

STORAGE NAME: h1859.grr

DATE: March 21, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES & REGULATIONS
ANALYSIS**

BILL #: HB 1859 (PCB COR 00-04B)

RELATING TO: Elderly Offenders

SPONSOR(S): Committee on Corrections and Representative Trovillion

TIED BILL(S):

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

- (1) CORRECTIONS YEAS 7 NAYS 1
 - (2) GOVERNMENTAL RULES & REGULATIONS
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

HB 1859 provides for the following:

- definition of elderly offenders;
- legislative findings and requires the Correctional Privatization Commission to issue a Request for Proposals for the establishment of an exclusively geriatric facility for elderly offenders at the current River Junction Correctional Institution site; and
- standards for rule making by the Department of Corrections (department) which reflect the intent of the Legislature and default standards if the rules are not considered to be adopted or in effect.

The bill would require an undetermined annual appropriation for the operation of the geriatric facility. Additionally, an indeterminate fiscal impact may result from the consolidation of elderly inmates in such a facility.

The act will take effect July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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 type="checkbox"/> | N/A <input checked="" 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:

Less Government

The Correctional Privatization Commission, a state entity housed under the Department of Management Services, is directed to oversee the operation of the geriatric inmate facility by the contractor selected through the request-for-proposals process.

The Department of Corrections is directed to adopt rules to specify which elderly offenders are eligible to be housed at the geriatric facility and to target occupancy at 100 percent, with no less than 85 percent occupancy. The department is also directed to submit a study projecting the number of existing offenders who will qualify for this facility.

B. PRESENT SITUATION:

Growth of Florida's Elder Offender Population

As of June 30, 1999, the number of elderly offenders¹ in Florida's correctional institutions and facilities was 5,082, or 7.4 percent of Florida's inmate population. This number represents an increase of 54.9 percent since 1995, when 3,281 elderly inmates were housed. The percentages of both elderly males and females in the inmate population have increased steadily. The department estimates that by June 2010, there will be 9,541 elderly inmates in prison.² It is generally reported that the cost of incarcerating a geriatric prisoner is three times that of maintaining a younger prisoner. A California study found that the cost of incarcerating younger inmates was about \$21,000 annually; for those inmates

¹The term "elderly inmate" is not easily defined. Because of the impact of lifestyle, poor medical care, and the background of most inmates, their physiological age may well surpass their chronological age. Most researchers recommend that correctional agencies adopt age 50 as the chronological starting point for defining older inmates. *Administrative Overview of the Older Inmate. Joann B. Morton. National Institute of Corrections. U.S. Department of Justice; August 1992; "The Graying of America's Prison Population." Edith E. Flynn. The Prison Journal. Vol. 72, Nos. 1 & 2. 1992; "The Graying of America's Prison Population." Edith E. Flynn. The Prison Journal. Vol. 72, Nos. 1 & 2. 1992.*

²These estimates include offenders expected to be sentenced under "10-20-Life" and "Three Strikes" legislation.

over the age of 60, the cost rose to \$60,000. The increase in cost is primarily a result of increased medical expenses.

Most correctional systems, including Florida's, are based on managing inmates who are young when they enter prison and will still be young when released. Elderly prisoners do not fit this model; they have different medical and programming needs than the younger inmates, and they may require significantly less security than is used at current institutions. Their medical requirements alone will consume an inordinate proportion of correctional resources. As this population swells, an increasing percentage of a prison's budget and attention will be dedicated to these inmates.

Florida's Elderly Offenders

A large majority (74.4 percent) of elderly inmates in Florida are incarcerated for violent offenses (murder/manslaughter, sexual/lewd behavior, robbery, and others); 12.4 percent for burglary or property offenses (theft, fraud, damage); 12.8 percent for drugs; and 4.4 percent for other offenses. On December 31, 1998, records from the Department of Corrections indicated that elderly inmates accounted for 7.1 percent of the total inmate population (67,224). Of the 4,766 elderly offenders imprisoned, over half (51.4 percent) were serving lengthy sentences. Fifty-eight percent of the elderly inmates incarcerated in Florida's prisons were first time offenders.

Florida's Elderly Inmate Health Care

In Florida, the medical care of elderly inmates is incorporated into the provision of care for all inmates. Each inmate is assigned a Functional Grade (or medical grade) by using a physical profiling system. A physician, dentist, clinical associate, or psychologist assigns a functional capacity based on an assessment of the inmate's overall profile. The inmate's functional capacity serves as the basis for institutional and work assignment and ensures that an inmate will be assigned to an institution that can meet that inmate's medical needs.

Inmates whose health is declining due to age are deemed "impaired" and are tracked in the department's medical classification system. As such, the department does not have any written policies, procedures, or programs that are age-specific and address the particular needs of elderly offenders. The Department reports that 62.8 percent of the current elderly population is assigned an unrestricted or minimum medical grade, but the medical grade does increase with age.

The Office of Health Services reports that the health care costs of elderly inmates are not tracked separately. The medical cost for all adult male inmates in FY 1997-98 was \$6.80 per day. If the health care costs of inmates age 60 and older are approximately 2.8 times as much as costs for younger inmates, expenditures were approximately \$76 million for medical care for these inmates in FY 1997-98.

Florida's Elder Inmate House and Programming

As indicated, Florida's elder inmates are distributed throughout the corrections system, and certain physical limitations (i.e. impaired hearing/vision and decreased bone mass/agility) are common in this group of inmates. Modifying an institution to meet these limitations will: (1) limit construction modifications to one institution; (2) decrease the medical costs incurred to treat common elderly injuries, such as falls; (3) permit cost effective

development of care programs such as hospice; and (4) permit programming dollars to be spent wisely.³

River Junction Correctional Institution

River Junction was established in 1974, housing 460 adult male inmates. In 1989, it was converted to an all female facility. In 1991, it returned to being an all male facility. Designated to accept minimum, medium and limited medical grade inmates, it formerly housed 761 adult male inmates. River Junction provided academic, vocational and self-betterment programs. In 1998, CMHI and River Junction Correctional Institution were combined into one facility called Corrections Mental Health Institution (CMHI) at River Junction.

CMHI was established when Florida's 1982 Corrections Mental Health Act authorized a correctional facility for mentally ill inmates. In 1983, the renovation of an existing structure at Florida State Hospital was directed, and the Corrections Mental Health Institution was established. This facility had been designated to accept close and maximum custody and all medical grade inmates. CMHI provided self-betterment programs to approximately 135 adult male and female inmates. The facility was closed on 10/14/99 by the Department of Corrections and all inmates were transferred to other institutions.

The Correctional Privatization Commission

The Correctional Privatization Commission (CPC) was created for the purpose of entering into contracts with contractors for the designing, financing, acquiring, leasing, constructing, and operating of private correctional facilities.

In 1994, the Legislature directed the CPC to solicit contracts for an adult 1,318-bed facility and three 350-bed youthful offender facilities (Chapter 94-209, Laws of Florida). Prior to their opening, two of the 350-bed facilities were redesignated to house juvenile offenders under the jurisdiction of the Department of Juvenile Justice (Chapter 96-422, Laws of Florida). The CPC awarded the 1,318-bed facility to Wackenhut Corrections Corporation and the facility, South Bay Correctional Facility, opened in February 1997. Corrections Corporation of America was awarded the remaining contract for a 350-bed facility, Lake City Correctional Facility, which opened in October 1996. Currently, the state contracts for a total of 3,936 privatized beds.

C. EFFECT OF PROPOSED CHANGES:

The bill, as originally drafted, proposed the following changes to:

- provide for legislative findings and requires the Correctional Privatization Commission to issue a Request for Proposals for the establishment and operation of an exclusively geriatric facility for elderly offenders at the site of River Junction Correctional Institution, which is currently closed;
- conform references changed by the alphabetizing of the definitions section;

³For example, educational programming and vocational training programs are not needed for individuals who are unlikely to re-enter the work force.

- provide for a definition of "elderly offender" as all prisoners age 50 and older in state correctional institutions and facilities; and
- provide for standards for rule making by the Department of Corrections which reflect the intent of the Legislature.

The amended bill now provides the definition of "elderly offender" as all prisoners age 50 and older in state correctional institutions and facilities whose chronological medically appraised age is at least 62.

The bill now provides the Legislature's further intent that implementation is not to be delayed by the adoption of rules or emergency rules and provides for a non-rule inmate population profile.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. The proposed committee bill was originally drafted to define "elderly offender" as all prisoners age 50 and older in state correctional institutions and facilities. However, the committee adopted an amendment to Amendment 3 which amends s. 944.02, F.S. provides for a definition of elderly as all prisoners age 50 and older in state correctional institutions and facilities whose chronological medically appraised age is at least 62. Declines in mental or physical health as a result of dementia, Alzheimer's Disease, Parkinson's Disease, or other similar degenerative diseases shall be considered as increases in age, although the effect of the change may be to reduce an individual's mental or physical capacity to that of a child.

Section 2. Creates s. 944.804, F.S., which states legislative findings regarding the increasing number and percentage of elderly in Florida prisons and requires exploration of alternatives to current housing, programming and treatment for the elderly in an effort to reduce overall costs of housing the elderly in prisons. The Correctional Privatization Commission is directed to issue a Request for Proposals for the establishment of an exclusively geriatric facility for elderly offenders at the current River Junction Correctional Institution site to implement various initiatives.

The bill as amended by Amendment 2 clarifies that requests for proposals shall consider how to reduce costs associated with elderly offenders as a method of defraying the rising medical costs of such a population.

This section also grants rulemaking authority to the department to establish criteria for eligibility to be housed at River Junction Correctional Institution which reflects the intent of the Legislature that: (1) offenders not be required to transfer to River Junction; (2) that the population represent a broad range of elderly offenders with good disciplinary records; and (3) that many of these offenders must possess a medical grade which would permit them to perform meaningful work activities, including participation an appropriate PRIDE facility. The rule making authority conferred requires the department to target 100 percent occupancy, achieve 85 percent occupancy, and demonstrate to the Joint Administrative Procedures Committee that the eligibility criteria will result in a sufficient number of inmates to fully occupy the facility.

The bill as amended by Amendment 1 permits the department to adopt emergency rules and exempts the department from the required findings by statute; and finally the amendment to Amendment 1 provides the Legislature's intent that implementation is not to

be delayed by the adoption of rules or emergency rules. This amendment also provides for a inmate population profile.

Section 3. Amends s. 120.81, F.S., to conform a reference to prisoners.

Section 4. Amends s. 413.051, F.S., to conform a reference to state correctional institutions.

Section 5. Amends s. 414.40, F.S., to conform a reference to state correctional institutions.

Section 6. Provides for an effective date of July 1, 2000.

III. **FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:

FISCAL IMPACT ON LOCAL GOVERNMENTS:

3. Revenues:

4. Expenditures:

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

C. FISCAL COMMENTS:

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 expend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This 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 state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill confers upon the department the responsibility to promulgate eligibility criteria for housing at River Junction Correctional Institution which reflect the expressed intent and criteria of the Legislature and to target occupancy at 100 percent, with no less than 85 percent occupancy.

C. OTHER COMMENTS:

The title to River Junction is currently vested in the Department of Children and Family Services. This bill may need to address an official transfer of title.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 21, 2000, the Committee on Corrections adopted the following amendments to the proposed committee bill:

Amendment 1 Provides for the rule making authority for the Department of Corrections to establish eligibility for placement at River Junction; permits the Department to adopt emergency rules and exempts the Department from the required findings by statute; provides legislative directive that the department is to target occupancy at 100% and to achieve occupancy of no less than 85%; provides for the Department to establish eligibility from existing database and submit the specific eligibility list as an appendix to JAPC at the time of rule submission.

Amendment to Amendment 1 Provides the Legislature's intent that implementation is not to be delayed by the adoption of rules or emergency rules and provides for an inmate population profile.

Amendment 2 Clarifies that requests for proposals shall consider how to reduce costs associated with elderly offenders as a method of defraying the rising medical costs of such a population.

Amendment 3 Removes the definition of an "elderly offender." See Amendment to Amendment 3.

Amendment to Amendment 3 Provides for a definition of "elderly offender" as all prisoners age 50 and older in state correctional institutions and facilities whose chronological medically appraised age is at least 62. Declines in mental or physical health as a result of dementia, Alzheimer's Disease, Parkinson's Disease, or other similar degenerative diseases shall be

STORAGE NAME: h1859.grr

DATE: March 21, 2000

PAGE 8

considered as increases in age, although the effect of the change may be to reduce an individual's mental or physical capacity to that of a child.

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

Prepared by:

Johana P. Hatcher

Staff Director:

Jo Ann Levin

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES & REGULATIONS:

Prepared by:

Shari Z. Whittier

Staff Director:

David M. Greenbaum