

1989

Session Law 89-526

Florida Senate & House of Representatives

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H 9-A GENERAL BILL/1ST ENG by Jamerson; Rojas; Holland; Rehm
(Compare H 868, H 1051, H 1052, H 1290, CS/H 1441, CS/H 1522,
CS/H 1528, 1ST ENG/H 1793, H 11-B, S 377, S 728, CS/1ST
ENG/S 882, S 940, S 1204, S 1205, S 1219, CS/S 1220, CS/S 1266,
CS/S 6-A, S 12-B)

Correctional System: creates Control Release Authority; provides criteria & eligi-
bility for control release; provides for terms & conditions of control release, & for
revocation; provides for cost of supervision payments by inmates under control
release, provisional & conditional release supervision; provides that inmates in-
carcerated at private correctional facility remain in legal custody of dept.; revises
priority of purposes of work programs, etc. Amends F.S. Effective Date: 10/01/89,
except as otherwise provided.

06/03/89 HOUSE Filed; Introduced, referred to Rules & Calendar -HJ 3; On
Committee agenda—Rules & Calendar, 06/03/89, 4:00 pm,
413-C; Preliminary Committee Action by Rules & Calen-
dar: Favorable; Comm. Report: Favorable by Rules & Calen-
dar, placed on Calendar -HJ 26; Read second time
-HJ 5; Amendment adopted; Read third time; Passed as
amended; YEAS 100 NAYS 3 -HJ 6

06/03/89 SENATE In Messages; Received -SJ 4; Passed; YEAS 18 NAYS 14
-SJ 9

06/03/89 Ordered enrolled

06/13/89 Signed by Officers and presented to Governor

06/29/89 Approved by Governor; Chapter No. 89-526; See also SB
12-B (Ch. 89-531)

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: sshb.cpp
DATE: June 3, 1989

HOUSE OF REPRESENTATIVES
Committee on Rules and Calendar
STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 9-A

RELATING TO: The Correctional System

SPONSOR(S): Committee on Corrections and Rep. Jamerson

EFFECTIVE DATE: October 1, 1989, unless otherwise provided.

COMPANION BILL(S):

OTHER COMMITTEES OF REFERENCE: (1) Rules and Calendar
(2)

I. SUMMARY:

Provides for controlled release of inmates, enhanced collection of victim restitution and other provisions relating to correctional programs.

A. PRESENT SITUATION:

Control Release

Offenders convicted of crimes committed on or after October 1, 1983 are not eligible for parole. Eligibility for parole was removed in 1983, with the creation of the sentencing guidelines and the setting of the sunset on the Parole Commission.

Since the elimination of parole eligibility, the amount of time the average offender spends under the jurisdiction of the department has dropped dramatically. In fiscal year 1985-86, the Auditor General found that in cases where parole was granted, the average time served in prison was 31% of sentence followed by an additional 36% of sentence under parole supervision. Offenders are currently serving only 35% of sentence imposed, and in 1987, only 9% of releasees had more than 90 days of post-release supervision.

The decreased percentage of time served is due to the overcrowded conditions of the Florida prison system. Costello v. Wainwright has required the state to maintain its prison population at 133% of design capacity. The Legislature has adopted laws to provide for expedient release of inmates when the population reaches 97.5% of the lawful level.

During the 1988 Legislative Session, two post-release supervision programs were created: the provisional release program (up to 90 days of supervision for those who receive provisional release credits); and the conditional release program (up to 2 years of

supervision for those sentenced in categories 1-4 with a prior commitment to state prison). Crimes in categories 1-4 are murder, manslaughter, sexual crimes, robbery and violent personal crimes.

In 1983, during a legislative restructuring of the correctional system in Florida, the Florida Parole and Probation Commission was set for repeal in 1987. This date was later changed to July 1, 1989. This act included a provision for legislative committee review prior to repeal; reviews were completed by the Senate (1985) and the House of Representatives (1988).

Privatization

Section 944.105, F.S., allows for the Department of Corrections to enter into contracts with private entities for operation and maintenance of state correctional facilities. However, the statute stipulates that specific legislative approval and funds must be appropriated prior to entering into any contracts. There are currently no state adult offender facilities operated by private entities in Florida.

Prison Industries

In 1981, the Florida Legislature authorized establishment of a corporation to take over responsibility for managing the prison industries system from the Department of Corrections. The state's correctional work programs were considered ineffective and unproductive and to alleviate this problem, the Legislature authorized the leasing of the correctional programs to a non-profit corporation, Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).

PRIDE was incorporated in 1981 as a result of Chapter 81-125, Laws of Florida, and began acquiring existing industry programs in 1982. From 1982-84, the PRIDE program received \$231,172 from the private sector for start-up costs. A \$2,000,000 General Revenue appropriation was received by the corporation in 1984 for capital investments. According to a report issued by Florida TaxWatch in December, 1988, Florida taxpayers have invested over \$79 million (this includes the \$2 million appropriation) in PRIDE by way of land, buildings, machines and equipment, etc. It was thought that a private entity could operate "more like real business" in order that participating inmates would be better prepared for post incarceration employment.

The major goals of the prison industry as stated in Chapter 946, Florida Statutes, are to:

- * Reduce the costs of state government by the operation of inmate enterprises;
- * Duplicate the free enterprise system to increase the opportunity for rehabilitation;
- * Reduce inmate idleness;

- * Provide relevant education, training, and post release job placement; and
- * Prepare inmates for reintegration into society.

PRIDE is composed of a Board of Directors appointed by the Governor and subject to Senate confirmation.

When PRIDE assumed responsibility of the industry program in 1981, 1,800 inmates were working. According to PRIDE's 1988 Annual Report, 2,516 inmates were working in the 53 diversified industries in the program. In FY 1987-88, more inmates were working at more jobs, more hours and for more pay than any time in Florida's history. Offenders are paid between \$.50 and \$1.10 per hour and are allowed to retain approximately 30% of their earnings. Ten percent of wages are paid into a victim restitution fund and 60% are remitted to the state for the costs of incarcerating PRIDE inmate workers.

PRIDE currently operates 53 industries at 21 prison locations and have proposed seven new programs. PRIDE produces and sells such products as auto tags, ring binders, garments, office furniture, citrus, shoes, sugar cane and cattle. PRIDE provides vocational training and post-release job placement service through the organization of a placement staff. In FY 1987-88, PRIDE generated over \$57,000,000 in sales and reported a net income of \$2,629,693.

Products manufactured by the corporation may be furnished or sold to any legislative, executive, or judicial agency of the state, any political subdivision, any other state, any foreign government, or any agency of the Federal Government, or to any contract vendor for such agencies or any subcontractor of the contract vendor.

PRIDE is not required to competitively bid if their products have been certified to the Department of General Services. Once this procedure is done, no similar article of comparable price and quality may be purchased from any source other than PRIDE. The purchasing agency may make reasonable determinations of need, price, and quality with reference to articles available for sale by PRIDE.

Transition Assistance Program

The 1987 Legislature created Chapter 87-298, Laws of Florida, which established the Transition Assistance Program Act (TAP). This was designed to equip the offenders with fundamental resources, which would then increase the likelihood of the offender's successful reentry into free society. The program went into effect January 1, 1988, and 15,618 inmates participated in the program during fiscal year 1987-88. The Department projects 17,500 TAP releases this year.

TAP consists of five components:

1. A release orientation program;
2. Basic release assistance or stipend;
3. Access to community-based support services;
4. Temporary housing; and
5. Job placement services upon release.

The initial act required each eligible inmate to receive not fewer than 120 hours of pre-release orientation instruction. The 1988 Legislature made minor revisions to the program, changing the name of the pre-release orientation program to the release orientation program and reducing the program hours from 120 to not fewer than 40 hours of pre- and post-release instruction.

Offenders not eligible for the TAP program include: 1) **offenders discharged via community correctional centers** (work release), because they receive orientation and placement services at the center; 2) **offenders discharged "to another state;"** and 3) **Offenders with a detainer.**

The first component of TAP -- the release orientation program -- is designed to provide every program participant with no less than 40 hours of pre-release or post-release instruction. However, it has been found that very little instruction has been given to the inmate prior to release. Of the 35 institutions where the TAP program is operating, only 4 have implemented a **partial** release orientation program. The Department of Corrections is statutorily authorized to provide Transition Assistance Program release instruction to inmates prior to their exit from the institution, but have failed, after one year, to fully implement the program as anticipated. As of April 21, 1989, 42 of 73 positions have been filled. Training began April 19, 1989 in Region I, and will proceed to the other regions in May.

The Department of Corrections began issuing photo identification cards to offenders on July 1, 1988.

Correctional Education School Authority

The Correctional Education School Authority (CESA) was established by the 1986 Legislature, in the passage of Chapter 86-183, Laws of Florida. This bill created section 242.68, Florida Statutes, titled "Education for State Prisoners." The goal of CESA is to provide inmates with opportunities to develop academic, occupational, and social living skills needed to return to society as productive citizens.

A Board of Correctional Education was also established and charged with the authority and responsibility of managing and operating the correctional education program. The Board consists of nine members appointed by the Governor. Funds are appropriated on a line item basis.

The Board is authorized to appoint a Director of Correctional Education who serves at its discretion. The director is responsible for preparing the legislative budget request for the entire correctional education program and submitting it to the Board of Correctional Education for approval. The budget is then forwarded to the Department of Corrections for inclusion in the department budget pursuant to s. 20.315, F.S.

Section 242.68, Florida Statutes, provides the budget procedure for the Correctional Education School Authority. The 1988 Legislature amended section 20.315, Florida Statutes, to clarify the budget authority of CESA, which was ambiguous in the past.

Parole Commission

Clemency - In 1986, the statutory language pertaining to the commission's power and duty of reporting to the Board of Executive Clemency was transferred to a newly created Board of Clemency Review which was to replace the Parole Commission upon its sunset. However, during the 1988 Legislative Session, the language creating the Board of Clemency Review was repealed. Inadvertently, the statutory language pertaining to the commission's power and duty to report to the Board of Executive Clemency was also deleted.

Witness Subpoenas - Inmates who are considered in parole violation hearings have the unqualified right to subpoena witnesses on their behalf. Many witnesses that are subpoenaed do not have testimony that is probative, non-cumulative, or relevant to the alleged violation. Witnesses must be reimbursed for transportation to the hearing site at significant expense to the State of Florida and many times involves out-of-state travel.

Probation and Parole

Private Officers Providing Felony Supervision -

The number of private firms approaching circuit judges to solicit referrals for supervision is growing. The requirements for officers who are to provide supervisory services are ill-defined and there are no minimum experience levels or training requirements. Reports have claimed that the level of supervision by private firms is not commensurate with the level of supervision provided by the state run probation offices.

Electronic Monitoring - The statutory language describing the electronic monitoring program was intended to provide for 24-hr. per day monitoring of the equipment worn by the offender. Computers are used which provide printouts that indicate when the offender is further than 150 feet from the central device at all hours of the day; however, these computers are not manned 24-hours per day. Therefore, officers are not cognizant of the offender's possible violation until normal working hours.

The current language also requires that non-compliance reports be investigated by an officer. With the current reporting system, officers may not be notified of a non-compliance report for several hours.

Each violation is presented before the court for action and the judge must be convinced that a violation has in fact occurred. Currently, violation indications may be due to inconsistencies with the electronic devices, therefore, additional verification is required.

The Fort Lauderdale police department, in conjunction with the Probation and Parole Services Office of the Department of Corrections, is conducting a pilot project in which the computer terminals that monitor the electronic units are placed in the police headquarters. On duty police officers are made available to check on non-compliance reports.

The department is conducting a pilot project in Jacksonville in which the non-compliance reports are immediately verified by a telephone call to the offender. The success of this project is dependent upon the court's reliance on this type of verification.

Training Requirements of Institutional Correctional Probation Officers - Institutional correctional probation officers are not subject to the training requirements set by the Criminal Justice Standards and Training Commission (CJSTC) as are "field" probation officers.

A current ruling by the Public Employees Relations Commission allows "field" probation officers to be represented by the Florida Police Benevolent Association (PBA); while the same class of employees in an institution will be represented by the American Federation of State, County, and Municipal Employees (AFSCME).

Records and Confidential Information - Correctional Probation Officers do not have clear statutory authority to secure and review HRS dependency records. Section 39.12(4), Florida Statutes, gives the department clear authority to inspect records pertaining to the child; however, a legal opinion prepared by the Department of Health and Rehabilitative Services asserts that the department does not have authority to obtain child abuse records. These records are vital in conducting Presentence Investigations.

Baker Act Modification - Probation/Parole Officers and Community Control Officers cannot take into custody individuals under their supervision for involuntary mental health examination. Law Enforcement Officers are currently authorized to perform this function.

Special Correctional Districts

The state of Florida is currently facing prison overcrowding that is reaching critical levels. Because of the ever-increasing drug traffic in the state, the increase in drug arrests and convictions has had an enormous impact on prison admissions and populations. According to figures released by the Executive Office of the Governor in 1988, yearly prison admissions for drug offenses increased from 816 in fiscal year 1979-1980 to 8,506 during 1987-1988, resulting in a 942% increase in drug offense admissions alone. The Criminal Justice Estimating Conference projects that the 1988-89 fiscal year will see approximately 48,912 prison admissions.

To make room for this exploding population, emergency measures such as provisional credits are employed when the correctional system reaches 97.5% of lawful capacity, leading to early release that in some instances cuts an inmate's actual time of incarceration by 50% or more. According to the Criminal Justice Estimating Conference, the average percentage of sentence an inmate in the Florida correctional system serves is just a little over 35%. As of February 1, 1989, Florida had 35,422 prison beds. Total admissions for the 1987-1988 fiscal year were 30,644. This means that for each inmate admitted into the state system, approximately one inmate is released to make room for the new admittee. Lack of bed space to house felons being sentenced in this State in unprecedented numbers has resulted in an undermining of Florida's corrections policy to the extent that punishment and rehabilitation appear to be incidental to other considerations.

Court-ordered Payments

Although the Department of Corrections does not have specific authorization to collect court-ordered payments, the Office of Probation and Parole Services has increasingly assumed this responsibility. During FY 87-88, they collected \$12 million in restitution and over \$6 million in fines and other court costs.

The processing of these payments is currently executed in 115 individual probation and parole offices by personnel ranging from clerical staff to supervising officers. At this time there are only three fiscal personnel statewide. The processing is completely manual from receipt writing to bookkeeping.

Currently, the Clerks of the Court are the only entity with statutory authorization to collect court-ordered payments. The Clerks of the Court may collect a processing fee of \$2 per payment.

B. EFFECT OF PROPOSED CHANGES:

Control Release

CS/HB 1528 creates the Control Release Authority which is to be composed of the members of the Florida Parole Commission, extending the repeal of the Parole Commission to July 1, 1991.

The Authority is required to develop criteria for determination of the number and type of inmates who shall be released from prison to keep the population below 97% of lawful capacity. The inmates will be released under conditional supervision.

The Authority will review approximately 900 inmates each week. A panel of no fewer than two commissioners shall establish the control release date considering the current offense, prior criminal activity, length of sentence and the age of the offender at the time of commitment.

No provisional credits will be awarded unless the chairman of the Authority certifies that they are unable to maintain the population below 97% or if the system reaches 97.5% of capacity.

The Authority will establish a control release date for each inmate that is committed to the Department of Corrections within 90 days of notification. This date may be extended or advanced.

The Authority is required to determine appropriate length and conditions of supervision for each inmate placed on control release. Offenders who violate such conditions shall be subject to s. 947.141, F.S.; violations of conditional release.

All inmates may be considered for control release except capital felons, sex offenders, and offenders serving the mandatory portion of a minimum mandatory sentence.

Expands the Crime Prevention and Law Enforcement Study Commission to study conditions and terms of release supervision for inmates and which entity should maintain the inmate population at a lawful level.

Private Correctional Facilities

Requires the Department of Corrections to solicit proposals from private vendors to construct or construct and operate a single-cell prototype institution or state correctional facility.

It also provides bid requirements for private vendors, requirements for performance, and contract requirements.

Prison Industries

Mandates a logical sequence of vocational training, employment by PRIDE and then post-release job placement. PRIDE has made

significant investments in providing job placement services during the last few years. This sequence needs to be strengthened through the joint efforts of the DOC and PRIDE.

Prioritizes the assignment of inmates to correctional and public work programs. Inmates would first be assigned to meet the needs of the DOC and PRIDE. Other available workers would then be assigned to meet the requirements of other state agencies and local governments on the basis of guidelines developed by the Department. This would clarify that the inmates needed to run the PRIDE programs and work programs of the DOC would receive first priority from the pool of available inmates.

Prioritizes the mission of the correctional work programs. Reports indicate that PRIDE places inordinate emphasis on profit over job training or the reduction of inmate idleness, even though PRIDE is quasi-governmental, quasi-private. By prioritizing the missions, PRIDE's and the state's priorities are similar.

Provides for industries to be made available to inmates of all custody levels. To ensure that all inmates, especially those with long sentences and/or are in close custody, have an opportunity to work for the corporation and reduce idleness.

Consideration of the needs of PRIDE when assigning and transferring prisoners to correctional institutions. Criteria are listed that would aid in the decision-making process of the Department of Corrections. Inmate availability has been kept small because of "man-made" problems which are beyond the control of PRIDE's management. Inmate labor is assigned to the DOT, DNR, county and city governments, vocational training and PRIDE. This restricts the availability of inmate workers for PRIDE.

Adds information to be supplied in the annual report to the Governor and the Legislature.

Transition Assistance Program

Mandates consultation between the correctional education managers and the transition assistance coordinators to assure that the inmate is situated in the optimum vocational setting according to his educational needs.

Mandates that a photo identification card be provided to all program participants to aid in securing employment once released from prison.

Requires that "not less than 40 hours of pre-release instruction" be given to participants in the Transition Assistance Program to guarantee that the inmate is adequately prepared to return to society in the most productive manner possible.

Correctional Education School Authority

Provides CESA and the Board of Correctional Education the authority to control their staffing and pay plans by exempting officers and employees from career service.

Defines CESA as a "public employer" for purposes of employee relations.

Parole Commission

Witness Subpoenas - These changes allow the Parole Commission to decline a request to subpoena a witness where it is found that such witness' testimony will be cumulative, irrelevant, or non-probative.

Probation and Parole Services

Private Officers Providing Felony Supervision -

This language requires that all felony offenders placed on probation shall be subject to the minimum standards and training requirements of officers employed by the Department of Correction.

Electronic Monitoring - This portion of the bill strengthens the language with regards to monitoring offenders subject to electronic monitoring. These changes clarify the legislative intent that non-compliance be immediately recognized and investigated.

This bill also allows the department to contract with local law enforcement agencies to aid in the location and apprehension of non-compliance reports as discovered by electronic monitoring systems. Probation supervisors are authorized to request that county or municipal law enforcement officers arrest probationers without a warrant whenever there is grounds to believe that the offender has violated the terms and conditions of supervision.

Training Requirement of Institutional Correctional Probation Officers -

This language requires Institutional Correctional Probation Officers to adhere to the same training requirements as field officers. This provision also provides for equal pay and benefits for both institutional and field probation officers.

Records and Confidential Information - This section provides Correctional Probation Officers clear authority to access confidential HRS dependency records.

Baker Act Modification - This language includes Probation/Parole and Community Control Officers under the definition of "Law Enforcement Officer" in the Baker Act. This allows these officers to take into custody, any individual under their supervision for involuntary mental health examination.

*Note- The Baker Act provides criteria delineating when a person may be taken in for involuntary examination upon finding reasonable cause to believe that he is mentally ill.

Special Correctional Districts

Creates a Special Correctional District Task Force with a 12 member panel to determine, among other things, funding for special districts, composition and administration of districts, eligible inmate population to be housed in district facilities, and possible rehabilitation programs that should be made available in district facilities.

Court-ordered Payments

This bill gives the Department of Corrections specific authority to collect and dispense court-ordered payments from offenders in its custody.

It also allows the department to collect a 4% service charge and creates a Court-Ordered Payment Trust Fund into which the service charges will be deposited to compensate for the department's administrative services.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

Court-ordered Payments

	<u>89-90</u>	<u>90-91</u>
Department of Corrections		
Data Processing	\$139,142	-0-

2. Recurring or Annualized Continuation Effects:

Control Release

	<u>89-90</u>	<u>90-91</u>
Parole Commission		
Salaries and Benefits (73 FTE)		\$1,475,963
Expenses		\$ 184,627
OCO		\$ 131,292

Transition Assistance Program

	<u>89-90</u>	<u>90-91</u>
Department of Corrections		
Salaries and Benefits (25 FTE)	\$475,992	\$ 475,992
Expenses	\$ 59,845	\$ 59,845
OCO	\$ 38,940	\$ 38,940

Correctional Education School Authority

Department of Corrections		
Salaries and Benefits (5 FTE)	\$ 93,981	\$ 125,309
Expenses	\$ 6,190	\$ 8,256
OCO	\$ 9,585	\$ 9,585

Court-ordered Payments

Department of Corrections		
Ass't. Sec. Regional Admin.		
Salaries and Benefits (5 FTE)	\$ 93,994	\$ 125,325
Expenses	\$ 6,082	\$ 8,110
OCO	\$ 6,795	\$ 6,795

Management Information Systems		
Salaries and Benefits (5 FTE)	\$102,441	\$ 106,587
Expenses	\$ 12,563	\$ 12,752
OCO	\$ 9,585	\$ 9,585

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

General Revenue	\$1,055,135	\$2,778,963
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B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None.

D. FISCAL COMMENTS:

Transition Assistance Program

When the Transition Assistance Program was originally funded it was intended that 120 hours of prerelease orientation should be provided. Therefore funding for prerelease orientation does not need to be funded in this bill. The 25 FTE will provide the coordinators necessary to manage the program at additional institutions.

Probation and Parole Services

24-hour electronic monitoring - The provisions of the section allow for the department to contract with local law enforcement to enhance 24-hour monitoring, however, it does not require any contracts.

Special Correctional Districts

Each member of the task force is required to be reimbursed from the agency by which he is employed.

Court-ordered Payments

SB 1500 provides \$124,589 and 5 FTE to write the software for the Court Ordered Payments System. SB 1500 also provides an additional \$2,000,000 to complete the office automation program for probation and parole services. The equipment will also be able to access the Court Ordered Payments System when the software has been written.

The accounting positions in this fiscal note will allow the department to assign a position in each region to begin to implement the administration of this program. When the program is established these and other support personnel could be funded through the Court Ordered Payments Trust Fund.

III. LONG RANGE CONSEQUENCES:

The provisions of this act comply with the State Comprehensive Plan as listed in s. 187.201(7), F.S., in its attempts to expand alternative corrections programs, encourage victim restitution, and make the corrections system as financially cost-effective as possible through prison industries and through contracted agreements with public and private vendors among their goals.

IV. COMMENTS:

This legislation is consistent with the priorities established at the Issues Conference. Part IV, B stresses the need to explore regional correctional facilities, community confinement techniques and privatization, among the other issues.

V. AMENDMENTS:

None.

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Corrections Staff

Staff Director:

Lucretia Shaw Collins

RULES AND CALENDAR:

Prepared by:

Karen Peterson
Karen Peterson

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APPROPRIATIONS:

Prepared by:

Staff Director:

STORAGE NAME: hb11B-f.cpp
DATE: June 19, 1989

HOUSE OF REPRESENTATIVES
Corrections, Probation & Parole
STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 11-B

RELATING TO: Correctional System

SPONSOR(S): Representative Jamerson

EFFECTIVE DATE: October 1, 1989, unless otherwise specified

COMPANION BILL(S): SB 12-B by Plummer

OTHER COMMITTEES OF REFERENCE: (1) Rules & Calendar
(2)

I. SUMMARY:

A. PRESENT SITUATION:

Correctional Medical Authority (CMA)

The Correctional Medical Authority of the Department of Corrections was created by the 1986 Legislature for the purpose of assisting in the delivery of health care services to inmates of the Department, and to advise the Department on the professional conduct of primary, convalescent, dental, and mental health care and the management of costs consistent with quality care. The need for this authority arose as a result of Costello vs. Dugger, a lawsuit concerning the health care of state prisoners. In its advisory, monitoring and oversight capacity, the CMA acts as advisor to the Governor, the Legislature and the Secretary of the Department of Corrections.

The governing board of the CMA currently has five (5) members who are appointed by the Governor, subject to confirmation by the Senate.

Up to two members of the CMA may be past or present employees of the Department of Corrections or have otherwise been involved in the administration of prison facilities for two years prior to the appointment, and at least two members shall have had at least five (5) years of experience in hospital administration in the public or private sector. [s. 945.602(2), F.S.] Currently, the law does not mandate a physician to be on the Board.

Section 945.603(15), Florida Statutes, requires that, no later than eighteen (18) months after creation of the CMA, it provide to the Governor its recommendation as to whether the Department of Corrections or an outside health care provider should provide basic medical services at each individual institution.

In 1987, the Legislature amended s. 768.40, F.S., to specifically bring the quality assurance programs developed by DOC and CMA within the protection of the statute. In accordance with the Costello v. Dugger litigation, DOC and CMA have contracted with Interqual, Inc., for the implementation of a comprehensive quality assurance and peer review program for DOC. In December 1988, a lawsuit was filed arguing that s. 768.40, F.S., does not implicitly provide an exemption from Chapter 119. The Judge ruled that s. 768.40, F.S., did protect the documents from disclosure under Chapter 119, "as to rule otherwise would render the protection afforded by s. 768.40, F.S., meaningless."

Interstate Agreement on Detainers

The interstate compact on detainers is an agreement between states whereby inmates, probationers and parolees are exchanged and/or transferred to and from other states. Forms and documents used in this procedure are uniform in all states except Florida.

Comprehensive Correctional Master Plan

Pursuant to s. 944.023, F.S., the Department of Corrections and Parole Commission are required to develop correctional improvement plans which are to be updated and submitted to the Legislature on an annual basis. The Department uses forecasts provided by the Criminal Justice Estimating Conference (CJEC) relating to prison population and other information to plan their budgetary needs. Under current law, the Legislature must accept the CJEC estimates as accurate, but is not obligated to fund any budget based on the estimates.

Section 944.096, F.S., establishes an inmate-to-population ratio, and further provides that all fixed capital outlay appropriations to the department for additional bedspace should be allocated to maintain bedspace consistent with the ratios established by that section.

Because the population of the prison system is a direct function of capacity and not admissions, the incarceration rate per 100,000 has remained relatively stable (264 in 1983 compared to 288 presently). Even though the incarceration rate is constrained by capacity limits, the incarceration rate has not declined in accordance with the mandated incarceration rate limits set forth in s. 944.096, F.S. If there were no capacity limits, and admissions continued at the current rate, the rate of incarceration is estimated by the CJEC to be approximately 698 per 100,000 population by FY 1992-93.

Since 1973, the Department of Corrections has developed several major master plans for the correctional system. These include: (1) A Five Year Plan for An Adult Corrections System in Florida (1976-1980), January 1975; (2) A Proposed Master Plan for Adult

Corrections in Florida, July 1974; and (3) The Final Report of the Adult Corrections Reform Plan, March 1973.

Conflict Between Post Release Supervision Programs

During the 1988 Legislative Session two new post release supervision programs were created. The Provisional Release Supervision Program provides short term supervision for offenders who are released early from prison due to overcrowding. The Conditional Release Program provides long term supervision for violent offenders.

Currently, an inmate who is eligible for conditional release supervision who is also eligible for provisional release supervision will receive the provisional release supervision.

Forfeiture of Gain Time

Currently, offenders with a split sentence who have served their time in prison and are charged with violating their probation or community control may not be required to forfeit the gain-time awarded during their time in prison. In Green v. State, 14 FLW 74 (Fla. 1st DCA, January 6, 1989), the court held that in addition to credit for time served while incarcerated, a defendant is also entitled to all gain time credit earned while incarcerated.

Parole Commission Sunset

In 1983, during a legislative restructuring of the correctional system in Florida, the Florida Parole and Probation Commission was set for repeal in 1987. This date was later changed to July 1, 1989. This act included a provision for legislative committee review prior to repeal; reviews have been completed by the Senate and the House of Representatives.

During the 1988 Legislative session, an attempt was made to set the date for repeal of the Parole Commission to July 1, 1990. However, the extension was not applied to chapter 20 of the Florida Statutes, leaving its repeal at July 1, 1989.

During the last legislative session, the conditional release program was enacted which requires the Parole Commission to review certain inmates to establish conditions they must follow during supervision upon release from state prison.

The Parole Commission continues to service the dwindling parole eligible population, as well as handling revocations of current parolees and investigations for the Executive Clemency Board.

Legislation was passed during the 1989 Legislative Session which expands the role of the Parole Commission when a Control Release Authority is created on September 1, 1990.

B. EFFECT OF PROPOSED CHANGES:

Correctional Medical Authority

This bill increases from five to nine the number of members of the governing board of the State of Florida Correctional Medical Authority (CMA) of the Department of Corrections.

The bill repeals a requirement that no more than two members of the governing board be past or present employees of the Department of Corrections or have been involved in the administration of prison facilities for the preceding two years. Repeals a requirement that at least two members of the board must have at least 5 years of experience in hospital administration.

The bill also repeals an obsolete reporting requirement, and requires the CMA to report to the Governor its recommendation of whether it is practical for a nonprofit corporation to be organized to lease and manage the medical services for inmates of the Department of Corrections.

This bill clarifies that quality assurance documents created by the DOC or the CMA are protected from public records disclosures, and avoids protracted litigation and the inevitable chilling effect on the integrity of the quality assurance program.

Interstate Agreements on Detainers

Conforms the language regarding interstate detainers to that of other states.

Comprehensive Correctional Master Plan

A more detailed and comprehensive Correctional Master Plan is to be submitted to the Legislature and the Governor by November 1, 1989.

The Master Plan calls for:

A plan for decentralization of reception and classification facilities, for comprehensive vocational and educational training, and for the use of local jail facilities as short term confinement resources.

A detailed analysis of current incarceration rates, and the establishment of a minimum ratio of inmates to the general population which will serve to project construction needs.

A projection of the total operating and capital outlay costs needed to construct enough prison beds to avoid the award of additional provisional release credits.

Conflict Between Supervision Programs

This bill eliminates a conflict that exists between the conditional release program and the provisional release program, requiring that inmates eligible for both conditional release and provisional release will be assigned to conditional release.

Forfeiture of Gain Time

This bill also provides that any offender who violates probation or community control while serving the second half of a split sentence may forfeit all gain-time earned while in prison.

Parole Commission Sunset

This bill extends the repeal of the sunset on the Florida Parole Commission to October 1, 1991.

C. SECTION-BY-SECTION ANALYSIS:

- Section 1. Exempts specific records of a medical review committee from public disclosure pursuant to Chapter 119, Florida Statutes.
- Section 2. Requires the Criminal Justice Estimating Conference to forecast prison admissions by specific categories.
- Section 3. Conforms the language regarding interstate agreement on detainers to that of other states.
- Section 4. Specifies provisions of the comprehensive correctional master plan.
- Section 5. Eliminates a conflict between the provisional release and conditional release supervision programs.
- Section 6. Provides for the forfeiture of gain time when conditional supervision is revoked.
- Section 7. Eliminates a conflict between the provisional release and conditional release supervision programs.
- Section 8. Increases the membership of the Correctional Medical Authority from five to nine. Repeals certain provisions regarding previous experience.
- Section 9. Provides for staggered terms of the new members of the Correctional Medical Authority.

- Section 10.** Requires the Correctional Medical Authority to file a report regarding the feasibility of organizing a nonprofit corporation to lease and manage correctional medical services for the Department of Corrections.
- Section 11.** Provides a definition for "Provisional release date."
- Section 12.** Eliminates a conflict between the provisional release and conditional release supervision programs.
- Section 13.** Provides for the forfeiture of gain time when the conditional supervision portion of a sentence is revoked.
- Sections 14-17.** Expands the repeal of the Florida Parole Commission to October 1, 1991.
- Section 18.** Provides that any law amended in this bill that was also amended during the regular session shall be construed as if enacted during the same session.
- Section 19.** Provides that this bill will apply to offenses committed on or after October 1, 1989.
- Section 20.** Provides for an effective date of October 1, 1989 except when otherwise specified.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects

Correctional Medical Authority	<u>89-90</u>
Expenses (Travel and per diem for 4 new members)	\$21,000

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None.

D. FISCAL COMMENTS:

The expansion of the Correctional Medical Authority will result in a \$21,000 impact due to travel and per diem costs. The Authority has indicated that it is able to absorb these costs within their current budget.

III. LONG RANGE CONSEQUENCES:

This legislation is consistent with the priorities established at the Issues Conference. Part IV (A) stresses the need for a Comprehensive correctional master plan that will project the needs of the state correctional system for the next five years.

The provisions of this act comply with the State Comprehensive Plan as listed in s. 187.201(7), F.S., in its attempt to maintain safe and secure prisons via the Comprehensive Correctional Master Plan modifying the Correctional Medical Authority and other minor provisions that compliment the Plan and lead to overall public safety.

IV. COMMENTS:

None.

V. FINAL ACTION:

HB 11-B was laid on the table under rules and identical provisions were included in SB 12-B.

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Corrections Staff

Staff Director:



Lucretia Shaw Collins

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director: