

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: CS/SB 974

SPONSOR: Governmental Oversight and Productivity Committee and Senator Garcia

SUBJECT: Criminal Justice Officers

DATE: February 26, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute amends 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)¹ for failure to maintain a conviction- or military discharge-free record as required by s. 943.13(4), F.S., and for failure to maintain good moral character as required by s. 943.13(7), F.S.

This bill substantially amends the following section of the Florida Statutes: 943.1395.

II. Present Situation:

Pursuant to s. 943.1395, F.S., ch. 120, F.S., and Rules 11B-27.003 through 27.005, 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(4) or (7), F.S.:²

- 1) The agency conducts an initial investigation. If the allegation is sustained, the investigation is forwarded to the CJSTC for further action.

¹ The CJSTC is housed within the Department of Law Enforcement, and is composed of 19 members, consisting of the secretary of the Department of Corrections; the Attorney General; the Commissioner of Education; the Director of the Division of the Florida Highway Patrol; and 15 gubernatorial appointments. Section 943.11, F.S.

² Section 943.13, F.S., specifies the minimum requirements for a law enforcement, correctional, or correctional probation officer, e.g., the officer must be a high school graduate, at least 19 years of age, and a United States citizen. Subsection (4) provides that the officer also must not have been convicted of a felony or misdemeanor involving perjury or false statement, and must have not received a dishonorable discharge from the military. Subsection (7) provides that the officer also must, "have a good moral character as determined by a background investigation under procedures established by the commission."

- 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.,³ 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; and (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 FPBA does not indicate results of any appeals, but reflects the following disposition of cases as of the Final Order:

³ Section 120.60(5), F.S., provide that in a proceeding, which involves the revocation, suspension, annulment, or withdrawal of any license, the agency must serve an administrative complaint and must provide the licensee an opportunity to request a hearing pursuant to ss. 120.569 and 120.57, F.S.

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.

In summary, the ALJ's recommended order was accepted in 7 cases and rejected in 13 cases.

III. Effect of Proposed Changes:

The bill provides final order authority to an ALJ who is assigned to an officer discipline case, based on allegation that the officer has failed to maintain a conviction- or military discharge-free record or failed to maintain good moral character.⁴ This removes the CJSTC from its current 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 invests 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. The ALJ could, however, 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.

The bill clarifies that the hearing conducted by the ALJ under the paragraph shall be conducted in the same manner as provided in ss. 120.569 and 120.57(1), except that the ALJ's order is to constitute a final order subject to judicial review under s. 120.68, F.S.

The bill provides that it takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁴ "Good moral character" is defined in Rule 11B-27.0011, F.A.C.

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 may incur additional costs to appeal final orders that are adverse to the position the CJSTC would have taken. 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.

Additionally, the CJSTC may incur additional costs if there is an increase in the number of formal hearings in which counsel for the CJSTC must participate. Under the bill, the CJSTC would no longer make the final decision regarding the sanction when an ALJ has conducted the hearing. Statistics provided by the FPBA for 20 decertification cases, which date back to 1998, indicate that the CJSTC accepted or modified the ALJ's recommended sanction as follows: (a) accepted the sanction in 8 cases; (b) increased the sanction to revocation in 11 cases; and (c) reduced the sanction in one case. Given this pattern, the number of cases proceeding to a formal hearing with an ALJ may increase, as it appears there is a greater likelihood of receiving a lesser sanction from an ALJ.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

Appeals by the CJSTC: Under the current statutory scheme, the CJSTC issues the final order, and thus, does not appeal the case. The bill's grant of final order authority to ALJs may create situations in which the CJSTC will file appeals. Further, the appellate court may uphold the ALJ's final order in some cases where the CJSTC could have legally modified or rejected the ALJ's recommended order under current law.

Policy Issue: The bill presents the following policy issue: Should officer discipline proceedings fall within the final discretion of the CJSTC or an ALJ?⁵ In *Criminal Justice Standards and*

⁵ This policy issue was raised in electronic transmissions received from the FDLE. The CJSTC, within the FDLE, has not voted to formally oppose this bill, and the FDLE, has indicated that, accordingly, it will defer from formally opposing the bill.

Training Commission v. Bradley,⁶ the Supreme Court considered whether the CJSTC, a professional regulatory agency, had the authority to reduce or increase an ALJ's recommended penalty. The Supreme Court ruled that the CJSTC did possess this authority, and cited with approval the following quote from *Hambley v. Department of Professional Regulation*:⁷ "Although hearing officers are entitled to substantial deference, they are judicial generalists who are trained in the law but not necessarily in any specific profession. The various administrative boards have far greater expertise in their designated specialties and should be permitted to develop policy concerning penalties within their professions."⁸

On the other hand, it can be argued that the bill may result in shortened discipline proceedings because the case may proceed more quickly to formal hearing with an ALJ. Further, it can be argued that the ALJ, after conducting a full formal hearing will have had an opportunity to have heard all of the facts, and will be a more neutral decision maker.⁹

VIII. Amendments:

None.

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

⁶ *Criminal Justice Standards and Training Commission v. Bradley*, 596 So.2d 661 (Fla. 1992).

⁷ *Hambley v. Department of Professional Regulation*, 568 So.2d 970 (Fla. 2nd DCA 1990).

⁸ The FDLE, by electronic transmission, has indicated that this observation by the Supreme Court applies equally a decade later. According to the FDLE, "Various administrative boards have far greater expertise in their designated specialties than 'judicial generalists' and should arguably be permitted to retain their power to develop policy concerning penalties within their professions. To the extent the proposal [the bill] moves that penalty determination to the hearing officer and away from the Commission, it represents a substantial departure from current policy, and a new approach to the governance of licensed individuals."

⁹ A representative of the Police Benevolent Association indicated these potential benefits by telephone on February 24, 2002.