

STORAGE NAME: h1559a.cpcs.doc

DATE: February 21, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 1559

RELATING TO: Corrections

SPONSOR(S): Representative(s) Kravitz

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 6 NAYS 0
 - (2) COUNCIL FOR HEALTHY COMMUNITIES
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Recently the First District Court of Appeal held that an alien being civilly detained at a county jail did not qualify as a "prisoner" under Chapter 944, F.S., and therefore could not be charged with the crime of escape.

HB 1559 redefines the term "prisoner" as used in the Florida Corrections Code (Chapter 944, F.S.). The bill classifies a person as a prisoner if he or she has been committed to any municipal or county jail, state prison, prison farm or penitentiary, or to the custody of the Department of Corrections, pursuant to lawful authority. The current law does not classify a person as a prisoner unless he or she has been convicted and sentenced by a court and committed as provided by law, or arrested and in the lawful custody of any law enforcement official.

The bill has no fiscal impact.

The bill has an effective date of July 1, 2002.

Note: On February 21, 2002, the Committee on Crime Prevention, Corrections & Safety adopted one amendment. The amendment, which is traveling with the bill, clarifies that persons who are under arrest, *whether civil or criminal*, and who are in the lawful custody of a law enforcement officer, are considered prisoners. The amendment also clarifies that persons who are committed to, *or detained in*, correctional facilities, pursuant to lawful authority, are considered prisoners.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

HB 1559 broadens the current definition of "prisoner," thereby allowing more persons to fall under the "prisoner" definition and consequently be considered and treated as prisoners.

B. PRESENT SITUATION:

Section 944.02(6), F.S., defines the term "prisoner" for purposes of the Corrections Code (Chapter 944, F.S.). A prisoner is a person who is either

- 1) under arrest and in the lawful custody of a law enforcement official; or
- 2) convicted and sentenced by any court and committed to any municipal or county jail or state prison, prison farm, or penitentiary, as provided by law; or
- 3) convicted and sentenced by any court and committed to the custody of the Department of Corrections as provided by law.

Section 944.40, F.S., provides that it is a second-degree felony for a prisoner to escape from confinement in a prison, jail, private correctional facility, road camp, or other penal institution operated by or under contract with the state, a county, or a municipality. The statute also criminalizes a prisoner's escape while working upon public roads or being transported to or from a place of confinement.

In Villegas-Alen v. State, 797 So.2d 1 (Fla. 1st DCA 2000), the First District Court of Appeal overturned the conviction of an alien who had escaped from civil detention in the Bay County Jail Annex pending deportation by the Immigration and Naturalization Service. The court found that Villegas-Alen's commitment to the jail was not the result of conviction and sentence by a court, and that he was not under arrest at the time of the escape. The court concluded that he was not a prisoner as defined in s. 944.02, F.S., and therefore he could not be convicted of escape pursuant to s. 944.40, F.S.

C. EFFECT OF PROPOSED CHANGES:

The bill would amend the definition of prisoner by removing the requirement that a person be convicted and sentenced by a court. As a result, the definition of prisoner would apply to a person who is under arrest and in the lawful custody of any law enforcement official, or who has been committed, pursuant to lawful authority, to any municipal or county jail, state prison, prison farm, or penitentiary, regardless of whether the commitment resulted from conviction and sentence by a court.

It is anticipated that the bill would address the type of situation presented in the Villegas-Alen case so that persons committed to correctional facilities pursuant to civil or administrative authority would be subject to prosecution for escape.

The bill would not affect persons who are committed for treatment pursuant to the Baker Act (ss. 394.451-.4789, F.S.). Such persons would not fit within the broadened definition of prisoner because they are not committed to a municipal or county jail, state prison, prison farm, or penitentiary. Mentally ill persons who are civilly committed (either voluntarily or involuntarily) under the Baker Act are sent to a receiving or treatment facility, which are either local or state hospitals. Therefore, a person who escapes from involuntary placement under the Baker Act would not be subject to prosecution for escape unless there is an independent basis for the charge.

It is not anticipated that the expanded definition of prisoner could be construed to include sexually violent predators who are civilly committed to the custody of the Department of Children and Family Services pursuant to ss. 394.910-.931, F.S. These persons are not committed to a municipal or county jail, state prison, prison farm, or penitentiary, nor is the Department of Children and Family Services considered a law enforcement agency. As a practical matter, civilly committed sexually violent predators are already subject to prosecution for escape under the provisions of s. 394.927, F.S.

D. SECTION-BY-SECTION ANALYSIS:

Please see Section C, "Effect of Proposed Changes."

III. 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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

It is unclear whether the broadened definition of prisoner would include persons who are detained in correctional facilities (as was the defendant in Villegas-Alen v. State), rather than committed to a correctional facility.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 21, 2002, the Committee on Crime Prevention, Corrections & Safety adopted one amendment. The amendment, which is traveling with the bill, clarifies that persons who are under arrest, *whether civil or criminal*, and who are in the lawful custody of a law enforcement officer, are considered prisoners. The amendment also clarifies that persons who are committed to, *or detained in*, correctional facilities, pursuant to lawful authority, are considered prisoners.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

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