HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 617 Sentencing
SPONSOR(S): Hasner and Rivera
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2046

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Public Safety & Crime Prevention	13 Y, 0 N	Maynard	De La Paz
2) Judiciary		Billmeier	Havlicak
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

Coterminous sentences are sentences which end at the same time as sentences for other offenses being served in another jurisdiction. HB 617 expressly provides that coterminous sentencing is not authorized in Florida. The bill specifically provides that if a court directs that a sentence be coterminous, that the provision will be deemed "surplusage."

This bill will take effect July 1, 2003.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[X]
2. Lower taxes?	Yes[]	No[]	N/A[X]
3. Expand individual freedom?	Yes[]	No[]	N/A[X]
4. Increase personal responsibility?	Yes[]	No[]	N/A[X]
5. Empower families?	Yes[]	No[]	N/A[X]

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Coterminous sentences are sentences which end at the same time as sentences for other offenses being served in Florida or in another jurisdiction. In Moore v. Pearson[1], the Florida Supreme Court held that Florida’s statute prohibiting the Department of Corrections from granting gain time that would cause a defendant to serve less than eighty-five percent of the court-imposed sentence did not bar a court from imposing a coterminous sentence. In Pearson, a defendant was sentenced, pursuant to a negotiated plea agreement, to a thirteen-year sentence which was to run concurrent and coterminous with an earlier imposed five-year sentence.[2] The state did not appeal the sentence.[3] When Pearson attempted to enforce the terms of the sentence, the Department of Corrections argued that the sentence could not be enforced because s. 944.275(4)(b)3., F.S., prohibited a prisoner from being released until he or she serves at least eighty-five percent of the sentence. The court rejected the Department’s argument and held that the statute was “nothing more than a limitation on DOC’s authority to grant gain-time.”[4] The court explained:

> Contrary to DOC's contention here, however, an otherwise lawful coterminous sentence does not constitute "court-ordered gain time" whereby the sentencing court is directly ordering DOC to award gain time. Nor can such a sentence be treated as "surplusage" in the sentencing order, as the DOC asserts. Instead, a coterminous sentence is a sentencing decision in which a court exercises its discretion to mitigate a defendant's sentence. Accordingly, DOC violates the separation of power doctrine when it refuses to carry out the sentence imposed by the court.[5]

The Department of Corrections cites examples of cases in which if coterminous sentences were ordered to be served concurrently, offenders would not have committed new crimes because they would have been in state prison:

> Inmate Mario Bertoni, DC #985983, was sentenced in Lee County on August 31, 1998 for a 16 month sentence, less 292 days county jail time credit. On the same date he was also sentenced in Pinellas county to a 16-month sentence less 22 days jail credit. The Pinellas county sentence was ordered to run coterminous with the Lee County sentence. By ordering the Pinellas county case to run coterminous, the court was directing that case to end at the same time the Lee County case ended. If the Pinellas county case was ordered by the court to run concurrent, the 16 month term would have an end date of December 2,

[1] 789 So. 2d 316 (Fla. 2001).
[2] See Pearson, 789 So. 2d at 317.
[3] See Pearson, 789 So. 2d at 320.
[4] Pearson, 789 So. 2d at 319.
[5] Pearson, 789 So. 2d at 319.

1999. However the Pinellas county case was allowed to terminate at the end point (coterminous) of the Lee county case which was January 24, 1999, and Inmate Bertoni was released from prison on January 24, 1999. On March 21, 1999, inmate Bertoni committed the offense of Fleeing a Law Enforcement Officer and Aggravated Assault on a Law Enforcement Officer. He is currently serving a 12 year prison sentence for these crimes. If the Pinellas county case was ordered to run concurrent to the Lee county case, the inmate would have terminated his sentence on December 2, 1999, and would have still been in prison on March 21, 1999.

In another case, Inmate Frudias Porter DC # 194035 was sentenced in Miami-Dade County on June 28, 1994, for two 3-year sentences. On one of the sentences the court ordered a 3-year firearm minimum mandatory prison term, but the court ordered this sentence to run coterminous with the other 3-year sentence. If the coterminous sentence was ordered to run concurrent, the 3 year prison term would have been served day for day as a result of the 3 year minimum mandatory sentence and would have had an end date of March 16, 1997. However, the sentences were ordered to run coterminous, and both sentences had an end date of September 18, 1995, thus Inmate Porter was released from prison on September 18, 1995. On October 12, 1995, Inmate Porter committed the offense of Burglary/Assault and Aggravated Battery on a pregnant woman. He was sentenced to a term of probation on these charges. If the second sentence, which carried a the 3 year minimum mandatory provision was ordered to run concurrent, he would have been released on March 16, 1997, and would have been in prison on October 12, 1995."[6]

HB 617 amends s. 921.16(3), F.S. to expressly provide that coterminous sentencing is not authorized in Florida. The bill specifically provides that if a court directs that a sentence be coterminous, that the provision will be deemed "surplusage." According to Black's Law Dictionary, "surplusage" is defined as "extraneous, impertinent, superfluous, or unnecessary matter."[7] [8] The bill also deletes remaining language dealing with coterminous sentences. According to the Department of Corrections, the amendments to the statute would make it easier for the Department to structure sentences, apply gain-time, and calculate a release date.

C. SECTION DIRECTORY:

Section 1. Amends s. 921.16(3), F.S. to prohibit coterminous sentencing.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments

2. Expenditures:

   See Fiscal Comments

[6] Department of Corrections Bill Analysis, HB 617.
[7] Black's Law Dictionary (6th ed. 1990).
[8] For examples of cases in which courts have deemed portions of criminal sentences "surplusage," see Teffeteller v. State, 396 So.2d (Fla 5th DCA 1981) (Where only one offense was charged in information, language setting condition that sentence "would run consecutively with any sentences you are . . . serving" would be treated as mere suplusage); Rice v. State, 243 So.2d 226 (Fla. 4th DCA 1971) (Statement by court that defendant's sentence of ten years imprisonment was to be served consecutively to other sentences then pending against defendant was mere surplusage).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not yet evaluated this bill at the time of this analysis.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the mandates provision because it is a criminal law.

2. Other:

Separation of Powers

In Pearson, the Florida Supreme Court held that the statute did not limit a court's ability to impose a conterminous sentence and said that the sentence in that case was "a sentencing decision in which the court exercises its discretion to mitigate a defendant's sentence."[9] To the extent the Supreme Court of Florida is willing to recognize the authority of a court to order a coterminous sentence as part of the power of the judicial branch of government, any attempt to abridge or extinguish that authority may be viewed as a violation of the separation of powers provision of the state constitution.

However, under Art. III, s. 1, Fla. Const., the legislative power is vested in the legislature. Within this power, the legislature has enacted statutes to provide the punishments for offenses.[10] It is well-settled that a court does not have the power to impose a sentence not authorized by law.[11] This bill amends a statute to expressly forbids coterminous sentences so it can be argued that this bill does not infringe on any constitutional power of the court.

Retroactive Effect

This bill provides that "coterminous sentencing has never been authorized in this state." It could be argued that this bill is intended to apply to criminals who have already been sentenced as well as to criminals who commit crimes in the future. The Florida Supreme Court has recognized that when "an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and

[9] Pearson, 789 So. 2d at 319.
[10] See generally ch. 921, F.S.
[11] See e.g. Bruno v. State, 837 So. 2d 521, 523 (Fla. 1st DCA 2003)("An illegal sentence cannot be imposed, even as part of a negotiated plea agreement."); State v. Mancino, 714 So. 2d 429, 433 (Fla. 1998) ("A sentence that patently fails to comport with statutory or constitutional limitations is by definition 'illegal.' ").

not as a substantive change thereof."[12] Since this bill is being considered after Pearson, it can be argued that this bill is intended to apply to all sentences, whenever imposed. However, the court noted in Pearson that even if it had accepted the Department of Corrections' position that coterminous sentences were prohibited by statute, the statute could not be enforced to inmates such as Pearson without violating double jeopardy.[13] Trial courts could interpret this bill to prohibit coterminous sentences in cases where the crime was committed prior to the effective date of the act but sentencing does not occur until after the effective date.[14]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Corrections recommends the effective date of the bill be amended to offenses committed "on or after" the effective date.[15]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A

[12] Lowry v. Parole & Probation Comm'n, 473 So.2d 1248, 1250 (Fla. 1985).
[13] See Pearson, 789 So. 2d at 319-20.
[14] See e.g. Hersey v. State, 831 So. 2d 679 (Fla. 5th DCA 2002)(holding that legislative reenactment of statute to cure single subject violation permitted harsher sentence and did not violate ex post facto provisions); Dobbert v. Florida, 432 U.S. 282 (1977)(changes in death penalty statute could apply to defendant who committed crime prior to enactment of those changes).
[15] Department of Corrections Bill Analysis, HB 617