

1989

Session Law 89-531

Florida Senate & House of Representatives

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S 12-B GENERAL BILL by Plummer (Identical H 11-B, Similar CS/CS/2ND ENG/H 300, Compare CS/H 391, CS/H 586, CS/CS/H 820, CS/H 1288, H 1290, CS/H 1528, 1ST ENG/H 9-A, S 307, CS/1ST ENG/S 335, S 337, S 728, S 814, S 940, S 1219, CS/S 1266, CS/S 1280) Correctional System; exempts from public inspection records of medical review committee created by Corrections Dept. or Correctional Medical Auth.; revises duties of Criminal Justice Estimating Conference re forecasts of prison admissions; requires dept. to develop comprehensive correctional master plan; provides additional requirements for inmates released under conditional release program; provides for act to be read in pari materia with certain prior acts, etc. Amends F.S. Effective Date: 10/01/89 except as otherwise provided.

06/20/89 SENATE Filed; Introduction allowed; Introduced, referred to Corrections, Probation and Parole; Immediately withdrawn from Corrections, Probation and Parole; Passed; YEAS 35 NAYS 0 -SJ 9

06/20/89 HOUSE In Messages; Introduction allowed -HJ 18; Received, placed on Calendar; Substituted for HB 11-B; Read second time; Read third time; Passed; YEAS 111 NAYS 2 -HJ 18

06/20/89 Ordered enrolled -SJ 16

06/21/89 Signed by Officers and presented to Governor

06/28/89 Approved by Governor; Chapter No. 89-531; See also: HB 9-A (Ch. 89-526) & CS/CS/HB 300 (Vetoed by Governor)

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: 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:
