

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

Section 944.279, F.S. provides that a court, up its own motion or that of a party, may conduct an inquiry into whether an action or appeal brought by a prisoner was brought in good faith. A prisoner who is found, by a court, to have brought a frivolous¹ or malicious suit, action, claim, proceeding or appeal in any state or federal court (for a filing after June 30, 1996) or who knowingly or with reckless disregard for the truth brought false information or evidence before the court, is subject to disciplinary procedures pursuant to the rules of the Department of Corrections. The section authorizes the judge to issue a written finding and direct that a certified copy be forwarded to the appropriate institution or facility for disciplinary procedures pursuant to rules of the department. The section specifies that it does not apply to a criminal proceeding or a collateral criminal proceeding. s. 944.279(2), F.S.

Section 944.28(2) provides in pertinent part:

All or any part of the gain-time earned by a prisoner according to the provisions of law is subject to forfeiture if such prisoneris found by a court to have brought a frivolous suit, action, claim, proceeding, or appeal in any court; is found by a court to have knowingly or with reckless disregard for the truth brought false information or evidence before the court.....

Rule 33-601.314 (9-32), F.A.C. authorizes the Department of Corrections to impose 60 days of disciplinary confinement and the loss of all of a prisoner’s gain time² if a prisoner is found by a court to have brought a frivolous court proceeding.

In Hall v. State, 752 So.2d 575 (Fla. 2000) the District Court of Appeal had sanctioned the defendant for filing a frivolous appeal of the denial of his postconviction motion. The Florida Supreme Court considered the question of whether a court could utilize section 944.28(a), F.S., which contains no exception for criminal collateral proceedings, independently of section 944.279, F.S., which contains

¹ See, Hay v. Moore, 728 So.2d 806, 807 (Fla. 1st DCA 1999)(“A frivolous appeal is not merely one that is likely to be unsuccessful. It is one that is so readily recognizable as devoid of merit on the face of the record that there is little, if any, prospect whatsoever that it can ever succeed.... It must be one so clearly untenable, or the insufficiency of which is so manifest on a bare inspection of the record ... that its character may be determined without argument or research.”)(citations omitted).

² Section 944.275, F.S. authorizes the department to “grant deductions from sentences in the form of gain-time in order to encourage satisfactory prisoner behavior, to provide incentive for prisoners to participate in productive activities, and to reward prisoners who perform outstanding deeds or services.” The maximum amount of gain time which can be granted depends on the date that the criminal offense was committed. For sentences imposed for offenses committed on or after October 1, 1995, the department is authorized to grant up to 10 days per month of incentive gain-time but is not authorized to grant any gain time that would result in a prisoner serving less than 85 percent of the sentence imposed.. .

language prohibiting its application to collateral criminal proceedings³, in order to sanction a defendant. In holding that section 944.28(2)(a), F.S. could not be applied to sanction a defendant for frivolous collateral criminal proceedings, the court reasoned as follows:

While section 944.28(2)(a) does not specifically prohibit its application to collateral criminal proceedings, that section is plainly tied to section 944.279 and, we conclude, cannot be utilized independently of that section. Of course that section clearly prohibits its application to such proceedings. Section 944.279 provides the courts with statutory authority to find that a frivolous filing warrants a referral to the Department of Corrections for discipline including possible gain time forfeiture under its administrative rules. Section 944.28(2)(a) is merely an ancillary statute which gives the Department of Corrections the statutory authority to forfeit gain time after a court has utilized 944.279 to find that the frivolous filing warrants a referral to the Department for discipline.

Hall v. State, 752 So.2d at 579; Saucer v. State, 779 So.2d 261 (Fla. 2001)(holding that a writ of habeas corpus that challenges the prisoner's criminal conviction or sentence is also considered to be a collateral criminal proceeding).

HB 1153 amends section 944.279, F.S. in order to remove the current exception, that has been interpreted to prevent the Department of Corrections from taking disciplinary action, including revocation of gain time, against a prisoner who is found by a court to have brought a frivolous or malicious collateral criminal action.

C. SECTION DIRECTORY:

Section 1. Amends s. 944.279, F.S.; authorizes disciplinary action for a frivolous or malicious collateral criminal action.

Section 2. Reenacts s. 944.28, F.S.

Section 3. Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

³ The court noted that the term "collateral criminal proceeding" is not defined by statute but found that a postconviction motion filed pursuant to Rule 3.850, Florida Rules of Criminal Procedure, and any appeal of such motion, are collateral criminal proceedings.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

To the extent that the provisions of this bill deter prisoners from filing frivolous or malicious criminal collateral proceedings, it could have a positive fiscal impact on the court system.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES