

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 292

SPONSOR: Criminal Justice Committee and Senator Bronson

SUBJECT: County and Municipal Jails

DATE: March 3, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barrow</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 292 would change the law regarding gain-time in local jails. It would not require counties to give its inmates gain-time, but would rather allow county governing bodies to decide whether to authorize the granting of gain-time.

The CS would also essentially recreate previously existing language that would make it a second degree misdemeanor if a person knowingly and willfully violated a rule prohibiting any of the listed acts while a local jail prisoner on a second or subsequent occasion.

This CS substantially amends the following sections of the Florida Statutes: 951.21 and 951.23.

II. Present Situation:

Currently, a board of county commissioners has no choice whether to give the county's jail inmates gain-time, or time off court-imposed sentences, for good behavior. Every jail must give gain-time to its inmates at the following rate: 5 days per month off the first and second years of the sentence, 10 days per month off the third and fourth years of the sentence, and 15 days off the fifth and all succeeding years of the sentence.

Up to the present, gain-time in local jails essentially mirrored the practice of granting incentive gain-time in the state prison system. Current law actually references the state prison system for "extra" good-time allowances for meritorious conduct or exceptional industry by requiring such gain-time awards to be in accordance with "the existing policy of the Department of Corrections for such awards for state prisoners."

It can be surmised that the practice of mandating certain gain-time awards was maintained for such a long time because the Florida Department of Corrections maintained oversight of local jails for many years. The Department of Corrections promulgated rules that governed the conduct of inmates and the operational minimum requirements for jails. To enforce these rules, the

Department of Corrections conducted inspections of local jails to monitor compliance. During this time, Florida Statutes contained a provision that made it a second-degree misdemeanor to “repeatedly,” knowingly, and willfully violate a rule governing the conduct of inmates.

As part of the 1996 revisions, however, the legislation repealed s. 951.07, F.S., which stated:

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. *See*, s. 34, House Bill 1411 (1996); *see also*, Ch. 96-312, s. 34, 1996 *Fla. Laws* 1413, 1443.

It is assumed that because there was no authority for the Department of Corrections to have rules governing jail inmate conduct, there was no rule at the time to reference to maintain the statutory language making it a second degree misdemeanor to violate them.

Since the Department’s authority to oversee jails was deleted, a working group comprised of county sheriffs and county government representatives created “Florida Model Jail Standards” as minimal standards of operations and inmate conduct that must be adopted by every county. These standards are fully operational and govern the conduct of inmates in local jails.

Chapter 13 of the Model Jail Standards sets out a list of acts that are 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 the disciplinary committee within the jail is authorized and a general procedure is also provided. Disciplinary reports are written for infractions of the rules, notification is provided to the jail inmate within 24 hours, and a disciplinary hearing is scheduled. The model standards also provide minimum authority of the disciplinary committee and hearing officer as well as the inmate facing the rule violation. The disciplinary committee or hearing officer decides on the disciplinary penalties against the inmate if he or she is found in violation of a rule. Corporal punishment is expressly prohibited. However, the rules do not specify punishment to be rendered upon an inmate; only that discipline must not be arbitrary, capricious, nor in the nature of retaliation or revenge. Discipline may consist of many “punishments” or remedial measures. Discipline may include disciplinary or administrative confinement (separation), loss of gain-time, work assignments, among other options. The forfeiture of gain-time for inmates who commit disciplinary infractions is authorized by s. 951.21 (4), F.S.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 292 would change the law regarding the award of gain-time to prisoners serving his or her criminal sentences in local jails. Rather than requiring counties to give its inmates gain-time at certain statutorily mandated rates, county governing bodies have the option of whether to authorize the granting of gain-time to its jail inmates.

If a board of county commissioners voted to grant incentive gain-time to its jail inmates, the gain-time would have to be given at the rate of 5 days per month off the first and second years of the sentence, 10 days per month off the third and fourth years of the sentence, and 15 days off the fifth and all succeeding years of the sentence. However, if the board of county commissioners did not want to give its jail inmates any “good time” gain-time, or time off sentences for good behavior, it would not be required to maintain such a practice.

The CS would amend language that authorizes extra good-time allowances for meritorious conduct or exceptional industry to not be in excess of 5 days per month. Thus, counties would be limited to a maximum of 5 days per month of meritorious gain-time in addition to good behavior, or incentive, gain-time, if the county voted to allow such gain-time to be granted.

The CS would also essentially recreate previously existing language that would deem it to be a second degree misdemeanor if a person knowingly and willfully violated any posted jail rule that governs the conduct of local jail prisoners on a second or subsequent occasion. Rather than generally referring to the Florida Model Jail Rules, the CS delineates the specific conduct that would have to be encompassed in a posted jail rule to be susceptible to the second degree misdemeanor provision. The second degree misdemeanor provision would apply to a rule that prohibits any of the following acts:

- (a) Assaulting any person;
- (b) Fighting with another person;
- (c) Threatening another with bodily harm, or any offense against another person or property;
- (d) Committing 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;
- (e) Engaging in sexual acts with others;
- (f) Making sexual proposals or threats to another;
- (g) Committing indecent exposure;
- (h) Escaping;
- (i) Attempting or planning escape;

- (j) Wearing a disguise or mask;
- (k) Setting a fire;
- (l) Destroying, altering, damaging or defacing government property or the property of another person;
- (m) Stealing;
- (n) Tampering with or blocking any locking device;
- (o) Adulterating any food or drink;
- (p) Possessing or introducing any explosive, ammunition, firearm, or weapon;
- (q) Possessing contraband;
- (r) Misusing authorized medication;
- (s) Loaning property or anything of value for profit or increased return;
- (t) Possessing anything not authorized for retention or receipt by the inmate and not issued to him or her through regular institutional channels;
- (u) Mutilating or altering issued clothing, bedding, linen, or mattresses;
- (v) Rioting;
- (w) Encouraging others to riot;
- (x) Engaging in or encouraging a group demonstration;
- (y) Refusing to work;
- (z) Encouraging others to refuse to work or participating in work stoppage;
- (aa) Refusing to obey a reasonable order of any staff member;
- (bb) Having any unexcused absence from work or any assignment;
- (cc) Malingering or feigning an illness or injury;
- (dd) Failing to perform work as instructed by a supervisor;
- (ee) Committing insolence toward a staff member;
- (ff) Lying or providing a false statement to a staff member;

- (gg) Committing conduct that disrupts or interferes with the security or orderly running of the institution;
- (hh) Counterfeiting, forging, or reproducing without authorization any document, article, or identification, money, security, or official paper;
- (ii) Participating in an unauthorized meeting or gathering;
- (jj) Being in an unauthorized area;
- (kk) Failing to follow safety or sanitation regulations;
- (ll) Using any equipment or machinery contrary to instructions or posted safety standards;
- (mm) Failing to stand count;
- (nn) Interfering with the taking of count;
- (oo) Making intoxicants or being intoxicated;
- (pp) Smoking where prohibited;
- (qq) Using abusive or obscene language;
- (rr) Gambling, preparing or conducting a gambling pool, or possessing gambling paraphernalia;
- (ss) Being unsanitary, untidy, or failing to keep one's person and one's quarters in accordance with posted standards;
- (tt) Tattooing or committing self-mutilation;
- (uu) Using mail or telephone without authorization;
- (vv) Having unauthorized contacts with the public;
- (ww) Corresponding with or engaging in conduct with a visitor in violation of posted regulations;
- (xx) Giving or offering any official or staff member a bribe or anything of value;
- (yy) Giving money or anything of value to, or accepting money or anything of value from, another inmate, a member of his or her family, or his or her friend.

Therefore, a person would commit a second degree misdemeanor, punishable by up to 60 days in jail and a \$500 fine, if he or she violated a jail rule prohibiting one of the above-listed acts two or

more times. The CS would require that the sentence imposed run consecutively to any other sentence that may be imposed upon the offender.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate and likely to be insignificant. Citizens who reside in counties that are near or at their 10-mill cap in ad valorem taxes could be impacted to the extent that the recipients of local government services could possibly see a shift in revenues toward slightly more jail expenditures, especially if the jails are also overcrowded. This would occur **only if** this CS would have the net result of having inmates in jail for longer periods of time because they are (a) not receiving gain-time (if so chosen by the board of county commissioners) or, (b) many inmates are being convicted of breaking jail rules two or more times and receiving jail sentences as punishment.

C. Government Sector Impact:

Because misdemeanors are punishable by up to 60 days in jail, there would be an indeterminate impact upon jails because there is a likelihood that prosecution for repeated violations of rules would increase the number of inmate days (beyond what increase may already exist because of administrative loss of gain-time for violations). The impact upon jail beds would basically be what existed prior to the similar law being repealed in 1996.

There would also be an indeterminate impact upon the court system because this CS creates a prosecutable offense for acts that may not otherwise independently rise to the level of being a criminal offense, such as escape, battery, arson, theft, carrying a concealed weapon, and extortion. The impact upon courts would basically be what existed prior to the similar law being repealed in 1996.

Jail personnel would also be impacted, possibly resulting in over-time for appearing in court to testify to the repeated violations of jail rules or over-time for other jail personnel who must cover jail duties while other personnel are in court. Time would also be utilized in preparing reports and probable cause affidavits to prosecute inmates for violating rules a second or subsequent time. This practical and fiscal impact upon jail personnel is indeterminate but would essentially be what existed prior to the similar law being repealed in 1996.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
