STORAGE NAME: h0253s1b.cp
DATE: February 17, 1999

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS

BILL #: CS/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 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 amends section 951.21 to change the granting of commutation of time for good conduct of county prisoners by the board of county commissioners from mandatory to permissive.
- The committee substitute deletes the requirement that the policy of county commissioners regarding the allowance of extra "good-time" credit for meritorious conduct to county prisoners be in accordance with the policy of the Department of Corrections.
- The committee substitute 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 chapter 13 of the Florida Model Jail Standards. Punishment for a violation of this section will be added to the sentence that the prisoner is serving at the time of the offense.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Under the present statute, boards of county commissioners are required to grant commutation of time served in jails (gain-time) for good conduct to county prisoners when no charge of misconduct has been sustained against the county prisoner. The statute provides that five days per month will 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.

Extra Good-Time Allowance for Meritorious Conduct
In addition, a board of county commissioners may adopt policy, upon the recommendation of the warden or sheriff, to allow extra good-time credit for meritorious conduct or exceptional industry 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, for inspecting jails for compliance, and for investigating incidents in county jails.

Violation of Jail Rules
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 repeatedly violate any jail rule. This section also prohibited the whipping and flogging of county prisoners. The 1996 Legislature deleted s. 952.07, F.S., as part of a bill to remove the responsibility for establishing jail standards and inspecting jails from the Department of Corrections.

In 1996, Section 951.23(4) 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. Sec. 951.23(4) also required 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:

Good Conduct Gain Time

The committee substitute removes the language making the granting of gain-time for good conduct mandatory and provides 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.

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 committee substitute 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 committee substitute adds subsection (11) to s. 951.23, F.S., which will create 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, refuse to obey any rule governing the conduct of prisoners adopted under subsection (4) of s. 951.21, F.S. as set forth in chapter 13 of the Florida Model Jail 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?

Yes, the policy of county commissioners regarding the allowance of extra "good-time" credit will no longer have to be in accord with the policy of the Department of Corrections.

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

Yes, the bill gives each county commission the ability to decide whether to grant commutation of time for good conduct to county prisoners.

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

No.

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?

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:

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

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides that the granting of gain-time for good conduct by a board of county commissioners is discretionary, not mandatory.

Section 2: Establishes a second degree misdemeanor for a second violation of jail rules.

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:

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 committee substitute. 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:

Section 2 of the committee substitute, which creates a second degree misdemeanor for a second violation of rules governing the conduct of prisoners, may be an unconstitutional delegation of power. Article II, Section 3 of the Florida Constitution states that "[t]he powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." According to the nondelegation doctrine:

> The legislature may not delegate open-ended authority such that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law. The Legislature ... may enact a law, complete in itself, designed to accomplish a general public purpose, and may expressly authorize designated officials within definite valid limitations to provide rules and regulations for the complete operation and enforcement of the law within its expressed general purpose. The delegation of authority to define a crime ... is of such a different magnitude from noncriminal cases that more stringent rules and greater scrutiny certainly is required.

State v. Mitchell, 652 So.2d 473, 478 (Fla. 2nd DCA 1995).

In Mitchell, the court found that the legislature, in section 790.001(4), F.S. unlawfully delegated open-ended authority to an administrative agency to determine the definition of a destructive device for the

crime of possession of a destructive device. Thus, the court struck the portion of sec. 790.001(4), Fla. Stat. making illegal the possession of "any device declared a destructive device by the Bureau of Alcohol, Tobacco and Firearms" as invalid as an unconstitutional delegation of legislative authority.

In B.H. v. State, 645 So.2d 987 (Fla. 1994), the statute in question made it a crime to "escape from any secure detention facility or any residential commitment facility of restrictiveness level VI or above." The Department of Health and Rehabilitative Services was given authority to assign each type of facility with a restrictiveness level. The Florida Supreme Court found that this statute did not place sufficient limits on HRS's authority. As the Court stated:

> While these restrictions may create a minimum standard, they completely fail to create a maximum point beyond which HRS cannot go. At the very least, all challenged delegations in the criminal context must expressly or tacitly rest on a legislatively determined fundamental policy; and the delegations also must expressly articulate reasonable definite standards of implementation that do not merely grant open-ended authority, but that impose an actual limit--both minimum and maximum--on what the agency may do.

The Court was troubled by the fact that the restrictiveness level assigned by the agency to a commitment facility determined whether escape from the facility was a criminal offense. Additionally, the Court found that the language of the statute itself wholly failed to give notice of the prohibited act and therefore violated due process.

Bill 253 creates a criminal offense based on a second violation of jail rules. The committee substitute may be subject to a challenge under the separation of powers doctrine because the authority to create the jail rules was given to a five member "working group". The statute itself does not indicate what specific acts would constitute a violation of jail rules but, in essence, gives that authority to the working group. Thus, the committee substitute may unconstitutionally delegate power to the working group to determine what the type of offenses, if committed two or more times, will constitute a second degree misdemeanor.

According to Section 2 of CS/HB 253, violating any rule two or more times governing the conduct of prisoners as set forth in chapter 13 of the Florida Model Jail Standards and adopted under section 4, is a second degree misdemeanor. In 1996, Sec. 951.23(4) was amended to provide that each sheriff was to adopt the model jail standards with reference to many topics including the construction, equipping, maintenance and operation of jail facilities. However, the rules relating to conduct of prisoners is not specifically listed in the statute as one of the topics that each sheriff had to adopt. Thus, a problem may arise if a sheriff did not adopt the rules in Chapter 13 of the Florida Model Jail Standards relating to prisoner's conduct and as a result, a criminal prosecution based on a violation of those rules would not be possible. Likewise, it may lead to a prisoner being prosecuted for committing two prohibited acts which would not be prohibited in another county jail.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee Substitute of Committee on Corrections
The House Committee on Corrections met January 20, 1999 when Representative Trovillion presented an amendment to HB 253. Following the adoption of the amendment, the committee made the bill a committee substitute. CS/HB 253 contains two changes. The first change replaces "any prisoner" with "county prisoner" and "municipal prisoner. The second change deleted the words "the model standards" and inserted "chapter 13 of the Florida Model Jail Standards". This change clarifies that the statute intends to punish a second violation of the rules adopted as part of the Florida Model Jail Standards.

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

- The first amendment 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.

- The second amendment provides that the amount of extra good-time allowance for meritorious conduct that a board of county commissioners is permitted to grant shall not succeed five days per month.

- The third amendment would remove reference to Chapter 13 of the Florida Model Jail Standards from section 2 of the bill which establishes a second degree misdemeanor for a second violation of jail rules and instead codifies the rules that are listed in that chapter to avoid any potential delegation of powers problem.

- Amendment 3a removes the language from the third amendment which stated that punishment for a violation shall run consecutive to any other sentence that the offender is serving. A large percentage of prisoners in county jail have not yet been sentenced for the offenses that they committed and thus are not "serving" a sentence. The amendment is intended to insure that a sentence for a second violation of jail rules will be served consecutively to the sentence that the defendant receives for the substantive offense that the prisoner committed.

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:	Staff Director:
Leslie Sweet	Ken Winker

AS REVISED BY THE COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:	Staff Director:
Trina Kramer	J. Willis Renuart