

# 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.)

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Prepared By: Governmental Oversight and Productivity Committee

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BILL: SB 1832

SPONSOR: Senator Argenziano

SUBJECT: DOC/Federal Government Prisoners

DATE: March 24, 2005

REVISED: \_\_\_\_\_

|    | ANALYST      | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|--------------|----------------|-----------|--------------------|
| 1. | <u>Davis</u> | <u>Cannon</u>  | <u>CJ</u> | <u>Favorable</u>   |
| 2. | <u>McKay</u> | <u>Wilson</u>  | <u>GO</u> | <u>Pre-meeting</u> |
| 3. | _____        | _____          | <u>JA</u> | _____              |
| 4. | _____        | _____          | _____     | _____              |
| 5. | _____        | _____          | _____     | _____              |
| 6. | _____        | _____          | _____     | _____              |

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## I. Summary:

This bill amends section 944.091, F.S., to establish statutory authority for the Department of Corrections to contract with the Federal Bureau of Prisons (BOP) for the boarding of federal prisoners in state correctional facilities. Eligible prisoners must have been convicted of an offense in the federal courts in Florida. The contract must provide for reimbursing Florida in full for all costs or expenses involved, exchange of prisoners under formulas or conditions specified in the contract, or compensation through a combination of both payment and exchange. The department is prohibited from accepting more U.S. prisoners than are transferred to the BOP under the contract. Prisoners transferred into state custody are subject to the same laws and rules as other inmates in Florida correctional institutions, unless the contract specifically provides otherwise or such rules are inconsistent with the sentence imposed by the federal court.

This legislation is designed to clarify that the state has the statutory authority to enter into exchange agreements. In recent years numerous lawsuits have been filed by federal prisoners who have been transferred to Florida prisons. This legislation is proposed to avoid the expense of unnecessary litigation and establish a more flexible manner for the state to have direct contracting authority with the federal government rather than rely on individual executive orders.

This bill substantially amends section 944.091, Florida Statutes.

## II. Present Situation:

According to the Department of Corrections(DOC), the DOC and the Federal Bureau of Prisons currently have an exchange arrangement for 30 prisoners based upon 18 U.S.C. 5003(a) and Executive Order 98-188. This exchange agreement was entered into after the state and federal governments determined that the federal government should assume responsibility for housing

long-term criminal aliens who came to Florida during the Mariel boatlift of 1980. Inter-Governmental Agreement 589-8 provides for an exchange of up to 30 state prisoners for BOP inmates on a one-for-one basis under the following conditions: (1) the BOP agreed to accept from the State of Florida up to 30 sentenced 'Task Force Inmates,' who were inmates identified as those prosecuted under the Joint Federal and State Homicide Task Force Agreement in 1983 and who were still serving time for convictions under that agreement and (2) Florida agreed to accept into custody up to 30 low security level BOP inmates who have ties to the state.

The application of Inter-Governmental Agreement 589-8 has been the subject of lawsuits filed in state and federal courts by transferred prisoners seeking to be returned to the BOP, according to the DOC. The prisoners claim that they should be returned to BOP custody because the Agreement does not comply with s. 944.091, F.S., which provides that the department may board federal prisoners who have less than six months remaining on their federal sentence and have family relationships or job opportunities in Florida. Compensation is to be paid at an agreed rate, which must not be less than the department's average incarceration cost per day.

### III. Effect of Proposed Changes:

This bill creates two new subsections of s. 944.091, F.S.

**Section 1** of the bill creates s. 944.091(2), F.S., which explicitly provides statutory authority for the exchange of prisoners pursuant to Inter-Governmental Agreement 589-8. This will clarify the statutory basis for the agreement, which was entered into under the authority of Executive Order 98-188 and 18 U.S.C. 5003(a). The DOC indicates that the bill will eliminate unnecessary and burdensome litigation concerning the agreement and provide a more flexible avenue for prisoner exchange arrangements through direct contracting authority rather than through individual Executive Orders.

Section 944.091(2), F.S., will permit the department to contract with the United States to provide custody, care, subsistence, education, treatment, and training for persons who are convicted of criminal offenses by federal courts located in Florida. Such a contract must either provide for: (1) full reimbursement to Florida for all costs or expenses; (2) exchange of prisoners under formulas or conditions specified in the contract; or (3) compensation through a combination of both payment and exchange. Florida may not accept more prisoners than it transfers under the agreement. Subsection (2) largely mirrors language from 18 U.S.C. 5003(a)(2).

Section 1 of the bill also creates s. 944.091(3), F.S., which provides that persons transferred to the department pursuant to s. 944.091(1) or (2), F.S., are subject to the same laws and rules as prisoners sentenced for violations of Florida law, unless the contract specifies otherwise or the law or rule is inconsistent with the federal sentence.

The current section is retained in its entirety and renumbered as subsection (1) of s. 944.091, F.S.

**Section 2** of the bill provides an effective date of July 1, 2004.

**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:

The legislation may save litigation costs because it will resolve issues that have generated litigation filed by federal prisoners in state custody.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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

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