



164736

604-03578-09

Proposed Committee Substitute by the Committee on Criminal and
Civil Justice Appropriations

1 A bill to be entitled

2 An act relating to the Department of Corrections;
3 amending s. 775.082, F.S.; requiring that the court
4 sentence certain offenders to a nonstate prison
5 sanction unless the court makes written findings that
6 ordering an offender to a nonstate prison sanction
7 could present a danger to the public; creating s.
8 921.00241, F.S.; providing that on or after a
9 specified date a court may divert from the state
10 correctional system certain offenders who otherwise
11 would be sentenced to state prison; providing
12 eligibility criteria for participation in the state
13 prison diversion program if such a program is funded
14 and exists in the circuit; requiring the court to make
15 written findings that the offender meets the
16 eligibility criteria for the diversion program;
17 creating s. 944.171, F.S.; authorizing the Department
18 of Corrections to contract with county and municipal
19 entities to house inmates committed to the department;
20 authorizing the department to enter into contractual
21 agreements with another state, a political subdivision
22 of another state, or a vendor in another state to
23 transfer and confine Florida inmates within that
24 state; requiring the reclassification of inmates
25 before a transfer occurs; providing for the contents
26 of the contract; providing that a transferred inmate



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27 remains subject to the rules of the Florida Parole
28 Commission; requiring that contracts for the transfer
29 of inmates be procured according to state law;
30 requiring that additional beds authorized under a
31 contract be added to the total capacity of the state
32 correctional system; authorizing the department to
33 adopt rules; amending s. 945.6037, F.S.; increasing
34 the copayment that an inmate must make for a
35 nonemergency visit to a health care provider; creating
36 s. 945.6041, F.S.; defining terms; limiting the
37 compensation of health care providers that do not have
38 contracts to provide inmate medical services with the
39 department or private correctional facilities;
40 limiting compensation to entities that provide
41 emergency medical transportation services for inmates
42 if those entities do not have a contract with the
43 department or certain private correctional facilities;
44 amending s. 947.1405, F.S.; requiring any person who
45 has been placed under supervision and is
46 electronically monitored by the department to pay the
47 department for the cost of the electronic monitoring
48 service; requiring that funds collected from the
49 person be deposited into the General Revenue Fund;
50 authorizing the Department of Corrections to exempt a
51 person from the payment of all or any part of the
52 electronic monitoring service cost under certain
53 circumstances; amending s. 948.01, F.S.; requiring the
54 court to use the orders of supervision prepared by the
55 Department of Corrections when placing a defendant on



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56 community supervision; amending s. 948.09, F.S.;

57 requiring a person to pay the department the cost of

58 electronically monitoring the offender while the

59 offender is placed on supervision; providing for a

60 cost cap on the monitoring service; providing that the

61 department may exempt a person from paying all or any

62 part of the costs of the electronic monitoring service

63 under certain circumstances; amending s. 948.11, F.S.;

64 requiring a person who is electronically monitored on

65 supervision to pay the department for the electronic

66 monitoring services; amending s. 957.09, F.S.;

67 providing that the provisions governing private

68 correctional facilities do not apply to contracts

69 between the department and county and municipal

70 entities, other states, political subdivisions of

71 another state, or correctional management service

72 vendors in another state for the transfer and

73 confinement of state inmates; providing for future

74 expiration of such exemption; amending s. 958.045,

75 F.S.; requiring the Department of Corrections to

76 submit a report to the court at least 30 days before a

77 youthful offender is scheduled to complete the basic

78 training program; requiring the court to modify the

79 youthful offender's sentence and place the offender on

80 probation if the youthful offender has successfully

81 completed the basic training program; providing an

82 effective date.

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84 Be It Enacted by the Legislature of the State of Florida:



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Section 1. Present subsection (10) of section 775.082, Florida Statutes, is renumbered as subsection (11), and a new subsection (10) is added to that section, to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.-

(10) If a defendant is sentenced on or after July 1, 2009, for committing a third-degree felony that is not a forcible felony as defined in s. 776.08, but excluding any third-degree felony violation under chapter 810, and if the total sentence points pursuant to s. 921.0024 are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to this section.

Section 2. Section 921.00241, Florida Statutes, is created to read:

921.00241 Prison diversion program.-

(1) Notwithstanding s. 921.0024 and effective for sentences imposed on or after July 1, 2009, a court may divert from the state correctional system an offender who otherwise would be sentenced to a state facility by sentencing the offender to a nonstate prison sanction as provided in subsection (2). An offender may be sentenced to a nonstate prison sanction if the offender meets all of the following criteria:

(a) The offender's primary offense is a felony of the third degree;



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114 (b) The offender's total sentence points score, as provided
115 in s. 921.0024, is not more than 48 points, or the offender's
116 total sentence points score is 54 points and six of those points
117 are for a violation of community control and do not involve a
118 new violation of law;

119 (c) The offender has not been convicted or previously
120 convicted of a forcible felony as defined in s. 776.08, but
121 excluding any third-degree felony violation under chapter 810;
122 and

123 (d) The offender's primary offense does not require a
124 minimum mandatory sentence.

125 (2) If the court elects to impose a sentence as provided in
126 this section, the court shall sentence the offender to a term of
127 probation, community control, or community supervision, with
128 mandatory participation in a prison diversion program of the
129 Department of Corrections if such program is funded and exists
130 in the judicial circuit in which the offender is sentenced. The
131 prison diversion program shall be designed to meet the unique
132 needs of each judicial circuit and of the offender population of
133 that circuit. The program may require residential,
134 nonresidential, or day reporting requirements, substance abuse
135 treatment, employment, restitution, academic or vocational
136 opportunities, or community service work.

137 (3) The court that sentences a defendant to a nonstate
138 prison sanction pursuant to subsection (2) shall make written
139 findings that the defendant meets the criteria in subsection (1)
140 and the sentencing order shall indicate that the offender was
141 sentenced to the prison diversion program pursuant to subsection
142 (2)



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143 Section 3. Section 944.171, Florida Statutes, is created to
144 read:

145 944.171 Housing of inmates.-

146 (1) (a) Notwithstanding the provisions of s. 944.17, Florida
147 Statutes, to the contrary, the Department of Corrections may
148 contract with county or municipal facilities for the purpose of
149 housing inmates committed to the department.

150 (b) Notwithstanding the provisions of ss. 944.17 and
151 944.1905, Florida Statutes, to the contrary, before transferring
152 a state inmate to another facility as authorized under this
153 section, the inmate shall be reclassified and scored as to
154 custody risk based on the current offense and not on prior
155 criminal history. Upon return to a state correctional
156 institution, the inmate shall be reclassified based on the
157 provisions of ss. 944.17 and 944.1905, Florida Statutes.

158 (c) Any inmate placed in another facility under this
159 section remains under the jurisdiction of the department.

160 (2) (a) Notwithstanding the provisions of s. 944.17, Florida
161 Statutes, to the contrary, the Department of Corrections may
162 enter into contracts with another state, a political subdivision
163 of another state, or a correctional management services vendor
164 in another state for the transfer and confinement in that state
165 of inmates who have been committed to the custody of the
166 department. Any such contract must include:

167 1. A termination date.

168 2. Provisions concerning the costs of inmate maintenance,
169 extraordinary medical and dental expenses, and any participation
170 in or receipt by inmates of rehabilitative or correctional
171 services, facilities, programs, or treatment, including those



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172 costs not reasonably included as part of normal maintenance.

173 3. Provisions concerning participation in programs of
174 inmate employment, if any, the disposition or crediting of any
175 payments received by inmates on account of employment, and the
176 crediting of proceeds or disposal of any products resulting from
177 employment.

178 4. Provisions for the delivery and retaking of inmates.

179 5. A waiver of extradition by this state and the state to
180 which the inmates are transferred.

181 6. Retention of jurisdiction of the inmates transferred by
182 Florida.

183 7. Regular reporting procedures concerning Florida inmates
184 by officials of the state, political subdivision, or
185 correctional management services vendor with which the
186 department is contracting.

187 8. Provisions concerning procedures for community
188 supervision, including probation, parole, conditional release,
189 and discharge.

190 9. The same standards of reasonable and humane care as the
191 inmates would receive in an appropriate institution in this
192 state.

193 10. Any other matters that are necessary and appropriate to
194 establish the obligations, responsibilities, and rights of
195 Florida and the state, political subdivision, or correctional
196 management services vendor with which the department is
197 contracting.

198 (b) Inmates from Florida state prisons while in an
199 institution in another state are subject to all provisions of
200 law and rules concerning the confinement of persons committed



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201 for violations of the laws of that state, except as otherwise
202 provided for by any contract entered into under this section.

203 (c) The Florida Parole Commission shall conduct any parole
204 hearing for an inmate confined under a contract pursuant to this
205 section according to the rules of the commission.

206 (d) Contracts under this section shall be procured in
207 accordance with s. 287.057, Florida Statutes.

208 (3) Any beds contracted under this section shall be added
209 to the total capacity of the correctional system as defined in
210 s. 944.023, Florida Statutes, notwithstanding any law to the
211 contrary.

212 (4) In making placements authorized by this section, the
213 department shall consider, to the extent possible, the proximity
214 of the receiving facility to the inmate's family, consistent
215 with s. 944.8031, Florida Statutes.

216 (5) The Department of Corrections may adopt rules to
217 administer this section.

218 Section 4. Paragraph (a) of subsection (1) of section
219 945.6037, Florida Statutes, is amended to read:

220 945.6037 Nonemergency health care; inmate copayments.—

221 (1) (a) ~~Effective October 1, 1997,~~ For each nonemergency
222 visit by an inmate to a health care provider which visit is
223 initiated by the inmate, the inmate must make a copayment of \$5
224 \$4. A copayment may not be charged for the required initial
225 medical history and physical examination of the inmate.

226 Section 5. Section 945.6041, Florida Statutes, is created
227 to read:

228 945.6041 Inmate medical services.—

229 (1) As used in this section, the term:



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230 (a) "Emergency medical transportation services" includes,
231 but is not limited to, services rendered by ambulances,
232 emergency medical services vehicles, and air ambulances as those
233 terms are defined in s. 401.23.

234 (b) "Health care provider" has the same meaning as provided
235 in s. 766.105.

236 (2) (a) Compensation to a health care provider to provide
237 inmate medical services may not exceed 110 percent of the
238 Medicare allowable rate if the health care provider does not
239 have a contract to provide services with the department or the
240 private correctional facility, as defined in s. 944.710, which
241 houses the inmate.

242 (b) Notwithstanding paragraph (a), compensation to a health
243 care provider to provide inmate medical services may not exceed
244 125 percent of the Medicare allowable rate if:

245 1. The health care provider does not have a contract to
246 provide services with the department or the private correctional
247 facility, as defined in s. 944.710, which houses the inmate; and

248 2. The health care provider reported a negative operating
249 margin for the previous year to the Agency for Health Care
250 Administration through hospital-audited financial data.

251 (3) Compensation to an entity to provide emergency medical
252 transportation services for inmates may not exceed 110 percent
253 of the Medicare allowable rate if the entity does not have a
254 contract with the department or a private correctional facility,
255 as defined in s. 944.710, to provide the services.

256 (4) This section does not apply to charges for medical
257 services provided at a hospital operated by the department.

258 Section 6. Paragraph (b) of subsection (7) of section



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259 947.1405, Florida Statutes, is amended to read:

260 947.1405 Conditional release program.—

261 (7)

262 (b) For a releasee whose crime was committed on or after
263 October 1, 1997, in violation of chapter 794, s. 800.04, s.
264 827.071, s. 847.0135(5), or s. 847.0145, and who is subject to
265 conditional release supervision, in addition to any other
266 provision of this subsection, the commission shall impose the
267 following additional conditions of conditional release
268 supervision:

269 1. As part of a treatment program, participation in a
270 minimum of one annual polygraph examination to obtain
271 information necessary for risk management and treatment and to
272 reduce the sex offender's denial mechanisms. The polygraph
273 examination must be conducted by a polygrapher trained
274 specifically in the use of the polygraph for the monitoring of
275 sex offenders, where available, and at the expense of the sex
276 offender. The results of the polygraph examination shall not be
277 used as evidence in a hearing to prove that a violation of
278 supervision has occurred.

279 2. Maintenance of a driving log and a prohibition against
280 driving a motor vehicle alone without the prior approval of the
281 supervising officer.

282 3. A prohibition against obtaining or using a post office
283 box without the prior approval of the supervising officer.

284 4. If there was sexual contact, a submission to, at the
285 probationer's or community controllee's expense, an HIV test
286 with the results to be released to the victim or the victim's
287 parent or guardian.



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288 5. Electronic monitoring of any form when ordered by the
289 commission. Any person who has been placed under supervision and
290 is electronically monitored by the department shall pay the
291 department for the cost of the electronic monitoring service at
292 a rate that may not exceed the full cost of the monitoring
293 service. Funds collected under this subparagraph shall be
294 deposited into the General Revenue Fund. The department may
295 exempt a person from the payment of all or any part of the
296 electronic monitoring service cost if the department finds that
297 any of the factors listed in s. 948.09(3) exist.

298 Section 7. Subsection (1) of section 948.01, Florida
299 Statutes, is amended to read:

300 948.01 When court may place defendant on probation or into
301 community control.-

302 (1) (a) Any court of the state having original jurisdiction
303 of criminal actions may at a time to be determined by the court,
304 either with or without an adjudication of the guilt of the
305 defendant, hear and determine the question of the probation of a
306 defendant in a criminal case, except for an offense punishable
307 by death, who has been found guilty by the verdict of a jury,
308 has entered a plea of guilty or a plea of nolo contendere, or
309 has been found guilty by the court trying the case without a
310 jury. If the court places the defendant on probation or into
311 community control for a felony, the department shall provide
312 immediate supervision by an officer employed in compliance with
313 the minimum qualifications for officers as provided in s.
314 943.13. In no circumstances shall a private entity provide
315 probationary or supervision services to felony or misdemeanor
316 offenders sentenced or placed on probation or other supervision



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317 by the circuit court.

318 (b) The court shall use the orders of supervision prepared
319 by the Department of Corrections when placing a defendant on
320 community supervision.

321 Section 8. Subsection (2) of section 948.09, Florida
322 Statutes, is amended to read:

323 948.09 Payment for cost of supervision and rehabilitation.—

324 (2) Any person being electronically monitored by the
325 department as a result of being placed ~~placement~~ on supervision
326 ~~community control~~ shall ~~be required to pay~~ the department for
327 electronic monitoring services at a rate ~~as a surcharge an~~
328 ~~amount~~ that may not exceed the full cost of the monitoring
329 service in addition to the cost of supervision fee as directed
330 by the sentencing court. The funds collected under this
331 subsection ~~surcharge~~ shall be deposited in the General Revenue
332 Fund. The department may exempt a person from paying all or any
333 part of the costs of the electronic monitoring service if it
334 finds that any of the factors listed in subsection (3) exist.

335 Section 9. Subsections (5) through (7) of section 948.11,
336 Florida Statutes, are amended to read:

337 948.11 Electronic monitoring devices.—

338 (5) Any person being electronically monitored by the
339 department as a result of being placed ~~placement~~ on supervision
340 ~~community control~~ shall ~~be required to pay~~ the department for
341 the electronic monitoring services ~~a surcharge~~ as provided in s.
342 948.09(2).

343 (6) For probationers, community controllees, or conditional
344 releasees who have current or prior convictions for violent or
345 sexual offenses, the department, in carrying out a court or



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346 commission order to electronically monitor an offender, must use
347 a system that actively monitors and identifies the offender's
348 location and timely reports or records the offender's presence
349 near or within a crime scene or in a prohibited area or the
350 offender's departure from specified geographic limitations.
351 Procurement of electronic monitoring services under this
352 subsection shall be by competitive procurement in accordance
353 with invitation to bid as defined in s. 287.057.

354 (7) A person who intentionally alters, tampers with,
355 damages, or destroys any electronic monitoring equipment
356 pursuant to court or commission order, unless the ~~such~~ person is
357 the owner of the equipment, or an agent of the owner, performing
358 ordinary maintenance and repairs, commits a felony of the third
359 degree, punishable as provided in s. 775.082, s. 775.083, or s.
360 775.084.

361 Section 10. Section 957.09, Florida Statutes, is amended to
362 read:

363 957.09 Applicability of chapter to other provisions of
364 law.—

365 (1) (a) Any offense that if committed at a state
366 correctional facility would be a crime shall be a crime if
367 committed by or with regard to inmates at private correctional
368 facilities operated pursuant to a contract entered into under
369 this chapter.

370 (b) All laws relating to commutation of sentences, release
371 and parole eligibility, and the award of sentence credits shall
372 apply to inmates incarcerated in a private correctional facility
373 operated pursuant to a contract entered into under this chapter.

374 (2) The provisions of this chapter are supplemental to the



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375 provisions of ss. 944.105 and 944.710-944.719. However, in any
376 conflict between a provision of this chapter and a provision of
377 such other sections, the provision of this chapter shall
378 prevail.

379 (3) The provisions of law governing the participation of
380 minority business enterprises are applicable to this chapter.

381 (4) The provisions of this chapter do not apply to
382 contracts between the department and county and municipal
383 entities, other states, political subdivisions of another state,
384 or correctional management service vendors in another state for
385 the transfer and confinement of state inmates.

386 Section 11. Paragraph (c) of subsection (5) of section
387 958.045, Florida Statutes, is amended to read:

388 958.045 Youthful offender basic training program.—

389 (5)

390 (c) The portion of the sentence served prior to placement
391 in the basic training program may not be counted toward program
392 completion. The department shall submit a report to the court at
393 least 30 days before the youthful offender is scheduled to
394 complete the basic training program. The report must describe
395 the offender's performance in the basic training program. If the
396 youthful offender's performance has been satisfactory, the court
397 shall issue an order modifying the sentence imposed and place
398 the offender on probation subject to the offender successfully
399 completing the remainder of the basic training program. ~~Upon the~~
400 ~~offender's completion of the basic training program, the~~
401 ~~department shall submit a report to the court that describes the~~
402 ~~offender's performance. If the offender's performance has been~~
403 ~~satisfactory, the court shall issue an order modifying the~~



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404 ~~sentence imposed and placing the offender on probation.~~ The term
405 of probation may include placement in a community residential
406 program. If the offender violates the conditions of probation,
407 the court may revoke probation and impose any sentence that it
408 might have originally imposed.

409 Section 12. This act shall take effect July 1, 2009.

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