

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 427 Correctional Officers

SPONSOR(S): Policy & Budget Council; Safety & Security Council; Patterson and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>9 Y, 0 N</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	<u>15 Y, 0 N, As CS</u>	<u>Cunningham/Davis</u>	<u>Havlicak</u>
3) <u>Policy & Budget Council</u>	<u>28 Y, 0 N</u>	<u>Leznoff</u>	<u>Hansen</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The term "correctional officer" is currently defined by s. 943.10, F.S, as:

Any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

Persons must meet a variety of requirements in order to be eligible to be correctional officers (e.g., be at least 19 years old, be a citizen of the United States, completed a Correctional Officer Basic Recruit Training Program, etc.). Additionally, correctional officers receive a variety of benefits, such as inclusion in the Special Risk Class of the Florida Retirement System, salary incentives, and increased death benefits that other state/county employees do not.

The Department of Children and Families (DCF) and the Agency for Persons with Disabilities currently operate forensic facilities that house persons who have been found incompetent to proceed in a criminal proceeding due to mental illness, retardation, or autism. The security staff at these forensic facilities are called "Institutional security personnel."

CS/HB 427 adds "persons employed full time by the state as institutional security personnel" to the definition of "correctional officer" contained in s. 943.10, F.S. As a result, persons employed in this capacity will be required to meet the requirements of correctional officers and will also receive the benefits of being a correctional officer. Most institutional security personnel are already classified as special risk retirement, however there are approximately 53 that are not so classified.

The bill also states that if a person seeks to serve as an "auxiliary law enforcement officer" and seeks an exemption from completing a commission approved basic reserve or auxiliary training program, the agency must verify that the applicant has successfully completed another state's comparable basic reserve or auxiliary training program for the discipline in which the applicant is seeking certification.

This bill has a recurring impact of \$81,449 on the contributions to Florida Retirement System according to data provided by the Department of Management Services. The greatest agency impact is to the Agency for

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Persons with Disabilities whose share of the impact is \$68,035. Also, not all institutional security personnel receive the same workers compensation benefits as correctional officers and this bill would entitle them to such benefits which will have a fiscal impact, which is indeterminate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – CS/HB 427 adds “persons employed full time by the state as institutional security personnel” to the definition of “correctional officer” contained in s. 943.10, F.S.

B. EFFECT OF PROPOSED CHANGES:

Correctional Officers – Requirements and Benefits

The term “correctional officer” is currently defined by s. 943.10, F.S, as:

Any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

Persons must meet a variety of requirements in order to be eligible to be correctional officers. Additionally, correctional officers receive a variety of benefits that other state/county employees do not. A review of the correctional officer requirements and the benefits of being a correctional officer follows.

Requirements of Being a Correctional Officer

Minimum Qualification for Employment as a Correctional Officer

On or after October 1, 1984, any person employed or appointed as a full-time, part-time, or auxiliary correctional officer; and on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional officer by a private entity under contract to the Department of Corrections, to a county commission, or to the Department of Management Services must:

1. Be at least 19 years of age.
2. Be a citizen of the United States, notwithstanding any law of the state to the contrary.
3. Be a high school graduate or its "equivalent" as the commission has defined the term by rule.
4. Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement.
5. Have documentation of his or her processed fingerprints on file with the employing agency or, if a private correctional officer, have documentation of his or her processed fingerprints on file with the Department of Corrections or the Criminal Justice Standards and Training Commission.
6. Have passed a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by the commission.
7. Have a good moral character as determined by a background investigation under procedures established by the commission.
8. Execute and submit to the employing agency or, if a private correctional officer, submit to the appropriate governmental entity an affidavit-of-applicant form, adopted by the commission, attesting to his or her compliance with the above requirements. The affidavit shall be executed under oath and constitutes an official statement within the purview of s. 837.06.
9. Complete a commission-approved basic recruit training program for the applicable criminal justice discipline, unless otherwise exempt.
10. Achieve an acceptable score on the officer certification examination for the applicable criminal justice discipline.
11. Comply with the continuing training or education requirements of s. 943.135.¹

¹ s. 943.13, F.S.

Basic Recruit Training Program

In Florida, the Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement (FDLE), establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary correctional officers. Every prospective correctional officer must successfully complete a CJSTC-developed Basic Recruit Training Program and pass a statewide certification exam in order to receive their certification.² The correctional officer basic recruit training program consists of 532 hours of training.³

Retraining

Section 943.135, F.S., requires the CJSTC to adopt a program for correctional officers to receive periodic CJSTC-approved continuing training or education as a condition of continued employment or appointment as an officer.⁴ Generally, correctional officers must successfully complete 40 hours, every 4 years, of In-service, Advanced, Specialized, or Career Development Training Courses.⁵

Benefits of Being a Correctional Officer

Retirement and Disability - Special Risk Class

The Special Risk Class of the Florida Retirement System (FRS) was created to recognize that certain employees, because of the nature of the work they perform, may need to retire at an earlier age with less service than other types of employees. As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service. Members of the Special Risk Class also earn an increased disability benefit and a higher normal retirement benefit of three percent of the member's average final compensation.⁶ Correctional officers are members of the Special Risk Class.

Workers' Compensation

Employees eligible for workers' compensation are paid 66 2/3 percent of their average weekly wages. Employees may supplement this amount by using sick, annual, or other types of leave.⁷ In contrast, Section 440.15(11), F.S., provides that a correctional officer who, while acting within the course of employment, is maliciously or intentionally injured and who thereby sustains a job-connected disability compensable under chapter 440, F.S., shall be carried in full-pay status rather than being required to use sick, annual, or other leave.

Salary Incentives

Section 943.22, F.S. provides the following salary incentives for correctional officers:

1. Full-time officers who have a community college degree or equivalent receive the sum of \$30 per month.
2. Full-time officers who receive a bachelor's degree receive an additional sum of \$50 per month.
3. Officers who complete a combination of 480 hours of approved advanced and career development training courses receive the sum of \$120 per month.

The maximum aggregate amount which any full-time officer may receive under this section is \$130 per month.⁸

Death Benefits

Section 112.19, F.S. provides for the following death benefits to be paid to beneficiaries of correctional officers:

² <http://www.fdle.state.fl.us/cjst/commission/index.html>

³ <http://www.fdle.state.fl.us/cjst/Curriculum/BasicRecruitCourses.html>

⁴ <http://www.fdle.state.fl.us/cjst/officerrequirements/mandatory.html>

⁵ *Id.*

⁶ House of Representatives Staff Analysis, House Bill 69 (2007).

⁷ s. 440.15, F.S.

⁸ See s. 943.22, F.S.

1. The sum of \$50,000 shall be paid when an officer, while engaged in the performance of the officer's duties, is accidentally killed or receives accidental bodily injury which results in the loss of the officer's life, provided that such killing is not the result of suicide and that such bodily injury is not intentionally self-inflicted.
2. The sum of \$50,000 shall be paid if an officer is accidentally killed and the accidental death occurs as a result of the officer's response to fresh pursuit, as a result of the officer's response to what is reasonably believed to be an emergency, at the scene of a traffic accident to which the officer has responded, or while the officer is enforcing what is reasonably believed to be a traffic law or ordinance. This sum is in addition to the \$50,000 provided for above.
3. The sum of \$150,000 shall be paid if an officer, while engaged in the performance of the officer's duties, is unlawfully and intentionally killed or dies as a result of such unlawful and intentional act.

Additionally, if a full-time correctional officer who is employed by a state agency is killed in the line of duty as a result of an act of violence inflicted by another person while the officer is engaged in the performance of law enforcement duties or as a result of an assault against the officer under riot conditions, the sum of \$1,000 shall be paid toward the funeral and burial expenses of such officer.⁹

The above benefits are paid by the employer of the officer. Additionally, certain educational expenses of the spouse or children of an officer must be waived at state career centers, community colleges and universities, if the officer is killed under circumstances described in s. 112.19(2)(b) or (c), F.S. (during fresh pursuit or an emergency or if the officer is unlawfully and intentionally killed). The law does not provide for the payment of educational expenses if the officer is killed under circumstances described in s. 112.19(2)(a), F.S. (as a result of an accident).¹⁰

Correctional Officer Bill of Rights

Part VI of Chapter 112 is commonly known as the "Law Enforcement Officers' Bill of Rights." Section 112.532, F.S. grants correctional officers specific rights when the officer is under investigation by members or his or her agency for any reason which could lead to disciplinary action, demotion or dismissal. The section provides that an officer cannot be dismissed, demoted, transferred, reassigned or otherwise punished unless the officer is notified of the action and the reason for the action. Upon request, an officer who is subject to disciplinary action (suspension with loss of pay, demotion or dismissal) must be provided with a complete copy of the investigative report and supporting documents and with an opportunity to address the findings in the report prior to the imposition of disciplinary action.¹¹

If an agency fails to comply with the provisions of the Law Enforcement Officers' Bill of Rights, an officer who is personally injured by such failure to comply may apply directly to the circuit court of the county where the agency is headquartered for an injunction to restrain and enjoin the violation and to compel performance of the agency's duties.¹²

Legal Actions Against Correctional Officers

Section 111.065, F.S., requires a correctional officer's employing agency to provide an attorney and pay the reasonable attorney's fees and costs for any officer in a criminal action commenced against the officer in any court if the employing agency determines that the officer's actions that gave rise to the charges meet certain requirements.

⁹ s. 112.19, F.S.

¹⁰ *Id.*

¹¹ *See* s. 112.532(4)(b), F.S.

¹² *See* s. 112.534, F.S.

Enhanced Penalties for Crimes Committed Against Correctional Officers

A variety of statutes provide enhanced penalties for crimes committed against correctional officers. A list of these statutes follows:

- Section 775.0823, F.S. - Violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.
- Section 782.07, F.S. - Manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.
- Section 784.07, F.S. - Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.

Institutional Security Personnel

The Department of Children and Families (DCF) and the Agency for Persons with Disabilities (APD) currently operate forensic facilities that house persons who have been found incompetent to proceed¹³ due to mental illness, retardation, or autism.

The security staff at DCF and APD forensic facilities are called "institutional security personnel" (ISP). ISPs are responsible for "providing security, protecting clients and personnel, enforcing rules, preventing and investigating unauthorized activities, and safeguarding the interests of citizens in the surrounding communities."¹⁴ By definition, ISPs must meet or exceed the requirements of s. 943.13, F.S., the statute that outlines the minimum qualifications that must be met in order for a person to be a law enforcement, correctional, or correctional probation officer.¹⁵ Currently, both DCF and APD are *authorized* to employ certified correctional officers as ISPs but are not *required* to do so.¹⁶

DCF currently has five forensic facilities¹⁷ in operation. Of these five forensic facilities, three are currently operated by GeoCare, Inc., a private entity that contracts with DCF, and two are operated by DCF. In their analysis of this bill, DCF stated that they currently have 140 ISP positions. GeoCare, Inc. reports that they employ 147 certified safety officers (the equivalent of an ISP).

APD currently has three forensic facilities¹⁸ in operation, all of which are operated by APD. In their analysis of this bill, APD stated that they currently have 55 ISP positions.

Effect of the Bill

CS/HB 427 adds "persons employed full time by the state as institutional security personnel" to the definition of "correctional officer" contained in s. 943.10, F.S. As a result, such ISPs will be required to meet the requirements of correctional officers outlined above and will be statutorily entitled to receive the above-described benefits of being a correctional officer.

Auxiliary Law Enforcement Officers – Training

¹³ "Incompetent to proceed" means unable to proceed at any material stage of a criminal proceeding, which shall include trial of the case, pretrial hearings involving questions of fact on which the defendant might be expected to testify, entry of a plea, proceedings for violation of probation or violation of community control, sentencing, and hearings on issues regarding a defendant's failure to comply with court orders or conditions or other matters in which the mental competence of the defendant is necessary for a just resolution of the issues being considered. *See* s. 916.106, F.S.

¹⁴ *See* s. 916.106, F.S.

¹⁵ *Id.*

¹⁶ s. 916.1091, F.S.

¹⁷ South Florida Treatment and Evaluation Center, South Florida Treatment and Evaluation Center Annex, Treasure Coast Forensic treatment Center, Florida State Hospital, and North Florida Evaluation and Treatment Center.

¹⁸ Florida State Hospital, Sunland, and Tacachale.

In Florida, the Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement (FDLE), establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement, correctional, and correctional probation officers.¹⁹ Currently, every prospective full-time and part-time law enforcement officer (LEO), correctional officer (CO), and correctional probation officer (CPO) must successfully complete a CJSTC-developed Basic Recruit Training Program in order to receive their certification. However, a person is exempt from completing a Basic Recruit Training Program if they have:

- Completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the Federal Government; and
- Served as a full-time sworn officer in another state or for the Federal Government for at least 1 year provided there is no more than an 8-year break in employment, as measured from the separation date of the most recent qualifying employment to the time a complete application is submitted for an exemption.²⁰

"Auxiliary law enforcement officers" are persons employed or appointed, with or without compensation, who aid or assist full-time or part-time law enforcement officers and who, while under the direct supervision of a full-time or part-time law enforcement officer, have the authority to arrest and perform law enforcement functions.²¹ Currently, prospective auxiliary law enforcement officers must successfully complete the CJSTC-developed Auxiliary Training Program. Florida law does not currently provide an exemption from taking the Auxiliary Training Program.

As indicated above, only persons who have completed a comparable basic recruit training program and who have served as a *full-time sworn officer* in another state or for the Federal Government for at least 1 year are eligible to be exempt from completing the Basic Recruit Training Program. Persons who have served as *auxiliary* law enforcement officers in another state are not exempt from completing the Auxiliary Training Program.

Effect of the Bill

The bill states that if an applicant seeks to serve as an "auxiliary law enforcement officer" and seeks an exemption from completing a commission approved basic reserve or auxiliary training program, the agency must verify that the applicant has successfully completed another state's comparable basic reserve or auxiliary training program for the discipline in which the applicant is seeking certification, completed the Florida Comparative Compliance course, demonstrated proficiency in the high-liability area, as defined by commission rule, completed the requirements of s. 943.13(10) within 1 year after receiving an exemption, served as an auxiliary law enforcement officer in another state for at least 1 year provided there is no more than a 8 year break in service as measured from the separation date of the most recent qualifying service to the time a complete application is submitted, and execute and submit to the agency, an affidavit-of-applicant form, adopted by the commission, attesting to his or her compliance with subsections (1)-(7). The affidavit shall be executed under oath and constitutes an official statement within the purview of s. 837.06. The affidavit shall include conspicuous language that the intentional false execution of the affidavit constitutes a misdemeanor of the second degree. The affidavit shall be retained by the employing agency. At no time may the auxiliary law enforcement officer work in a full time paid capacity.

C. SECTION DIRECTORY:

Section 1. Amends s. 943.10, F.S., relating to definitions; ss. 943.085 – 943.255.

¹⁹ <http://www.fdle.state.fl.us/cjst/commission/index.html>

²⁰ s. 943.13, F.S.

²¹ s. 943.10, F.S.

Section 2. Amends s. 943.13, F.S., relating to officers' minimum qualifications for employment or appointment.

Section 3. This bill takes effect July 1, 2008.

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:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

Institutional Security Personnel

In their analysis of this bill, DCF stated that they have 140 ISP positions. APD reported in their bill analysis that they have 55 ISP positions. GeoCare, Inc., is the private entity that contracts with DCF to operate three of DCF's forensic facilities. GeoCare, Inc. reports that they employ 147 certified safety officers (the equivalent of an ISP).

Requirements of Being a Correctional Officer

DCF, GeoCare, Inc., and APD reported that all of the persons currently employed as ISPs are certified as correctional officers (i.e., they meet the requirements of s. 943.13, F.S., have completed a correctional officer basic recruit program, and are subject to the retraining requirements discussed above). Consequently, adding ISPs to the definition of "correctional officer" would not appear to have a fiscal impact in this regard.

DCF stated in their analysis of the bill that while all of their ISPs hold correctional officer certification, several would need defensive tactics and firearms certification. DCF stated that they would be able to bring such persons into compliance with little cost (the main cost would be the ammunition used to show proficiency in firearms), and they have an agreement of Appalachian Correctional Institution to provide the training.

It should be noted that current law *authorizes* DCF and APD to hire certified correctional officers as ISPs but does not *require* it. Thus, under current law, DCF and APD could opt not to hire certified correctional officers in the future (thereby possibly saving the expense of certifying employees). By

adding ISPs to the definition of “correctional officer,” DCF and APD would be *required* to hire certified correctional officers as ISPs.

It should also be noted that GeoCare, Inc., pays for the certification of its ISPs. Thus, should DCF ever cancel its contract with GeoCare, Inc., DCF would be responsible for paying for the certification of any ISPs that become employed by the state.

Benefits of Being a Correctional Officer

Florida Retirement System Impact

The Department of Management Services provided the following information regarding current institutional security personnel who are not members of the special risk retirement class and the fiscal impact associated with the differential in retirement contribution generated by the bill:

Agency	# of Regular Class Employees Considered "Institutional Security Personnel" by People First	Annual Salary Totals for Covered Positions	2007/2008 Employer Contributions (2007/2008 Regular Class rate is 8.69%)	Proposed Employer Contributions (2007/2008 Special Risk Class rate is 19.76%)	Difference in Employer Contributions Due Using 2007/2008 Rates
APD	28	\$614,595.75	\$53,408.37	\$121,444.12	\$68,035.75
DCF	3	\$121,168.47	\$10,529.54	\$23,942.89	\$13,413.35
TOTALS	31	\$735,764.22	\$63,937.91	\$145,387.01	\$81,449.10

Workers' Compensation

DCF reported that in 2007, they elected to give ISPs the workers' compensation benefits described above. However, APD reported that ISPs do not currently receive the workers compensation benefits described above. Consequently, this bill may have a fiscal impact to the extent that ISPs who do not currently receive the above-described workers' compensation benefits would be entitled to such benefits. It should also be noted that DCF would no longer be able to *choose* whether to give ISPs the workers' compensation benefits if the bill passes.

GeoCare, Inc., is a private entity and operates its own workers' compensation plan. Should DCF ever cancel its contract with GeoCare, Inc., any ISPs that become employed by the state would be entitled to the above-described workers' compensation benefits.

Salary Incentives

DCF, GeoCare, Inc., and APD reported that all of the persons currently employed as ISPs receive the salary incentives described above. Consequently, adding ISPs to the definition of “correctional officer” would not appear to have a fiscal impact in this regard.

It should be noted that GeoCare, Inc., pays for the salary incentives of its ISPs. Thus, should DCF ever cancel its contract with GeoCare, Inc., DCF would be required to pay the salary incentives of any ISPs that become employed by the state.

Death Benefits

DCF and APD reported that all of the persons currently employed as ISPs receive the death benefits described above. Consequently, adding ISPs to the definition of “correctional officer” would not appear to have a fiscal impact in this regard.

GeoCare, Inc., is a private entity and its ISPs are not eligible for the above-described death benefits. Should DCF ever cancel its contract with GeoCare, Inc., any ISPs that become employed by the state would be entitled to such benefits.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 2

The bill refers to a “basic reserve” program. It is unclear what this program is.

The bill specifies that the “agency” must verify certain information in order for a person to be exempt from completing training. It is unclear what “agency” the bill is referring to.

The bill refers to the Florida Comparative Compliance Course. It is unclear what this course is.

D. STATEMENT OF THE SPONSOR

No statement submitted.

The chair of the Safety & Security Council chose not to submit any further comments regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 12, 2008, the Homeland Security & Public Safety Committee adopted a strike-all amendment and reported the bill favorably as amended. The strike-all amendment removes “certified security personnel” from the definition of “correctional officer.”

On April 1, 2008, the Safety & Security Council reported the bill favorably as a council substitute. This analysis is drafted to the council substitute.

On April 21, 2008, the Policy & Budget Council adopted one amendment to the bill and reported the bill favorably as a council substitute. The amendment exempts persons who have served as *auxiliary* law enforcement officers in another state from completing the Auxiliary Training Program. This analysis is drafted to the council substitute.