counties. Pursuant to the federal and Florida constitutions, once an offender is charged with a crime, numerous criminal procedural safeguards must be complied with such as the appointment of a public defender. Additionally, the state attorney would have to perform an investigation. If the offender chooses to go to trial on the charges, the offender may remain in county or municipal facilities for an extended period of time. Additionally, the state will likely call county corrections officers as witnesses. Any or all of these situations may impose new responsibilities, obligations or work for any number of governmental or private organizations or individuals, principally the counties.

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

Prosecuting rule violations would place the adjudication of jail violations within the county court system as the prosecution of second degree misdemeanors require adjudication within a court of law.

- 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?

This bill may increase taxes. The responsibility of the cost of adjudication may be passed onto the county's court budgets through increased court costs. As prosecutions of these offenses would occur within the court system, the county jail personnel would need to prepare for litigation and staff would be required to testify. Additionally, a rule infraction may now be adjudicated within two

separate settings; once internally within the jail to establish the rule violation and secondly within a court of law.

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

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

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D. STATUTE(S) AFFECTED:

951.21(1); 951.21(3); 951.23(11)

E. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes section.

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:

None.

2. Direct Private Sector Benefits:

None.

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

None.

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 bill. Since the rules affected by this bill are also in the criminal code, state attorneys will have to decide which offense, if any, to bring against the prisoner.

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:

1. "Any rule governing the conduct of prisoners adopted under subsection(4) and set forth in the model standards for county and municipal detention facilities."

This language added to s. 951.23, F.S., may need to explicitly state, "Section 13 of the Florida Model Jail Standards," to eliminate any confusion as to what rule violations will be punished. As worded, s. 951.23(4)(a), F.S., states that each sheriff and chief correctional officer shall adopt, at a minimum, the model standards. This statement, "at a minimum", could be read to provide discretion to sheriffs and chief correctional officers to set standards different from the Model Jail Standards as long as the standards set by the sheriffs and chief correctional officers are above the minimum set of Model Jail Standards. If discretion is built into the establishment of what behavior constitutes a rule violation, and in turn violation of

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those rules carry criminal sanctions, then sheriffs may be incorporating their individual rules into the Florida criminal law and thus extending into the purview of the Legislature.

Presently, it is unclear as to whether any prisoner was ever punished under s. 951.07, F.S., when it was in the Florida Statutes prior to its elimination in 1996. County correctional officers may already have adequate policies in place that effectively address rule violations.

2. "Any prisoner in a county detention facility"

The wording "any prisoner" may not be consistent with the definitions contained within s. 951.23, F.S., for county prisoners and municipal prisoners. The term "any prisoner" may be unclear and conflicting with the definitions used in s. 951.23(c) and (e), F.S., for county prisoner and municipal prisoner. This provision may spawn litigation and may impose additional costs on local governments.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

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