

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 592

INTRODUCER: Criminal Justice Committee

SUBJECT: Criminal Justice

DATE: February 10, 2014

REVISED: 03/03/14

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
<u>Sumner</u>	<u>Cannon</u>		CJ SPB 7006 as Introduced
1. <u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	Favorable

I. Summary:

SB 592 amends s. 944.70, F.S., to include additional conditions for releasing inmates from incarceration. The bill requires the Department of Corrections (DOC) to verify the authenticity of court orders that change a person's release date to an earlier date before releasing the person from incarceration, unless the order received from the clerk of court is accompanied by a confirmation from the issuing judge or authorized designee.

II. Present Situation:

Current Law Relating to When DOC May Release an Inmate

Current law authorizes DOC to release an inmate only after it receives the court's written order from the Clerk of Court. The Clerk of Court is the custodian of the judicial record. There are three ways the Clerk of Court receives sentencing and modification orders:

- From a non-secure drop box or mail.
- Secured direct pick up from the Courts.
- In Court directly from the judge.¹

Section 944.70, F.S., provides that persons who are convicted of a crime committed on or after October 1, 1983, but before January 1, 1994, may be released from incarceration only upon the following conditions:

- Expiration of the person's sentence;
- Expiration of the person's sentence as reduced by accumulated gain-time;
- As directed by an executive order granting clemency;
- Attaining the provisional release date;

¹ PowerPoint presentation from Florida Court Clerks & Comptrollers.

- Placement in a conditional release program pursuant to s. 947.1405, F.S.; or
- Granting of control release pursuant to s. 947.146, F.S.

A person who is convicted of a crime committed on or after January 1, 1994, may be released from incarceration only upon the following conditions:

- Expiration of the person's sentence;
- Expiration of the person's sentence as reduced by accumulated meritorious or incentive gain-time;
- As directed by an executive order granting clemency;
- Placement in a conditional release program pursuant to s. 947.1405, F.S., or a conditional medical release program pursuant to s. 947.149, F.S.; or
- Granting of control release, including emergency control release, pursuant to s. 947.146, F.S.²

Background on Recent Incidents Using Fraudulent Orders

In an e-mail dated July 2, 2013, Michael R. Ramage, General Counsel for the Florida Department of Law Enforcement (FDLE) notified DOC that inmates having long sentences had recently attempted to secure reduction of sentences through use of fraudulent court orders.³ He stated that the "scheme" involved preparation of legitimate-looking orders that are filed in the court and then presented to the Department of Corrections or others to secure a reduction of a sentence. He further stated that, in one case, an inmate was actually released.⁴ Though the inmate was captured, Mr. Ramage requested DOC's help in getting the word out and that "the best success in curbing this abuse is through greater awareness on everyone's part."⁵

In late August and September of 2013, Joseph Jenkins and Charles Walker were released from the Franklin County Correctional Institution after the Department of Corrections received fraudulent release documents from the Orange County Clerk of Court. The FDLE along with Bay County Sheriff's Office, Panama City Police Department, and the U.S. Marshals Service Task Force arrested both inmates on October 19, 2013.⁶ An FDLE investigation revealed that the release was part of a larger conspiracy involving six current and former inmates of the Department of Corrections.

In the meetings of the Senate Criminal Justice Committee on November 4, 2013, and the meeting of the Senate Appropriations Subcommittee on Criminal and Civil Justice on November 6, 2013, there was a briefing by FDLE, DOC, the Clerk of Courts and the State Attorneys on remedial actions that were taken based on the recent escapes and the use of fraudulent sentencing modification documents.

² Section 944.70(1)(b), F.S.

³ Correspondence between Florida Department of Law Enforcement staff and Senate Criminal Justice staff (July 2, 2014) (on file with the Senate Committee on Judiciary).

⁴ *Id.*

⁵ *Id.*

⁶ December 19, 2013 News Release, Florida Department of Law Enforcement.

The FDLE's Commissioner, Gerald Bailey, testified before the Senate that the release of the inmates continued to be part of an ongoing investigation. Commissioner Bailey further testified that due to lack of good audit trails, the investigation is still underway to determine how the documents got to the Clerk's office. Commissioner Bailey revealed that confidential sources, who were inmates, stated that the documents came from inside the prison. Commissioner Bailey also stated that there was no evidence that any employees from the Orange County Clerk's Office were involved.⁷

Lee Adams, Chief of the Bureau of Admission and Release at the Department of Corrections, gave a PowerPoint presentation on fraudulent court orders. During the presentation, Chief Adams stated that the fundamental duty of the DOC is to execute sentencing orders by calculating release dates. When the lawful sentence ends, the DOC no longer has the authority to hold the inmate and the inmate has a constitutional right to be at liberty. He stated that DOC's proof of lawful detention is based solely on the court's written order.

Chief Adams stressed that there is a presumption of validity of the Order on which the department relies. Chief Adams explained that during the standard release process, there is a 180-day time period from the comprehensive record review, contact with a social service provider, and the final release phase. He explained that there is also an immediate release process that takes only 2 hours but with the same safeguards in place.

Since January 2010, Chief Adams reported that 61 life sentences for murder, attempted murder, or manslaughter were reduced or vacated. During FY 2012-13, more than 4,100 court orders were reduced or vacated. It was noted that DOC does not evaluate the legality of the order; however, it does recognize and seek clarification of discrepancies involving the factual record and internal inconsistencies within orders.

A PowerPoint presentation by the Florida Court Clerks and Comptrollers set forth its proposed strategies for fraud prevention in document processing. Its strategies are to:

- Establish a secure process for the delivery of documents between the Judge and the Clerk.
- Establish a secure location in a non-public work area to process documents.
- Establish a secure process for delivering or receiving documents from the State Attorney and local detention or jail facilities.⁸

An additional step in verification procedures also discussed included having the Clerk review Orders for unusual circumstances including unusual signatures, incorrect spellings, and incorrect court type or document style.

Statewide forms for notifying the Court, a uniform procedure for filing such notification forms, and an adoption of uniform procedure of notification to DOC of order verification were also proposed.

⁷ November 4, 2013 Senate Criminal Justice Committee and the November 6, 2013 Senate Appropriations Subcommittee on Criminal and Civil Justice.

⁸ Florida Court Clerks and Comptrollers, PowerPoint presentation, "Fraudulent Documents: Document Processing and Fraud Prevention Standards" (2013).

Recent Developments in E-Filing Court Documents

E-filing standards were mandated by the Supreme Court for filings in criminal cases beginning on February 3, 2014.⁹ The Supreme Court has begun discussions at the statewide level for judges to use the e-portal for their orders. This use of the e-portal would provide a method to authenticate judicial orders through secured electronic transmission from the Court.

III. Effect of Proposed Changes:

The bill amends s. 944.70, F.S., to include additional conditions for releasing inmates from incarceration. The bill requires the Department of Corrections (DOC) to verify the authenticity of court orders that change a person's release date to an earlier date before releasing the person from incarceration, unless the order received from the clerk of court is accompanied by a confirmation from the issuing judge or authorized designee.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁹ Electronic Filing of Criminal Cases in the Trial Courts of Florida via the Florida Courts E-Filing Portal, Admin. Order No. AOSC13-48 (Fla. September 27, 2013), available at: <http://www.floridasupremecourt.org/clerk/adminorders/2013/AOSC13-48.pdf#xml=http://199.242.69.43/texis/search/pdfhi.txt?query=AOSC13-48&pr=Florida+Supreme+Court&prox=page&rorder=1000&rprox=1000&rdfreq=500&rwfreq=500&rlead=1000&rdepth=0&sufs=2&order=r&cq=&id=5249aff617> (last visited February 4, 2014).

C. **Government Sector Impact:**

The DOC may experience additional workload as a result of this bill, but the DOC anticipates that any additional workload will be insignificant.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 944.70 of the Florida Statutes.

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁰ Telephone interview with staff of the Florida Department of Corrections (Feb. 11, 2014).