

# 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 2046

SPONSOR: Appropriations Subcommittee on Criminal Justice and Senator Smith

SUBJECT: Sentencing

DATE: April 15, 2003                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Noble</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 2046 prohibits a court from directing that a sentence be served coterminously with a sentence imposed by another court or a court of another state. This bill also removes language in a current provision that provides that, in the event the court directs the Florida sentence to be coterminous as well as concurrent with a sentence in another jurisdiction, the Department of Corrections shall notify the other jurisdiction of the department’s interest in the offender until the offender has satisfied the commitment in the other jurisdiction, or the Florida sentence has expired. It also removes other language relating to this interest.

This bill substantially amends s. 921.16, F.S.

**II. Present Situation:**

Section 921.16(1), F.S., provides that a defendant convicted of two or more offenses charged in the same indictment, information, or affidavit or in consolidated indictments, informations, or affidavits shall serve the sentences of imprisonment concurrently, unless the court directs that two or more of the sentences be served consecutively. Sentences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall be served consecutively unless the court directs that two or more of the sentences be served concurrently. This subsection also directs that any sentence for sexual battery or murder must be imposed consecutively to any other sentence for sexual battery or murder which arose out of a separate criminal episode or transaction.

Section 921.16(2), F.S., provides that a county court or circuit court of this state may direct that the sentence imposed by such court be served concurrently with a sentence imposed by a court of another state or of the United States or, for purposes of this section, concurrently with a sentence

to be imposed in another jurisdiction. The remainder of the subsection addresses the designation of the institution for reception and confinement, the forwarding of commitment papers and other documents, and parole eligibility and determination of the parole release date.

Section 921.16(3), F.S., provides that, in the event the court directs the Florida sentence to be coterminous as well as concurrent with a sentence in another jurisdiction, the Department of Corrections shall notify the other jurisdiction of the department's interest in the offender until the offender has satisfied the commitment in the other jurisdiction, or the Florida sentence has expired, whichever occurs first. The remainder of this subsection addresses program participation in another jurisdiction, and parole or release in the other jurisdiction and the Department of Corrections' interest regarding this matter.

In *Pearson v. Moore*, 767 So.2d 1235, 127 n. 2, (Fla. 1st DCA 2000), approved, 789 So.2d 316, 319 (Fla. 2001), the First District noted that “[a] coterminous sentence has been defined as a sentence that runs concurrently with another and terminates simultaneously. *See Madden v. State*, 535 So.2d 636, 637 n. 1 (Fla. 5th DCA 1988).” (The Fifth District in *Madden* noted that the parties in that case had used the term “coterminous” to “refer to the termination of the state sentences at the same time the federal sentence terminates.” *Id.*)

“Unless there is specific statutory authority to impose a sentence it cannot stand.” *See Rozmester v. State*, 381 So.2d 324, 326 (Fla. 5<sup>th</sup> DCA 1980) (citations omitted). While neither s. 921.16, F.S., nor any other provision of Florida law, appears to specifically state that courts are authorized to impose coterminous sentences, the Florida Supreme Court has declared that a coterminous sentence is “a sentencing decision in which a court exercises its discretion to mitigate a defendant’s sentence.” *Moore v. Pearson*, 789 So.2d 316, 319 (Fla. 2001). The Criminal Punishment Code gives “the trial court the discretion both to impose any sentence between the lowest permissible sentence and the statutory maximum and to apply mitigating factors to reduce the sentence below the lowest permissible sentence....” *Winther v. State*, 812 So.2d 527, 529 (Fla. 4<sup>th</sup> DCA 2002).

In *Moore v. Pearson*, *infra*, the Florida Supreme Court found that a trial court’s coterminous sentence was not a court-ordered gain-time reduction, as the Department of Corrections had construed it, but rather a court-imposed mitigation of the sentence, which was within the court’s discretionary power. The court held that the Department of Corrections violated the separation of powers doctrine when it refused to carry out this sentence. (The department construed the court-imposed sentence reduction as a court-ordered gain-time reduction, and believed that gain-time reduction would conflict with s. 944.275(4)(b)3., F.S., which prohibits the award of gain-time for offenses committed on or after October 1, 1995, that would result in a prisoner serving less than 85-percent of the sentence imposed.) The Court also noted that, even if the separation of powers issue was not dispositive, the defendant would still be entitled to relief because the defendant and the state had entered into an agreement as to the coterminous sentence, which the state did not appeal. The Department of Correction’s refusal to carry out the sentence would increase the sentence after its imposition, which would be a double jeopardy violation.

While the state did argue in its brief that there was no statutory authority for coterminous sentences, *see* Brief of the Petitioner on the Merits, p. 23-26, *Moore v. Pearson*, Case No. SC00 2166 (January 22, 2001), it appears that this issue was not properly raised. *See Moore v.*

*Pearson*, 789 So.2d at 320 (Wells, C.J., concurring) (“I concur that the decision of the district court is correct under the facts of this case. I do have serious concerns as to whether a coterminous sentence is a legal sentence. However, that was not properly raised in this case.”)

### **III. Effect of Proposed Changes:**

Senate Bill 2046 removes current language in s. 921.16(3), F.S., and adds new language in that subsection that prohibits a court from directing that a sentence be served coterminously with a sentence imposed by another court or a court of another state. The current language the bill removes provides that, in the event the court directs the Florida sentence to be coterminous as well as concurrent with a sentence in another jurisdiction, the Department of Corrections shall notify the other jurisdiction of the department’s interest in the offender until the offender has satisfied the commitment in the other jurisdiction, or the Florida sentence has expired. This provision is no longer relevant if coterminous sentences are prohibited. The bill also removes other current provisions relating to this interest, which are also no longer relevant if coterminous sentences are prohibited.

The bill takes effect July 1, 2003.

### **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:**

An analysis of the bill by the Criminal Justice Impact Conference (CJIC) determined the impact on prison beds to be insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

On April 15, 2003, the Committee on Criminal Justice Appropriation adopted one amendment that removed the reference to federal courts in coterminous sentencing.

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

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