FILED
SID J. WHITE
MAR 15 1999
CLERK, SUPREME COURT
By______
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CLARENCE H. HALL, JR.,

Petitioner,

v.

CASE NO. 91,122
(Formerly 91,075)

STATE OF FLORIDA, et al.,

Respondents.
______________________/

ON DISCRETIONARY REVIEW FROM THE FIFTH
DISTRICT AND THE SEVENTH JUDICIAL
CIRCUIT OF FLORIDA

SUPPLEMENTAL BRIEF OF RESPONDENT

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

CARMEN F. CORRENTE
ASSISTANT ATTORNEY GENERAL
Florida Bar #304565
444 Seabreeze Boulevard
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENTS

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CERTIFICATE OF FONT SIZE

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SUMMARY OF ARGUMENT

SUPPLEMENTAL POINT 1: The *Saucer* case is directly applicable herein because it construes the same provision of law. It also applies the statute under review to criminal cases, which is one of the issues in this appeal. All of the other district courts have also expressed their approval of applying the statute to criminal cases. The decision also discusses the intent of the legislature in passing the statute and the amendment thereto.

SUPPLEMENTAL POINTS 2 AND 3: The intent of the legislature in passing the amendment was to broaden the possible punishment for filing frivolous lawsuits in civil cases. The amendment did not alter the provision applying in criminal cases. The stated intent and actual effect of passing this legislation is to empower the courts to better regulate congested court dockets. The most efficient manner to accomplish this intent is to apply the statutes to both civil and criminal court dockets.

ARGUMENT

SUPPLEMENTAL POINT I

> THE SAUCER OPINION IS DIRECTLY ON POINT AND CONSTRUES §944.28(2) AS APPLICABLE IN CRIMINAL CASES.

This Court has requested supplemental briefs on three issues. The first is the applicability of Saucer v. State, 24 Fla. L. Weekly D37 (Fla. 1st DCA December 17, 1998) to the facts of this case. In Saucer, the State asked the appellate court to order a forfeiture of gain time pursuant to §944.28(2) because Saucer knowingly brought false information or evidence before the court. This is the same statute which permits forfeiture of gain time for the filing of frivolous actions. Because it is uncontroverted that Appellant herein has filed a frivolous action, the opinion in Saucer is directly applicable.

In Saucer, the court was

> persuaded that the provisions of section 944.28(2) are applicable...

Saucer, 24 Fla. L. Weekly at D38. Just as in this case, Saucer is a "criminal proceeding." One issue to be resolved in this case (Point 3 in Respondent's brief on the merits) is whether a prisoner is subject to a forfeiture of gain time where he files a frivolous action (or brings false information or evidence before the court) in a criminal or collateral criminal proceeding.

As noted in Saucer and argued in Respondent's answer brief, an analysis of the respective penalties provided in §§944.279 and 944.28 reflect that mere disciplinary proceedings are mandated in the former while more severe "sanctions" are provided for in the

latter. This distinction is the planned result of an amendment which altered the original intent of the legislature.

Saucer is clearly applicable in this cause because it construes the same provision of law. The court in Saucer recognized that, "in the absence of limiting language in section 944.28, there appears to be no reason why the gain-time forfeiture cannot apply to criminal proceedings." Id. Moreover, in light of the requirement that any forfeiture be preceded by the equivalent of a charging document alleging each instance of misconduct and the date of the offenses, it is clear that the entire statute encompasses notice and due process requirements which comport with criminal actions.

Finally, every other district court has applied or has expressed approval of applying §944.28 in criminal proceedings. See Brown v. State, 702 So.2d 1370, 1371 (Fla. 1st DCA 1997)("The filing of successive pleadings that raise issues which have already been decided on the merits is an abuse of process and can result in the forfeiture of gain-time or other sanctions."); Mercade v. State, 698 So.2d 1313 (Fla. 2d DCA 1997); Gorge v. State, 712 So. 2d 440 (Fla. 3d DCA 1998) ("filing successive pleadings raising sentencing claims that were previously rejected on the merits may be the basis for the imposition of sanctions such as the forfeiture of gain time."); and Anderson v. State, 708 So.2d 1028 (Fla. 4th DCA 1998) ("[w]e write only to advise Anderson that if he continues to file frivolous motions and appeals seeking the same relief, he will forfeit his earned gain time.").

SUPPLEMENTAL POINTS 2 AND 3

THE LEGISLATIVE INTENT AND ACTUAL EFFECT OF CHAPTER 97-78, §14, LAWS OF FLORIDA WAS TO FURTHER DECRIMINALIZE VIOLATIONS OF § 944.279, FLORIDA STATUTES.

The Senate Staff Analysis and Economic Impact Statement for related Senate Bill 20 suggests that §944.279, Florida Statutes was amended to "allow the Department of Corrections to impose other disciplinary punishments, ***in addition to gain-time forfeiture***, against prisoners who file ***lawsuits*** deemed by the court to be frivolous..." (Exhibit A at 1, emphasis supplied). The amendment to §944.279 merely expands the possible range of penalties under the statute. The Staff Analysis refers to disciplinary proceedings ***and*** gain-time forfeiture as possible penalties for a violation of 944.279, which in turn applies only to civil litigation. Thus, the filing of a frivolous lawsuit in a civil matter is proscribed in both 944.279 and 944.28, Florida Statutes. But, as discussed below, due to the intentional absence of any limiting language in 944.28, that section may apply to both criminal and civil actions.

As a result of the amendment, filers of frivolous civil lawsuits are no longer solely subject to a forfeiture of their gain time as a penalty for their abuse of the judicial process. It is absolutely critical to note that the Legislature specifically excluded the phrase "[t]his section does not apply to a criminal proceeding or a collateral criminal proceeding" in Section 944.28; but the same phrase was specifically included in Section 944.279. Therefore, if the Legislature had intended for Section 944.28 to

apply only in civil cases and not criminal cases, the Legislature would have expressly said so as it did in Section 944.279. See Brown v. State, 672 So.2d 861, 863 (Fla. 3d DCA 1996)("It is a firmly established principle of statutory construction that the mention of one thing in a statute implies the exclusion of another or '*expressio unius est exclusio alterius.*'"); Thayer v. State, 335 So.2d 815, 817 (Fla. 1976) ("It is, of course, a general principle of statutory construction that the mention of one thing implies the exclusion of another; *expressio unius est exclusio alterius.*"). Therefore, this Court should adopt the holding in Saucer and find that the intent of the Legislature was that section 944.28 is applicable in civil and criminal proceedings.

The actual effect (of the original statutes, the amendment of §944.279, and the ***lack*** of an amendment to §944.28) is to empower the judiciary to better regulate congested court dockets. The preamble to Chapter 96-106, Laws of Florida, §§5-6 at 96-97 clearly indicates that the intent of the legislature in passing the original statutes was to limit frivolous inmate lawsuits which congest court dockets and "delay the administration of justice for ***all*** litigants...[and to curtail] the millions of dollars [spent] each year [by state and local governments] processing, serving, and defending frivolous lawsuits filed by self-represented indigent inmates." Saucer, 24 Fla. L. Weekly at D39 (emphasis supplied). This language applies equally to civil and criminal court dockets. There is no rational reason to differentiate between the two.

Given the clear intent of the statutes coupled with the

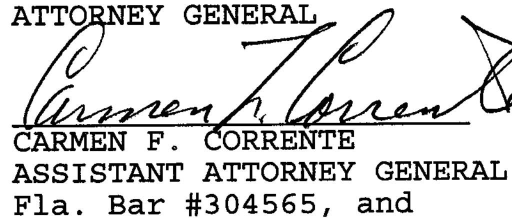
clarification of the amendment to 944.279, §944.28 must be applicable in ***all*** court cases if it is to be effective.

CONCLUSION

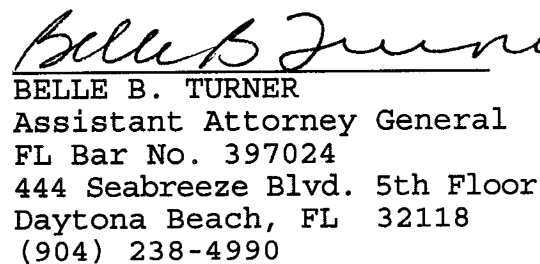
Based on the supplemental argument and authorities presented herein, Respondent requests this Honorable Court to affirm the District Court's order initiating the forfeiture of gain-time proceedings.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



CARMEN F. CORRENTE
ASSISTANT ATTORNEY GENERAL
Fla. Bar #304565, and

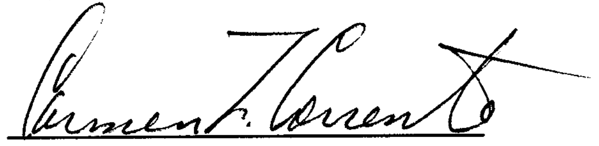


BELLE B. TURNER
Assistant Attorney General
FL Bar No. 397024
444 Seabreeze Blvd. 5th Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing supplemental brief of Respondent in case number 91,122 has been furnished by U.S. Mail to Bruce Rogow and Beverly A. Pohl, attorneys for Petitioner, Broward Financial Centre, Suite 1930, 500 East Broward Boulevard, Fort Lauderdale, FL 33394 this 12th day of March, 1999.



CARMEN F. CORRENTE
ASSISTANT ATTORNEY GENERAL

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 18, 1997 Revised: ________ ________ ________ ________

Subject: Corrections

	Analyst	Staff Director	Reference	Action
1.	Barrow	Miller	CJ	Favorable/CS
2.			CA	
3.			WM	
4.				
5.				

I. Summary:

CS for SB 20 contains several substantive and clarifying provisions relating to corrections that would: allow the Department of Corrections to impose other disciplinary punishments, in addition to gain-time forfeiture, against prisoners who file lawsuits deemed by the court to be frivolous; eliminate the requirement that use-of-force reports, in their entirety, be maintained in the file of a department employee who used force against an inmate or authorized the use of such force; change the condition of supervision relating to AIDS awareness from a standard condition to an optional condition based on where such programs are available; provide statutory authority for substance abuse testing of inmates based on reasonable suspicion; and require an offender to pay all court-ordered costs for all felonies prior to restoration of civil rights, among other provisions.

The CS also contains clarification concerning administrative hearings for specified inmates who qualify for special educational services and request a due process hearing.

The CS would clarify legislative intent concerning the application of credit for time served for offenders sentenced to a split sentence and probationers that have violated their supervision and had their probation revoked followed by a sentence to a new term of supervision.

This CS would substantially amend, create, or repeal the following sections of the Florida Statutes: 775.084, 921.0017, 940.05, 944.279, 944.35, 944.472, 944.473, 944.801, 948.01, 948.03, 948.032, 948.06, 947.04, and 947.1405.

II. Present Situation:

Lawsuits by Prisoners

Section 944.279, F.S. (Supp. 1996), provides that prisoners who file frivolous or malicious lawsuits in state or federal court or who knowingly provide false information to a court are subject to forfeiture of gain-time or the right to earn gain-time. The finding as to whether a claim is frivolous or malicious or whether false information has been provided may be made by the court at any time. A written copy of the court's finding must be forwarded to the appropriate institution or facility for disciplinary action.

Section 944.279, F.S. (Supp. 1996), does not specify what constitutes a frivolous or malicious lawsuit for purposes of gain-time forfeiture; however, §57.085, F.S. (Supp. 1996), addressing actions filed by prisoners who have been declared indigent and have been granted a waiver of costs, provides the following considerations for a court to use in making that finding. A claim is deemed frivolous or malicious if it:

- has no arguable basis in law or fact;
- reasonably appears intended solely to harass a party filed against;
- is substantially similar to a previous claim in that it involves the same parties or arises from the same operative facts as a previous claim;
- has little likelihood of success on its merits; or
- contains allegations of fact that are fanciful or not credible.

Section 944.28, F.S. (Supp. 1996), provides the specific circumstances under which a prisoner may lose all or part of gain-time that has been earned. Those circumstances include a finding by the court that a prisoner has brought a frivolous or malicious lawsuit or has knowingly provided false information to the court. The statute also sets forth procedures for declaring forfeiture of gain-time, which include notice to the prisoner, a hearing before a disciplinary committee authorized by rules promulgated by the Department of Corrections, and approval of the committee's findings by the superintendent of the institution and the department.

The Department of Corrections is authorized to promulgate rules relating to disciplinary procedures and punishment. §944.09(1)(c), F.S. (Supp. 1996). The current rules provide for notice to an inmate who is being investigated for a disciplinary infraction and an opportunity to be heard at a disciplinary hearing. Final disciplinary action is reviewed and approved by the superintendent, regional probation administrator or regional director. Rule 33-22.009, F.A.C. (1995).

Disciplinary procedures that can be imposed for violating rules of the department range from reprimands, loss of privileges (e.g., routine mail, visitation or telephone privileges) and extra work assignments to more serious sanctions, such as disciplinary confinement and loss of accrued gain-time. Rule 33-22.008, F.A.C. (1995).

Currently, the department's disciplinary procedures and punishment outlined in the departmental rules do not apply to the filing of frivolous or malicious lawsuits or knowingly providing false information to a court. The only penalty for such acts involves forfeiture of gain-time prescribed by statute.

Use of Force Reports

Section 944.35, F.S. (Supp. 1996), establishes procedures for reporting and investigating incidents of physical force used by department employees against inmates. Employees who apply physical force to an inmate or an offender under community supervision or persons who are responsible for making the decision to use force are required to prepare a written report of the incident within 5 days of the occurrence. The report is then forwarded to the superintendent or regional administrator, who investigates the incident and provides written approval or disapproval of the force used.

The employee's report, together with the superintendent's or regional administrator's written evaluation, is reviewed by the regional director, who must concur in the evaluation or disapprove it. Copies of the employee's full report, the superintendent's or regional administrator's evaluation, and the regional director's review must be kept in the file of the inmate or offender under supervision as well as in the employee's personnel file. Full copies of the reports are kept in the employee's file as well as the inmate's file regardless whether the incident/grievance was founded or not. By keeping copies of the full reports in the employee's file, rather than a list of reports in the employee's file for reference with the reports kept elsewhere for detail when needed, employee's files can attain sizes that are unwieldy.

Inmate Substance Abuse Testing

The Drug-Free Corrections Act of 1992 mandates that the department establish procedures to randomly select and test inmates for drug and alcohol use through urinalysis or other non-invasive procedure. §§944.472, .473, F.S. Departmental rules for the substance abuse testing program set forth procedures and enumerate penalties for positive test results, including forfeiture of gain-time. Rule 33-3.0065, F.A.C. (1996); Rule 33-22.012, F.A.C. (1995). The department is also required to report certain information about the random substance abuse testing program (e.g., the number of positive and negative test results obtained) in its annual report. §944.473(3), F.S.

The department randomly tests 10% of the Florida prison population every month. According to the department, since random drug testing began, the percentage of positive tests has declined every year, from 5.89% in fiscal year 1993-94, to 3.3% in fiscal year 1995-96. The most common drug detected is cannabis (88% of all positive results in fiscal year 1995-96).

By rule, the department may take blood, urine and saliva from inmates and test it to determine the presence of "alcohol, narcotics or dangerous drugs where there is clear indication that such evidence will be found." Rule 33-3.0065(3)(c)10., F.A.C. (1995). The department also bases its current policy of "for cause" substance abuse testing on departmental rules authorizing

disciplinary procedures for the unauthorized use of drugs or alcohol, as evidenced by positive test results or observable behavior. See Rule 33-22.012, F.A.C. (1995).

Currently, however, no statutory authority exists for the department to conduct substance abuse testing based on a "reasonable suspicion" standard. The department has developed guidelines relating to such testing, which have not been implemented. According to the guidelines, "for cause" testing would mean drug testing based on a belief that an inmate is using or has used unauthorized drugs or alcohol drawn from specific facts and reasonable inferences drawn from those facts in light of experience. Such facts and inferences would be based on observable phenomena and certain types of evidence that an inmate has used drugs. The guidelines also specify procedures for preparing incident reports and testing of specimens.

Gain-Time Awards in the Prison System

According to the Department of Corrections, gain-time, in one form or another, has been in existence since 1889. Gain-time is essentially an award of time to an inmate to be applied against the inmate's court-imposed sentence to have the effect of shortening the length of the inmate's sentence. The Legislature statutorily regulates the type and rate of gain-time that may be awarded to state inmates by the Department of Corrections. The types of gain-time that have been utilized in Florida's prison system are basic, incentive, meritorious, and educational.

Basic gain-time was created effective July 1, 1978. Prior to January 1, 1994, with the exception of the habitual offenders, basic gain-time was awarded to all inmates as "a means of encouraging satisfactory behavior" pursuant to §944.275(4)(a), F.S. Basic gain-time was awarded to inmates at a rate of 10 days for each month of each sentence imposed upon a prisoner if his crime was committed between July 1, 1978, and January 1, 1994. *See* §944.275(6)(a), F.S. Basic gain-time is non-discretionary and is awarded to all eligible inmates at a flat rate at the beginning of their service of sentence to almost immediately reduce their sentence to be served.

Prior to November 1, 1988, the only prohibition on any type of gain-time relating to habitual offenders was that habitual offenders were prohibited from receiving provisional credits. However, effective November 1, 1988, when the habitual offender statute was made more comprehensive by establishing two categories of offenders, habitual felony offenders and habitual violent felony offenders, basic gain-time was eliminated for such habitual offenders.

Effective January 1, 1994, basic gain-time was abolished prospectively for *all* crimes committed on or after that date.

Incentive gain-time is a more discretionary-type of gain-time because it is awarded to inmates based upon work evaluations, program participation, and inmate behavioral adjustment. Incentive gain-time awards are given to inmates on a monthly basis as they are earned by inmates. The amount of incentive gain-time that an inmate can earn on a monthly basis depends on the offense committed and the time period that the offense was committed. Incentive gain-time is the type of

gain-time that has been most frequently manipulated by the Legislature. Since its introduction, incentive gain-time has been awarded to inmates as follows:

Offense Date	Monthly Incentive Gain-Time Award
Prior to 07-01-78	Up to 20 days
07-01-78 through 06-14-83	One day gain-time for each day worked per month; Up to 6 days extra for educational efforts
06-15-83 through 12-31-93	Up to 20 days
01-01-94 through 09-30-95	Offenses in Guidelines Levels 1 thru 7, up to 25 days Offenses in Guidelines Levels 8 thru 10, up to 20 days
On or after 10-01-95	Up to 10 days; however, gain-time cannot be applied in an amount to cause an inmate's release prior to serving a minimum of 85% of the court-imposed sentence.

Other types of gain-time awarded in the prison system are essentially hybrids of incentive gain-time. Meritorious gain-time authorizes that an inmate may be awarded up to 60 days for an outstanding deed performed pursuant to §944.275(4)(c), F.S. Two types of educational gain-time are also authorized to be awarded. Under §944.275(4)(d), F.S., an inmate who receives a GED certificate or a certificate for completion of a vocational program is eligible to receive a one-time award of 60 days, unless otherwise prohibited by law. Under §944.275(4)(e), F.S., an inmate who satisfactorily completes the Mandatory Literacy Program, as determined by the correctional institution's education program manager, is eligible to receive a one-time award of 6 days.

Application of Credit for Time Served in Split Sentence Cases and When an Offender Violates a Term of Supervision

Section 948.01(11), F.S. (Supp. 1996), authorizes the court to impose a split sentence whereby the defendant is sentenced to a term of probation which may be followed by a period of incarceration or community control as follows:

(a) If the offender meets the terms and conditions of probation or community control, any term of incarceration may be modified by court order to eliminate the term of incarceration.

(b) If the offender does not meet the terms and conditions of probation or community control, the court must impose a term of incarceration equal to the remaining portion of the order of probation or community control. Such term of incarceration shall be served under applicable law or county ordinance governing the service of sentences in that jurisdiction. Additionally, the court may impose any other sanction provided by law.

Section 948.06(2), F.S., relating to violations of probation or community control and revocations, modifications, and continuances thereof, states that no part of the time that the defendant is on

probation or in community control shall be considered as any part of the time that he shall be sentenced to serve.

In the 1996 Florida Supreme Court decision of *Shoda v. State*, the Court held that upon revocation of probation and the imposition of a new community control sentence for a violation of probation, the trial court must give the violator credit for time previously served on probation towards the newly imposed community control sentence. 666 So. 2d 134 (Fla. 1996). *See also, Eanes v. State*, 662 So.2d 334 (Fla. 1995); *Roundtree v. State*, 637 So.2d 325 (Fla. 1st DCA 1994). Based on this decision, it is possible that the court would also try to carry this reasoning further to apply to incarceration as well.

To change this precedence set by the Court, the Legislature would need to clarify its intent that the court is not to apply credit for time served when there has been a violation of probation and a new term of supervision is being applied to the defendant. It would need to be clarified that the Legislature deems a violation of supervision to be an offense that is separate from the original offense and is subject to the same sentence of up to the statutory maximum for the original offense. Thus, it would be made clear to the courts that under statutory law it is never incumbent upon a trial court to always apply credit for time served on probation that was subsequently revoked when a new term of community supervision or incarceration is being imposed upon the defendant as a sentence for violating probation.

If the law is not clarified, a probationer, for example, who is serving a probation sentence that extends beyond 2 years and the offender violates a condition of probation after 2 years on probation, the court would not be able to revoke the probation and place the violator on a new term of community control as a punishment. The court would not be able to place the offender on community control because an offender may only be placed on community control for a maximum period of 2 years. Under the reasoning of the *Shoda* decision, a court would have to apply credit for time previously served the probation that the offender had just violated and is being sentenced on after a revocation, because the 2-year cap on the community control would have been met or exceeded under this scenario.

The CS would change the condition of probation that requires an AIDS awareness program from a standard condition of probation to an optional condition of supervision because such programs are not available in all counties and placement and confirmation takes an extraordinary amount of time for correctional probation officers. Therefore, in order to be imposed on a probationer, there must be such a program within the county where the probationer resides and the court must orally pronounce such a condition at sentencing.

The Membership of the Florida Parole Commission

In 1996, the Legislature amended 947.01, F.S. (Supp. 1996), to reduce the authorized number of members from seven members to three. *See also,* §947.022, F.S. (Supp. 1996). The Legislature reduced the number of commissioners as part of an effort to implement a 25% budget reduction for the Parole Commission. Expedited appointments were made with staggered terms pursuant to

§§947.021, 22, F.S. (Supp. 1996). A chairperson of the Parole Commission is selected by the Governor and Cabinet before July 1 of each even-numbered year as required by §947.04, F.S. (Supp. 1996). The chairperson is appointed for a period of 2 years; however, the chairperson is prohibited from succeeding himself or herself. This restriction on the selection of a chairperson has remained in statute, despite the significant reduction in the number of commissioners and possible chairpersons.

Conditional Release Supervision

To ensure that the most "serious" inmates had supervision upon release from prison, the 1988 Legislature enacted the Conditional Release Program. §947.1405, *Florida Statutes.* This program requires mandatory supervision for inmates who are sentenced for certain crimes of violence and had at least one previous incarceration or who were sentenced as a violent or habitual offender. Conditional release is not a discretionary program and is not an early release program. Rather, certain inmates are required by law to be supervised upon expiration of their prison sentence. Upon release from prison once inmates reach their tentative release date, such inmates continue to be supervised for the length of time that they earned gain-time in prison that allowed their sentence to expire prior to serving 100% of their court-imposed sentence. Thus, as implemented, offenders subject to conditional release supervision after serving their prison sentences are supervised for the length of time that is equal to the difference between the time they were released from prison and their court-imposed prison sentence.

These offenders are subject to specified terms and conditions of supervision as set by the Parole Commission. All offenders are subject to a set of standard conditions. In addition, certain types of sex offenders are statutorily required to be subject to an additional set of special conditions. The Parole Commission may also set other special conditions for any offender it deems appropriate and in accordance with law.

When the Evelyn Gort and All Fallen Officers Career Criminal Act was created in 1995, as an oversight, §947.1405, F.S., was not likewise amended to include "violent career criminals" in subsection (2)(b), to be consistent with the changes made to §775.084 in 1995 that included the creation of a sub-category of habitual offenders to be placed under subsection (1)(c). To be consistent with past changes made to §775.084, F.S., in 1995, §947.1405, F.S. (Supp. 1996), should be amended to include "violent career criminals" in the list under subsection (2)(b) for consistency.

III. Effect of Proposed Changes:

The Department of Corrections would be authorized to impose additional disciplinary punishments that would be provided by administrative rule on a prisoner who has been found by a court to have brought a frivolous or malicious lawsuit or who has knowingly provided false information to the court. This revision would allow the department to impose additional possible penalties such as disciplinary confinement and chain-gang work assignments, among other

possible punishments, in addition to the penalty of gain-time forfeiture authorized under current law.

The CS would delete the requirement that a copy of a report regarding an incident of use of force against an inmate be maintained in the file of the employee who used or authorized the use of such force. As a result, a copy of a use of force report and accompanying evaluations and reviews would be maintained only in the inmate's file. The employee's file would contain a list the "incidences" and case numbers of the reports, evaluations, and reviews written as a result of accusations of improper use-of-force against an employee. The result would be that employee's files would be of a more manageable size because currently the department must put all such paperwork in an employee's file regardless of the outcome of the investigation concerning accusations of improper use-of-force.

The original legislative intent underlying the Drug-Free Corrections Act of 1992 would be expanded to include the establishment of a substance abuse testing program based on reasonable suspicion. The department would be required to establish a reasonable suspicion drug and alcohol testing program and to adopt rules relating to its operations and procedures. The department would be required, as part of its annual report, to include certain information about the reasonable suspicion substance abuse tests (e.g., the number of positive and negative test results obtained).

The condition of probation and community control supervision relating to AIDS awareness would be changed from a standard or mandatory condition of supervision to an optional condition, based on where such programs are available in counties where applicable offenders reside. As a result courts will have to orally announce such a condition if it is to be imposed on an offender if such a program is available in the offender's county of residence.

The law relating to revocations of community supervision and credit for time served applied to resulting/subsequent sentences would be clarified. It would be clarified in §948.01(11)(b), F.S. (Supp. 1996) and §948.06(2), F.S., that if the court revokes an offender's probation or community control for a violation, the court can impose any sentence that it could have imposed at the time the offender was originally placed on community supervision. The court would be expressly prohibited from applying credit for time served for any portion of probation or community control term toward a subsequent term of probation or community control. The court would be limited in the subsequent term it imposes. The court would not be able to impose a subsequent term of community supervision that would exceed the maximum penalty allowable under §775.082, F.S., when it is combined with any amount of time served on preceding terms of probation or community control for offenses pending before the court for sentencing.

Section 921.0017, F.S., would be clarified to state that if an offender's probation or community control is revoked and the offender is serving a split sentence pursuant to §948.01, F.S., upon recommitment to the Department of Corrections, the court shall order credit for time served *in state prison or county jail* only without considering any type of gain-time earned before release to supervision or any other type of mechanism or credits that resulted in shortening the length of the offender's court-imposed, incarcerative sentence.

The CS would restrict an offender's ability to have his rights restored because having civil rights restored would be reliant upon the condition precedent that there be full payment of all the offender's court-ordered costs related to all felony convictions.

Despite the prohibition against inmates being a party to an administrative proceeding except for rulemaking hearings and petitions to initiate rulemaking pursuant to §120.81(3), F.S. (Supp. 1996), CS/SB 20 would entitle all inmates under the age of 22 years who qualify for special educational services and programs pursuant to the Individuals with Disabilities Education Act under 20 U.S.C. §§1400 *et seq.*, to a due process hearing before the Division of Administrative Hearings if such inmates request a hearing as provided in the federal act. However, it would not require administrative law judges to travel to state or privatized state correctional facilities in order to conduct these due process hearings. Thus, such hearings could be conducted telephonically rather than traveling to the site of the hearing.

The chairperson of the Parole Commission would be authorized to succeed himself or herself.

The CS would clarify which inmates are subject to conditional release supervision upon expiration of their sentences. A technical clarification would be made to include violent career criminals as subject to conditional release supervision.

Lastly, the CS would clarify that conditional release supervision would be required for inmates whose terms of sentences include a sentence that is conditional release eligible. Supervision would be required upon release even if the conditional release eligible sentence is not the longest sentence in the multiple sentences the inmate is serving in prison.

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:

Overall, the impact upon the private sector is indeterminate.

C. Government Sector Impact:

According to the Department of Corrections, there would be some cost attached to developing a reasonable suspicion substance abuse testing program; however, the cost is estimated to be minimal.

According to the Department of Corrections, this CS would have a limited fiscal impact if the department increases the overall disciplinary actions taken against inmates who file frivolous lawsuits; however, court costs could be reduced if frivolous lawsuits decrease.

Eliminating the requirement to maintain copies of use-of-force reports in employees' files would result in a cost savings to the department by reducing paper and file maintenance in the personnel section.

The increased chance of receiving payment of court-ordered payments of costs, such as costs of supervision, would have an indeterminately small positive impact upon the state.

There may be a slight negative fiscal impact upon the state if there is an increase in the number of administrative hearings for due process hearings as set out in the federal Individuals with Disabilities Education Act. Because this CS would entitle qualifying inmates to such hearings, there may be an increase in the number of such hearings. However, such hearings would be authorized to be conducted telephonically, which would minimalize the cost of any additional hearings because there would be no travel expenses associated with providing such hearings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.