

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 271 CS

Custody of Criminal Defendants

**SPONSOR(S):** Kreegel and others

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 688

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	7 Y, 0 N, w/CS	Cunningham	Kramer
2) Justice Appropriations Committee	_____	_____	_____
3) Justice Council	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

Currently, if a state prisoner is arrested, an outside law enforcement agency (usually the sheriff of the county where the alleged crime occurred) comes to the state institution, arrests the prisoner, and transports the prisoner to a county facility. Counties generally return such prisoners to the prisoner's state institution when the prisoner is no longer needed in court or when a prisoner does not have impending court dates. If the prisoner's presence is later required in court, the sheriff returns to the state institution, assumes temporary custody of the prisoner, and transports the prisoner to a county facility.

This bill provides that, unless otherwise ordered by the court, arrested persons who are in the custody of the Department at the time of arrest shall remain in the Department's custody pending disposition of the charge, or until the person's sentence of imprisonment expires, whichever occurs earlier. The bill also provides that the provisions of s. 944.17(8), F.S., (requiring the sheriff to assume temporary custody and transport state prisoners to the county jail if the prisoner's presence is required in court for any reason) are to apply if the arrested state prisoner's presence is required in court for any reason. Because the bill appears to codify an act that, in large part, is currently being practiced, it would not appear to have a significant fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – The bill provides that, unless otherwise ordered by the court, arrested persons who are in the custody of the Department of Corrections shall remain in the department's custody pending disposition of the charge, or until the person's underlying sentence of imprisonment expires, whichever occurs earlier.

#### B. EFFECT OF PROPOSED CHANGES:

In 2003, three inmates of Charlotte Correctional Institution were arrested for the murder of Correctional Officer Darla Lathrem and a fellow inmate during an alleged escape attempt. All three inmates were serving life sentences at the time of the murder and have violent criminal histories. Subsequent to the attacks, the Department of Corrections transferred the three inmates to Florida State Prison (FSP), a maximum security institution. After the defendants were indicted<sup>1</sup>, counsel for one of the defendants moved the court to have the defendants transferred to the Charlotte County jail pending trial, pursuant to s. 907.04, F.S.<sup>2</sup> Over the objection of the Sheriff and the State, the trial court interpreted s. 907.04, F.S., as mandating that the defendants be held in the custody of the Charlotte County Sheriff in the county jail pending disposition of the charges. At this time, the defendants are still being housed at the Charlotte County jail.

Currently, if a state prisoner is arrested (either for a crime committed while incarcerated or for a crime committed prior to being incarcerated), an outside law enforcement agency<sup>3</sup> (usually the sheriff of the county where the alleged crime occurred) comes to the state institution, arrests the prisoner, assumes temporary custody of the prisoner, and transports the prisoner to a county facility.<sup>4</sup> Currently, counties generally return such prisoners to the prisoner's state institution when the prisoner is no longer needed in court or when a prisoner does not have impending court dates.<sup>5</sup> If the prisoner's presence is later required in court, the sheriff returns to the state institution, assumes temporary custody of the prisoner, and transports the prisoner to a county facility.<sup>6</sup>

This bill provides that, unless otherwise ordered by the court, arrested persons who are in the custody of the Department at the time of arrest shall remain in the Department's custody pending disposition of the charge, or until the person's underlying sentence of imprisonment expires, whichever occurs earlier.

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<sup>1</sup> The defendants were indicted on charges of capital murder and escape.

<sup>2</sup> Section 907.04, F.S., states in part that if a person who is arrested does not have a right to bail for the offense charged, he or she shall be delivered immediately into the custody of the sheriff of the county in which the indictment, information, or affidavit is filed.

<sup>3</sup> Pursuant to s. 944.31, F.S., Department of Corrections' inspectors who have been designated by the Secretary as law enforcement officers have the authority to arrest state prisoners, but only in certain circumstances. Correctional officers do not have arrest powers. Thus, in most instances, it is not a Department of Corrections' employee who arrests inmates who have committed a crime, but rather an outside law enforcement agency.

<sup>4</sup> Representatives with the Department state that there are occasions where the Department transports a prisoner to a county facility.

<sup>5</sup> Prisoners must be returned to the state institution from which they came. Thus, if a prisoner has numerous court proceedings to attend in a short time-frame, a county that is geographically far away from a prisoner's institution (i.e. the prisoner is incarcerated in north Florida and the new arrest originates from Dade county) may keep the prisoner in a county facility rather than transport the prisoner back and forth across the state numerous times. Counties can also request that DOC transfer a prisoner to a state institution that is closer to the arresting county, though this is not always possible due to lack of bed space, security concerns, etc...

<sup>6</sup> Section 944.17(8), F.S., states in part that if a state prisoner's presence is required in court for any reason after the sheriff has relinquished custody to the Department of Corrections, the court shall issue an order for the sheriff to assume temporary custody and transport the prisoner to the county jail pending the court appearance.

This bill also requires the application of the provisions of s. 944.17(8), F.S., if the arrested state prisoner's presence is required in court for any reason.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 907.04, F.S.; providing that if a person is arrested, and at the time of the arrest is in the custody of the Department of Corrections under sentence of imprisonment, unless otherwise ordered by the court, such person shall remain in the Department of Corrections' custody pending disposition of the charge, or until the person's underlying sentence of imprisonment expires, whichever is earlier; providing that if the arrested state prisoner's presence is required in court, the provisions of s. 944.17(8), F.S., shall apply.

**Section 2.** This act takes effect on July 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

**State Government**

The Department of Corrections states that data to determine the approximate number of inmates this bill would affect is unavailable. However, it appears that counties currently return many state prisoners who have been arrested to state institutions once the prisoner does not have any impending court dates. Thus, because the bill appears to codify an act that, in large part, is currently being practiced, it would not appear to have a significant fiscal impact.

The Criminal Justice Impact Conference reviewed this bill on January 9, 2006, and determined that it would have an insignificant impact.

**Local Government**

In some instances, a prisoner may be housed in a prison that is hundreds of miles from the county where the charging document was filed (i.e. the prisoner is incarcerated in north Florida and the new arrest originates from Dade county). When such prisoners have court appearances scheduled, sheriffs will be responsible for the cost of transporting such prisoners from the state institution to the county.<sup>7</sup>

<sup>7</sup> s. 944.17(8), F.S.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 25, 2006, the Criminal Justice Committee adopted one amendment to the bill and reported the bill favorably with committee substitute. The amendment addressed some of the issues raised in the original bill analysis. Specifically, the amendment: specifies that unless otherwise ordered by the court, a state prisoner will remain in the Department's custody pending disposition of the charge or until the prisoner's underlying sentence of imprisonment expires, whichever occurs earlier. The amendment also includes a reference to s. 944.17(8), F.S., to clarify that it is the sheriff's responsibility to assume temporary custody and transport an prisoner if the prisoner's presence is required in court for any reason.