

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 974
 SPONSOR: Senator Garcia
 SUBJECT: Criminal Justice Officers
 DATE: February 14, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill would amend s. 943.1395, F.S., to give an administrative law judge (ALJ) final order authority when appointed to hear law enforcement officer revocation or disciplinary actions initiated by the Criminal Justice Standards and Training Commission (CJSTC) for failure to maintain good moral character as required by s. 943.13(7), F.S.

The bill provides for an effective date of July 1, 2002.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 943.1395.

II. Present Situation:

Pursuant to s. 943.1395, F.S., and ch. 120, F.S., and Rules 11B-27.003-.005, F.A.C., the following procedure is followed when an employing law enforcement agency has cause to suspect that an officer does not comply with s. 943.13(7), F.S.:

- 1) The agency conducts an initial investigation. If the allegation is sustained, the investigation is forwarded to the CJSTC for further action.
- 2) A three-person panel comprised of CJSTC members reviews the case and makes a probable cause determination. The process is not subject to the Administrative Procedure Act (ch. 120, F.S.) at this point.

- 3) If probable cause is found, the CJSTC may issue an administrative complaint in accordance with s. 120.60(5), F.S., to suspend or revoke the officer's certification. From this point, the process is conducted in accordance with ch. 120, F.S.
- 4) If the officer requests a hearing and there are disputed issues of material fact, the CJSTC refers the case to the Division of Administrative Hearings for appointment of an ALJ.
- 5) The ALJ conducts an evidentiary hearing and issues a recommended order. Section 943.1395(8)(d), F.S., requires that any recommended disciplinary action be in accordance with the CJSTC's disciplinary guidelines that are set forth in Rule 11B-27.005, F.A.C. Any deviation from the guidelines must be based upon aggravating or mitigating factors and explained in writing.
- 6) The parties may submit exceptions to the recommended order.
- 7) The CJSTC issues a Final Order after considering the recommended order and exceptions. Section 120.57(1)(l), F.S., places the following restrictions on the CJSTC's authority to change the recommended order: (a) a finding of fact may not be rejected unless the CJSTC reviews the entire record and makes a particularized written determination that the finding was not based upon competent substantial evidence or that the proceedings did not comply with essential requirements of law; (b) a conclusion of law may not be rejected or modified unless it relates to a law or administrative rule over which the CJSTC has substantive jurisdiction, the reasons for rejection or modification are stated with particularity, and the CJSTC finds that its conclusion or interpretation is as or more reasonable than that of the ALJ; (c) the recommended penalty may not be changed unless the particular reasons for doing so are set forth in the final order, with citation to the record to justify the change.
- 8) Parties may appeal the final order to the appropriate district court of appeal.

The Florida Police Benevolent Association (FPBA) provided data reflecting the results of the last 20 decertification proceedings in which hearings were conducted by an ALJ, going back to an unspecified date in 1998. The time from issuance of the recommended order to the date of the final order averaged 107 days, with a range from 42 to 204 days.

The data provided by the FBPA does not indicate results of any appeals, but reflects the following disposition of cases as of the Final Order:

The ALJ recommended suspension in 13 cases. The CJSTC accepted this recommendation in 2 cases, and increased the penalty to revocation in 11 cases.

The ALJ recommended revocation in 6 cases. The CJSTC accepted the recommendation in 5 cases and reduced the penalty in one case to a suspension with probation.

The ALJ recommended dismissal or a 30-day suspension in one case. The CJSTC imposed a 20-day suspension with one year of probation.

The ALJ's recommended order was accepted in 7 cases and rejected in 13 cases.

III. Effect of Proposed Changes:

The bill would give final order authority to an ALJ who is assigned to an officer decertification case. This would remove the CJSTC's from the position of issuing a final order after reviewing the ALJ's recommended order and any exceptions. If the CJSTC does not agree that the final order complies with the law, it must appeal to the district court of appeal.

Although the bill would invest the ALJ with final order authority, he or she would still be required to adhere to the CJSTC's disciplinary guidelines and recommended penalty ranges. However, the ALJ could order a penalty outside of the guidelines if there are mitigating or aggravating factors, and the CJSTC would have to file an appeal if it did not agree with the departure.

Under the current statutory scheme, the CJSTC has no reason to appeal its own orders. It can be anticipated that the bill's grant of final order authority to ALJs will create situations in which the CJSTC will file appeals, and the CJSTC's status as an appellant will be different than its current status as the final order authority. The bill's grant of final order authority to ALJs may result in an appellate court's upholding of ALJ final orders in some cases in which the CJSTC could justifiably modify or reject a recommended order under the current procedure.

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:

None.

C. Government Sector Impact:

The CJSTC could incur additional costs to appeal adverse final orders. It is not known to what extent the costs of additional appeals would be offset by a reduction in appeals by respondent officers who now appeal CJSTC final orders that overturn ALJ recommended orders.

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.
