

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal and Civil Justice Appropriations Committee

BILL: PCS/SB 1796

INTRODUCER: For consideration by the Criminal and Civil Justice Appropriations Committee

SUBJECT: Corrections

DATE: March 25, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Butler	Sadberry	JA	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill authorizes the Department of Corrections (department) to contract with county and municipal entities to house inmates committed to the department.

The bill also authorizes the department to enter into contractual agreements with another state, a political subdivision of another state or a vendor in another state to transfer and confine Florida inmates within that state.

The bill provides that beds contracted with county and municipal entities and with other states are counted in the department's total capacity, as defined in s. 944.023, F.S.

The bill provides that the department consider, to the extent possible, the proximity of the receiving facility to the inmates family.

This bill creates an unnumbered section of the Florida Statutes, and substantially amends s. 957.09, F.S. The statutory changes are temporary and expire on June 30, 2009.

II. Present Situation:

Currently, the Department of Corrections does not have specific statutory authority to enter into contracts with county and municipal entities, or out-of-state private correctional facilities for the housing of inmates.

In the event, Florida's prison population nears 99 percent of total capacity, a mechanism exists in s. 947.146, F.S. relating to the control release of inmates. The department must notify the

Control Release Authority, Parole Commission within 120 days prior to the date the state correctional system is projected pursuant to s. 216.136 to exceed 99 percent of total capacity, the authority shall determine eligibility for and establish a control release date for an appropriate number of parole ineligible inmates committed to the department and incarcerated within the state who have been determined by the authority to be eligible for discretionary early release.

The authority shall implement a system for determining the number and type of inmates who must be released into the community under control release in order to maintain the state prison system between 99 and 100 percent of its total capacity as defined in s. 944.023.

The statutes further define the correctional system capacity limits for housing the inmate population. Section 944.023, F.S. provides the formula to calculate the design, total and maximum capacity of each institution which is based on the institutional physical configuration of secure housing units and open bay dormitories. Although an institution may house inmates up to the maximum capacity, section 944.0231, F.S. provides that the correctional system as a whole cannot exceed total capacity. Section 944.0231, F.S., states that if the department's total capacity exceeds 100 percent for more than 21 days, the Governor has authority to reduce the prison population.

Florida's prison population has exceeded population projections estimated by the Criminal Justice Estimating Conference for most months during FY 2007-08. During FY 2007-08, the Legislature diverted fixed capital outlay appropriations for planned construction, and for specific construction projects so the department could purchase quick build construction buildings as a method of increasing bed capacity for inmates to avoid invoking the control release mechanism.

To further alleviate the possibility of a control release, the state would benefit from having the ability to contract with county and municipal entities, and out-of-state correctional facilities.

There are several methods under which inmates of departments of corrections throughout the United States are transferred to other jurisdictions to be housed.

Interstate Compacts

There are two forms of interstate compacts generally used to effect the transfer of inmates from one state to another; national compacts and regional compacts. The only national compact in the United States at this time is the Interstate Corrections Compact. There are currently two regional compacts; the Western Corrections Compact and the New England Corrections Compact. Transfers effectuated under interstate compacts result in the movement of an inmate into the public facilities of another state.

The Interstate Corrections Compact

The department is currently a signatory on the Interstate Corrections Compact (ICC). The ICC is codified at section 941.56, Florida Statutes. The ICC is a document under which the departments of corrections of the participating states cooperate through contract in order to efficiently use the

available resources of the states and to provide adequate care and programs for offenders under supervision in the various states.¹

Article III of the ICC authorizes any of the states adopting this compact to contract with any other participating state. Contracts established pursuant to the ICC must establish certain criteria in order to be valid. The necessary components include clauses establishing the duration of the contract, which party is responsible for payments related to a transferred inmate's care, eligibility of an inmate to participate in employment programs, transportation of inmates between the sending and receiving state, and any other necessary matters. Article III of the ICC also requires the terms and provisions of the ICC to be incorporated into the contract and forbids establishing contract provisions inconsistent with the provisions of the ICC.²

Regional Compacts

In addition to the ICC, there are regional compacts that provide for the transfer of inmates from one participating state to another. Operating in a similar fashion to the national ICC, the Western Corrections Compact has 11 signatory states and the New England Corrections Compact has six signatory states in the northeastern states.³ Most signatories to these regional compacts are also participating states under the ICC. There is currently no regional compact that might encompass the State of Florida.

One difference between the regional compacts and the ICC is that the regional contracts, unlike the ICC, include a provision that authorizes contractual arrangements for enlarging facility space that will be set aside especially for transferees from another state when the receiving state is engaged in the process of enlarging its facilities generally.⁴

Additional Authority to Transfer Inmates Under Interstate Compacts

Many states that are party to any of the three interstate compacts described above have also enacted additional statutory authority in an effort to provide context to the compacts, create

¹ Article I of the Interstate Corrections Compact states that that the participating states "desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation or the confinement, treatment, and rehabilitation of offenders with the most economical use of human and material resources."

² The terms referred to in this provision are found throughout Articles IV to X. These Articles contain provisions on the procedures participating states must follow, the rights of participating states and transferred inmates, the policy with regard to extradition, acceptance of federal aid to be applied to the ICC program, and the procedure for and ramifications of a state's withdrawal from the ICC.

One clause of the ICC, found in Article IV(e), states that an inmate transferred to another state cannot be deprived of the rights he would have been afforded in the sending state. The rule against establishing contract provisions inconsistent with the ICC provisions would, therefore, prevent a contract from stating that the transferred inmate could be treated inhumanely in the receiving state.

³ Interstate Transfer of Prison Inmates In The United States.....<http://www.nicic.org/library/021242>

⁴ In other words, where California and Arizona are both parties to the Western Corrections Compact, if Arizona intends to enlarge its correctional facilities, California and Arizona may establish a contract under which Arizona creates additional space in its facilities to be used exclusively to house California transferee inmates.

absolute procedures for the transfer of inmates and to generally implement contract provisions.⁵ These legislative or agency enactments may provide additional rights to inmates outside the compact language,⁶ establish conditions of mandatory transfer or prohibitions on transfer,⁷ require transfers to be cost effective, and any other conditions subject to compliance with the compact and established laws.

Statutory Authority

Many states have established transfer policies outside of the interstate compacts by establishing statutory authority or agency policies. Such policies and rules make it possible for transfers to be made to facilities other than public state facilities. The legislation establishes the methods by which one state may transfer inmates to the physical custody of private facilities⁸ or the Federal Bureau of Prisons. While the majority of transfers occur under the interstate compacts, legislation may prove to be useful where a majority of public state correctional facilities are at or near capacity.⁹

Compensation

Contracts for the transfer of inmates, whether authorized under the ICC, regional compacts, or statutory authority, establish the monetary amounts required for the maintenance and care of transferred inmates. The two major methods of compensation under these contracts are quid pro quo exchanges and contract payments.

Quid pro quo exchanges allow for states to “trade” inmates. Inmates are usually transferred as a result of errant behavior, to protect other inmates and staff, or to protect the inmate being transferred. Quid pro quo transfers facilitate administration of institutions by affording prison officials the opportunity to isolate problem inmates. These transfers do not, however, help to resolve issues of overcrowding in that each inmate transferred to another state is replaced by an inmate from another state.

Monetary compensation is usually determined at a per diem rate. This type of transfer may be used to alleviate issues of overcrowding in that numerous inmates may be transferred out of state to public and private institutions. The transferring state is required to pay a cost per day to cover the expenses related to the inmate’s care and maintenance in another location.

Transfer Locations

Inmates may be transferred to three types of facilities; public state institutions, private institutions, and federal institutions. The ICC and regional compacts allow inmates to be transferred to public state institutions only because the compacts call for the creation of contracts between participating states and no other institutional bodies.

⁵ Interstate Transfer of Prison Inmates In The United States. pg 6.

⁶ California. ITPIITUS pg 6.

⁷ Alaska, Missouri. ITPIITUS pg 7.

⁸ See, ex, AB 900 the public safety and offender rehabilitation services act of 2007.

⁹ Wisconsin, for example, employs both the ICC and additional statutory authority. See §§301.21 and 302.25, Wisconsin Statutes.

Statutory enactments may permit a state department of corrections the opportunity to contract with virtually any type of facility.¹⁰ Where a state's legislature has given its corresponding department of corrections the discretion to contract with private facilities in other states, such discretion may be used to transfer numerous inmates out of overcrowded facilities within the state.¹¹

Local and County Facilities

The Florida Department of Corrections does not, at this time, have clear authority to transfer inmates in the custody of the department to local or county jail facilities. While there is no direct prohibition placed on the department, numerous statutes indicate that such action is impermissible.

Section 944.0231, Florida Statutes, gives the Governor the authority to exercise emergency powers to reduce the population of the state correctional system under certain circumstances. That statute prohibits the Governor from transferring inmates "to any county or municipal jurisdiction within the state."

Section 944.17, Florida Statutes, details the process of commitment and classification of inmates and provides for the transfer of inmates within the correctional system.¹² The language of this section and others indicates that transfers of inmates are to occur between state institutions only.¹³

III. Effect of Proposed Changes:

Each change below is effective July 1, 2008 and expires July 1, 2009.

Section 1 authorizes the department to contract with county or municipal facilities for the purpose of housing inmates committed to the department.

It is further provided that before transferring a state inmate to another county or municipal facilities, the inmate shall be reclassified and scored as to custody risk based on the current offense and not on prior criminal history. Upon return to the state correctional institution, the

¹⁰ There is some question as to whether state inmates are eligible for transfer to local institutions. Prevailing practice tends to indicate that such transfers are impermissible for numerous policy reasons. Additionally, certain statutory provisions may restrict the ability of the Florida Department of Corrections to transfer inmates to local facilities.

¹¹ The Florida Department of Corrections does not, at this time, have clear authorization to transfer inmates to private institutions out of state. Although § 944.105, Fla. Stat. (2007), does not expressly authorize or prohibit the transfer of inmates to out of state private facilities, the Department is only permitted to transfer inmates to private facilities certified under Florida standards and requires that correctional officers at private institutions be certified under Florida standards. It is unlikely that out of state private correctional facilities are certified under Florida standards at this time.

¹² "Each prisoner committed to the custody of the department shall be conveyed to such institution, facility or program *in the correctional system* as the department shall direct, in accordance with its classification scheme." § 944.17(2), Fla. Stat. (2007) (Emphasis added). "Pursuant to such regulations as it may provide, the department may transfer prisoners from one institution to another institution *in the correctional system* and classify and reclassify prisoners as circumstances may require." § 944.17(7), Fla. Stat. (2007) (Emphasis added).

¹³ Authority to transfer inmates out of state or to private institutions is granted elsewhere. See § 941.56, Fla. Stat. (2007); § 944.105, Fla. Stat. (2007).

inmate shall be reclassified based on the provision of sections 944.17 and 944.1905, Florida Statutes.

Inmates placed in county and municipal facilities remain under the jurisdiction of the Florida Department of Corrections.

Under the provisions of this bill, the department is authorized to contract with another state, political subdivision of another state or a correctional management services vendor, i.e. privately operated prisons, to transfer and confine Florida inmates within that state.

It is further provided that the contracts with out-of-state facilities must include:

- a) a termination date;
- b) provisions concerning costs of inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment, including those costs not reasonably included as part of normal maintenance;
- c) provisions concerning participation in programs of inmate employment, if any, the disposition or crediting of any payments received by inmates on account of employment, and the crediting of proceeds or disposal of any products resulting from employment
- d) provisions for the delivery and retaking of inmates;
- e) a waiver of extradition by this state and the state to which the inmate is transferred
- f) retention of jurisdiction of the inmates transferred by Florida;
- g) regular reporting procedures concerning Florida inmates by officials of the out-of-state facility;
- h) provisions concerning procedure for community supervision, including probation, parole, conditional release, and discharge
- i) the same standards of reasonable and humane care as the inmates would receive in an appropriate institution in this state;
- j) any other matters that are necessary and appropriate to establish the obligations, responsibilities, and rights of Florida and the out-of-state facilities with which the department in contracting.

The bill provides that beds contracted with county and municipal entities and with other states are counted in the department's total capacity, as defined in s. 944.023, F.S.

The bill provides that the department consider, to the extent possible, the proximity of the receiving facility to the inmate's family to comply with the legislative intent of s. 944.023, F.S.

Section 2 amends s. 957.09, F.S. to provide an exemption for the applicability of Chapter 957 for contracts for the transfer and confinement of state inmates entered into between the Department of Corrections, county and municipal entities and out-of-state facilities.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would have a positive fiscal impact to private correctional management services vendors which have excess correctional space capacity with which the department enters into a contract for the purpose of housing inmates.

C. Government Sector Impact:

The bill would have a positive fiscal impact to counties which have excess correctional space capacity with which the department enters into a contract for the purpose of housing inmates.

VI. Technical Deficiencies:

The statutory references listed in s. 957.07(4) should not be specified, as the new section has not been assigned.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
