

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1895 (PCB PS 04-17) Department of Corrections/Housing federal prisoners  
**SPONSOR(S):** Public Safety & Crime Prevention  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1978

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Corrections (Sub)</u>	<u>5 Y, 0 N</u>	<u>Whittier</u>	<u>De La Paz</u>
2) <u>Public Safety &amp; Crime Prevention</u>	<u>19 Y, 0 N</u>	<u>Whittier</u>	<u>De La Paz</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

The Department of Corrections (DOC, department, state) and the U.S. Department of Justice, Federal Bureau of Prisons (BOP), through Intergovernmental Agreement 589-8 [supported by Executive Order 98-188 and 18 U.S.C. 5003(a)], currently have an exchange arrangement for prisoners. This agreement, which was established in July 1998, provides that the BOP accept from the state up to thirty sentenced state prisoners and the state accept into its custody thirty low security level BOP inmates who have a tie to Florida. The agreement specifies that the BOP undertake the state-transferred inmates' custody, housing, medical treatment, safekeeping, and subsistence at a federal correctional facility, and that the state provide the same services to the BOP inmates transferred to Florida. According to the DOC, the agreement has been the subject of litigation from several of the prisoners transferred from the BOP to the department. The prisoners have cited s. 944.091, F.S., as a basis for their return to the BOP. These cases have included proceedings in state and federal courts. Although the transfer agreement is supported by federal statutory authority and a State Executive Order, the litigants are claiming lack of *statutory* authority. By amending the statutes to include the authority, the department is anticipating the deterrence of any new litigation based on this claim by other prisoners.

Currently, s. 944.091, F.S. authorizes the department, upon request, to board prisoners of the United States committed to their custody by any agency of the United States if such prisoners have less than six months remaining on their federal sentence, and if such prisoners have family relationships or job opportunities in this state. Inmates are accepted on a space-available basis only.

HB 1895 authorizes the department (when proper and adequate facilities and personnel are available) to contract with the proper officials of the U.S. to provide custody, care, subsistence, education, treatment, and training for persons convicted of criminal offenses in the federal courts. The bill specifies that the contract cannot provide for Florida to receive more U.S. prisoners than are transferred from Florida to U.S facilities. The contract must provide for reimbursing the state in full for all costs for expenses involved; for the U.S. to receive, in exchange, persons convicted of criminal offenses in Florida to serve their sentences in U.S. facilities; **or** for the U.S. to compensate the department by means of a combination of monetary payment and of receipt of persons convicted of criminal offenses. The bill also provides that a person committed to the state under this section is subject to all the provisions of state law and rules, not inconsistent with the imposed sentence.

The bill appears to have no significant fiscal impact on the state or local governments, and perhaps could result in cost-savings through the deterrence of future inmate litigation.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1895.ps.doc  
**DATE:** March 31, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

#### B. EFFECT OF PROPOSED CHANGES:

##### **The U.S. Department of Justice, Federal Bureau of Prisons**

The federal prison system is a nationwide system of prisons and detention facilities established for prisoners who are incarcerated for the commitment of federal crimes and the detention of individuals awaiting trial or sentencing in federal court.

As of February 7, 2004, the U.S. Department of Justice, Federal Bureau of Prisons (BOP or Bureau) was responsible for the custody and care of approximately 174,179 federal offenders. Approximately 147,301 of these inmates were confined in Bureau-operated correctional institutions and detention centers, and the remaining 26,878 inmates were confined in privately-operated prisons, detention centers, community corrections centers, and juvenile facilities, as well as some facilities operated by state or local governments.<sup>1</sup> Specifically, 11,516 of these remaining prisoners are inmates in facilities operated by a state or locality that is either under contract or under an Intergovernmental Agreement with the BOP.<sup>2</sup>

##### **Intergovernmental Agreement between the Department of Corrections and the U.S. Department of Justice, Federal Bureau of Prisons**

The Department of Corrections (DOC, department, state) and the U.S. Department of Justice, Federal Bureau of Prisons, through Intergovernmental Agreement 589-8<sup>3</sup> [which is supported by Executive Order 98-188 and 18 U.S.C. 5003(a)], currently have an exchange arrangement for prisoners. This agreement, which was established in July 1998, provides that the BOP accept from the state up to thirty sentenced state prisoners<sup>4</sup> and the state accept into its custody thirty low security level BOP inmates who have a tie to the State of Florida. The agreement specifies that the BOP undertake the state-transferred inmates' custody, housing, medical treatment, safekeeping, and subsistence at a federal correctional facility, and that the state provide the same services to the BOP inmates transferred to Florida. Noncompliance is grounds for cancellation of the agreement. The agreement provides that as a BOP inmate in the state's custody completes his or her sentence, another BOP

<sup>1</sup> See <http://www.bop.gov>.

<sup>2</sup> Ibid., *Quick Facts* link.

<sup>3</sup> See IGA 589-8, *Intergovernmental Agreement between the State of Florida, Department of Corrections and the United States Department of Justice, Federal Bureau of Prisons*.

<sup>4</sup> The IGA 589-8 document refers to the prisoners being transferred from Florida to U.S. prisons as "Task Force Inmates."

inmate is to be transferred to the state, thus maintaining a one-to-one ratio, and that the BOP is responsible for ensuring that the one-for-one exchange of inmates is maintained.<sup>5</sup> All costs related to the transfers of prisoners are to be the responsibility of the entity that is doing the transferring. For example, all the costs incident to the transfer of a BOP inmate, as well as transportation costs related to the release of a BOP inmate are to be the responsibility of the BOP.<sup>6</sup>

All inmates are to receive the same degree of medical treatment and attention regularly provided by the BOP and the state. In addition, the BOP is to forward to the state, and vice versa, an updated inmate progress report as requested. Any awards of gain time shall be in accordance with the laws, rules, and regulations of the agency with the original jurisdiction over the terms of the commitment. Any lawful release prior to the expiration of sentence is to be in accordance with the laws, rules, and regulations of the agency with the original jurisdiction over the inmate.<sup>7</sup> The BOP has physical control over, and power to exercise disciplinary authority upon, a transferred state inmate. While in the custody of the state, the BOP inmate is to be subject to state laws, rules, and regulations not inconsistent with the sentence imposed. While in the custody of BOP, the transferred state inmate is to be subject to federal laws, rules and regulations not inconsistent with the sentence imposed.<sup>8</sup>

## Department of Corrections

According to the DOC, the agreement has been the subject of litigation from several of the prisoners transferred from the BOP to the department. The prisoners have cited s. 944.091, F.S., as a basis for their return to the BOP. These cases have included proceedings in state and federal courts. Although the agreement is supported by federal statutory authority<sup>9</sup> and State of Florida Executive Order Number 98-188, the litigants are claiming lack of *statutory* authority. By amending the statutes to include the authority, the department is anticipating the deterrence of any new litigation based on this claim by other prisoners.

Currently, s. 944.091, F.S., authorizes the department, upon request, to board prisoners of the United States committed to their custody by any agency of the United States if such prisoners have less than six months remaining on their federal sentence, and if such prisoners have family relationships or job opportunities in this state. Inmates are accepted on a space-available basis only. Daily compensation for the board of such prisoners is to be paid at a rate to be mutually agreed upon by the department and the appropriate United States agency. Such compensation is to recover the total maintenance cost of such prisoners and is not to be less than the average cost per inmate per day for all inmates confined by the department.

The bill authorizes the department (when proper and adequate facilities and personnel are available) to contract with the proper officials of the U.S. to provide custody, care, subsistence, education, treatment, and training for persons convicted of criminal offenses in the federal courts. The bill specifies that the contract cannot provide for Florida to receive more U.S. prisoners than are transferred from Florida to U.S. facilities. In addition, the contract must provide the following:

- 1) For reimbursing the state in full for all costs for expenses involved;
- 2) For the U.S. to receive, in exchange, persons convicted of criminal offenses in Florida to serve their sentences in U.S. institutions or facilities, according to formulas or conditions that are negotiated in the contract; **or**

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<sup>5</sup> IGA 589-8, *Intergovernmental Agreement between the State of Florida, Department of Corrections and the United States Department of Justice, Federal Bureau of Prisons*, p. 3.

<sup>6</sup> *Ibid.*, p. 4

<sup>7</sup> *Ibid.*, p. 5

<sup>8</sup> *Ibid.*

<sup>9</sup> See 18 U.S.C. 5003(a).

3) For the U.S. to compensate the department by means of a combination of monetary payment and of receipt of persons convicted of criminal offenses, according to formulas or conditions that are negotiated in the contract.

The bill further provides that, unless it is otherwise specifically provided in the contract, a person committed to the state under this section is subject to all the provisions of state law and rules, not inconsistent with the imposed sentence.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 944.091, F.S., which addresses state custody of United States prisoners.

**Section 2.** Provides an effective date of July 1, 2004.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill could result in cost-savings for the state through the deterrence of future inmate litigation based on the claim that the language in the statutes and the intergovernmental agreement between the DOC and the Federal Bureau of Prisons is not consistent.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**