

By the Committee on Criminal and Civil Justice Appropriations;
and Senator Crist

604-04039-09

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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
27 remains subject to the rules of the Florida Parole
28 Commission; requiring that contracts for the transfer

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

57 requiring a person to pay the department the cost of

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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.

83

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

85

86 Section 1. Present subsection (10) of section 775.082,

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87 Florida Statutes, is renumbered as subsection (11), and a new
88 subsection (10) is added to that section, to read:

89 775.082 Penalties; applicability of sentencing structures;
90 mandatory minimum sentences for certain reoffenders previously
91 released from prison.-

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

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

104 921.00241 Prison diversion program.-

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

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

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

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116 total sentence points score is 54 points and six of those points
117 are for a violation of probation, community control, or other
118 community supervision, and do not involve a new violation of
119 law;

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

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

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

138 (3) The court that sentences a defendant to a nonstate
139 prison sanction pursuant to subsection (2) shall make written
140 findings that the defendant meets the criteria in subsection (1)
141 and the sentencing order shall indicate that the offender was
142 sentenced to the prison diversion program pursuant to subsection
143 (2)

144 Section 3. Section 944.171, Florida Statutes, is created to

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145 read:

146 944.171 Housing of inmates.-

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

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

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

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

168 1. A termination date.

169 2. Provisions concerning the costs of inmate maintenance,
170 extraordinary medical and dental expenses, and any participation
171 in or receipt by inmates of rehabilitative or correctional
172 services, facilities, programs, or treatment, including those
173 costs not reasonably included as part of normal maintenance.

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

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

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

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

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

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

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

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

199 (b) Inmates from Florida state prisons while in an
200 institution in another state are subject to all provisions of
201 law and rules concerning the confinement of persons committed
202 for violations of the laws of that state, except as otherwise

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203 provided for by any contract entered into under this section.

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

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

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

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

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

219 Section 4. Paragraph (a) of subsection (1) of section
220 945.6037, Florida Statutes, is amended to read:

221 945.6037 Nonemergency health care; inmate copayments.—

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

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

229 945.6041 Inmate medical services.—

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

231 (a) "Emergency medical transportation services" includes,

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232 but is not limited to, services rendered by ambulances,
233 emergency medical services vehicles, and air ambulances as those
234 terms are defined in s. 401.23.

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

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

243 (b) Notwithstanding paragraph (a), compensation to a health
244 care provider to provide inmate medical services may not exceed
245 125 percent of the Medicare allowable rate if:

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

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

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

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

259 Section 6. Paragraph (b) of subsection (7) of section
260 947.1405, Florida Statutes, is amended to read:

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261 947.1405 Conditional release program.-

262 (7)

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

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

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

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

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

289 5. Electronic monitoring of any form when ordered by the

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

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

301 948.01 When court may place defendant on probation or into
302 community control.—

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

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

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

324 948.09 Payment for cost of supervision and rehabilitation.—

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

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

338 948.11 Electronic monitoring devices.—

339 (5) Any person being electronically monitored by the
340 department as a result of being placed ~~placement~~ on supervision
341 ~~community control~~ shall ~~be required to pay the department for~~
342 the electronic monitoring services ~~a surcharge~~ as provided in s.
343 948.09(2).

344 (6) For probationers, community controllees, or conditional
345 releasees who have current or prior convictions for violent or
346 sexual offenses, the department, in carrying out a court or
347 commission order to electronically monitor an offender, must use

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

355 (7) A person who intentionally alters, tampers with,
356 damages, or destroys any electronic monitoring equipment
357 pursuant to court or commission order, unless the ~~such~~ person is
358 the owner of the equipment, or an agent of the owner, performing
359 ordinary maintenance and repairs, commits a felony of the third
360 degree, punishable as provided in s. 775.082, s. 775.083, or s.
361 775.084.

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

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

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

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

375 (2) The provisions of this chapter are supplemental to the
376 provisions of ss. 944.105 and 944.710-944.719. However, in any

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377 conflict between a provision of this chapter and a provision of
378 such other sections, the provision of this chapter shall
379 prevail.

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

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

387 Section 11. Paragraph (c) of subsection (5) of section
388 958.045, Florida Statutes, is amended to read:

389 958.045 Youthful offender basic training program.—

390 (5)

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

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

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

411