

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1596

SPONSOR: Senators Smith and Lynn

SUBJECT: Frivolous Actions/Filed by Prisoner

DATE: April 19, 2004                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill amends s. 944.279, F.S., which subjects an inmate to Department of Corrections disciplinary proceedings if a court finds that the inmate filed an action or appeal in bad faith or knowingly presented false information or evidence to the court. The bill removes the exception that prevents application of the sanction to a collateral criminal proceeding filed by an inmate.

This bill substantially amends s. 944.279 of the Florida Statutes:

**II. Present Situation:**

***Statutory Authority***

Section 944.279, F.S., was enacted in 1996 as part of an act aimed at reducing unnecessary or frivolous prisoner filings. The section provides that a prisoner is subject to disciplinary procedures if a Florida state court or a federal court determines that a prisoner has either:

- Filed a frivolous or malicious suit, action, claim, proceeding, or appeal; or,
- Knowingly, or with reckless disregard for the truth, brought false information or evidence before the court.<sup>1</sup>

A prisoner is defined as a person who is convicted of a crime and incarcerated for that crime, or held in custody pending extradition or sentencing.<sup>2</sup>

An exception is provided for criminal proceedings and collateral criminal proceedings.<sup>3</sup>

<sup>1</sup> s. 944.279 (1), F.S.

<sup>2</sup> s. 944.279 (3), F.S.

<sup>3</sup> s. 944.279 (2), F.S.

Upon making a written finding, the court is required to direct a certified copy to the Department, for the Department to take disciplinary action pursuant to its administrative rules.<sup>4</sup>

Section 944.28(2)(a), F.S., provides separate authority for the Department to forfeit all or part of any gain time earned by an inmate if he or she is found by a court to have brought a frivolous suit, action, claim, proceeding, or appeal in any court. The Department may also forfeit all gain time of an inmate who is found by a court to have brought false information or evidence before the court either knowingly or with reckless disregard for the truth. There is no exception for collateral criminal proceedings.

Certain due process procedures apply in cases of gain-time forfeiture, including requiring a copy of the filing of a written charge to be forwarded to the prisoner, that the prisoner be given notice of a hearing, and that the prisoner has the right to be present at the hearing.<sup>5</sup>

#### ***Florida Administrative Code***

Section 9-32 of Rule 33-601.314, F.A.C., tracks the statutory language and provides a maximum penalty of 60 days disciplinary confinement and loss of all gain time if a court makes the required finding of prisoner misconduct.

#### ***Case Law***

In *Hall v. State*, 752 So.2d 575 (Fla. 2000), the Florida Supreme Court noted that the term “collateral criminal proceeding” is not defined in the statute and that there is no definition of the term in *Black’s Law Dictionary*. However, the Court found that a postconviction motion filed pursuant to Rule 3.850, Florida Rules of Criminal Procedure, and any appeal of such a motion, are collateral criminal proceedings. In *Saucer v. State*, 779 So.2d 261, (Fla. 2001), the Court held that a writ of *habeas corpus*, although quasi-civil in nature, that challenges the prisoner’s criminal conviction or sentence is also considered to be a collateral criminal proceeding, based on the subject matter of the action.

In *Hall*, the Court held that sections 944.279 and 944.28, F.S. must be read together and cannot be read independently. In so doing, the court found that the exception for collateral criminal proceedings applies to both statutes. Therefore, gain time cannot be revoked if the underlying action was a collateral criminal proceeding.<sup>6</sup>

Additionally, the sanction recommended by the court is not binding on the Department.<sup>7</sup>

### **III. Effect of Proposed Changes:**

The bill will remove the current exception that prevents the Department of Corrections from taking disciplinary action, including revocation of gain time, against a prisoner who is found by a court to have brought a collateral criminal proceeding in bad faith or to have presented false information or evidence before the court in such a proceeding.

---

<sup>4</sup> s. 944.279 (1), F.S.

<sup>5</sup> s. 944.28 (2)(c), F.S.

<sup>6</sup> *Id at 579.*

<sup>7</sup> *Id at 577.*

This bill applies prospectively.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is no quantifiable impact, but there will be a reduction of use of judicial and prosecutorial resources if the extension of s. 944.279, F.S., to cover collateral criminal proceedings, deters frivolous filings by prisoners.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.