HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 617 Relating to Sentencing
SPONSOR(S): Rep. Hasner
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Public Safety & Crime Prevention	13 Y, 0 N	Maynard	De La Paz
2) Judiciary			
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. Because Florida law requires inmates to serve 85% of their sentences, currently coterminous sentences are not authorized in Florida.[1] Despite this, courts are still imposing them. 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 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.

[1] s. 944.275(4)(b)3, F.S.

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 another jurisdiction. Because Florida law requires inmates to serve 85% of their sentences, currently coterminous sentences are not authorized in Florida.[2] Despite this, courts are still imposing them. Recently, the Florida Supreme Court upheld a coterminous sentence, on the grounds that the Department of Correction's enforcement of the 85% minimum service requirement in the face of a negotiated plea amounted to an unconstitutional usurpation of the court's power to sentence. Moore v. Pearson, 789 So.2d 316 (Fla. 2001) In doing so, it overturned two previous District Court decisions which refused to apply the coterminous portions of a plea sentence in the face of the clear wording of s. 944.275(4)(b)3, F.S. which contains the 85% minimum service requirement. See Turner v. State, 689 So.2d 1107 (Fla. 2d DCA 1997); and Nieves v. State, 779 So.2d 294 (Fla. 3rd DCA 1999).

The Department of Corrections has 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, 1999. However the Pinellas county case was allowed to terminate at the end point (coterminous) of the Lee vounty 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

[2] s. 944.275(4)(b)3, F.S.

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."[3]

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." Black's Law Dictionary 1443 (6th ed. 1990)[4] 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

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

[3] Maher, Susan. Office of General Counsel Department of Corrections Bill Analysis, HB 617.

[4] 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 of that defendant's sentence of ten years imprisonment was to be served consecutively to other sentences then pending against defendant was mere surplusage).

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:

2. Other:

A constitutional issue may exist with the proposed legislation with regard to the recent decision of Moore v. Pearson, 789 So.2d 316 (Fla 2001). In that case, the Supreme Court of Florida tied the power of courts to order coterminous sentences to the sentencing power of the judiciary generally. "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 powers doctrine when it refuses to carry out the sentence imposed by the court." Id. at 319. The separation of powers doctrine is found in Article II, section 3 of the Florida Constitution, which provides that "[n]o person belonging to one branch [of government] shall exercise any powers appertaining to either of the other branches unless expressly provided herein." The provision which the court said the Department violated was Article I s. 18 of Florida's Constitution which provides: "No administrative agency . . . shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law." Moore at 319. Although, the court found that the 85% minimum service requirement is "nothing more than a limitation on DOC's authority to grant gain-time," and therefore did not infringe on the court's power, 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 unconstitutional by the court. Id.

It is important to note, however, that under Article III, section 1 the legislative power is vested in a legislature of the State of Florida. Within this power, the Legislature has enacted statutes to provide the punishments for offenses. See generally ch. 921, F.S. Moreover, a statute which expressly forbids coterminous sentences should suffice for the purposes of the "except as provided by law" section in Article 1, s. 18 of the Florida Constitution which the Florida Supreme Court indicated the Department would run afoul of if it refused to implement a coterminous sentence ordered by the court in Moore.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES