



## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Civil Rights Restoration Process**

Currently, s. 940.061, F.S., requires the Department of Corrections (department) to do the following:

- Inform and educate inmates and offenders on community supervision about restoration of civil rights; and
- Assist inmates in completing the restoration of civil rights application.<sup>1</sup>

Section 944.293, F.S., also requires the department, prior to the discharge of an offender from supervision, to obtain from the Governor the application and other necessary forms for restoring civil rights, to assist the offender in completing the forms, and to ensure that the application and other forms are forwarded to the Governor.<sup>2</sup>

In years past, the restoration of civil rights process required persons to fill out and submit paper applications to the Florida Parole Commission, an agent of the Clemency Board. However, the restoration of civil rights process has undergone changes and is now fully automated. In 2001, the Clemency Board eliminated the requirement for inmates to file an application and instead a computer-generated list of felons eligible for restoration is sent directly to the commission by the department. The Clemency Board also revised the rules in 2001 to make more offenders eligible for restoration without a hearing.<sup>3</sup>

Since 2001, the department reports that it has electronically submitted the names of inmates released from incarceration and offenders who have completed supervision to the Clemency Administration Office in the Florida Parole Commission. These lists are submitted on a monthly basis and serve as electronic restoration of civil rights applications.

Due to these current practices, ss. 940.061 and 944.293, F.S., no longer accurately describe the department's process for assisting inmates and offenders with restoration of civil rights.

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<sup>1</sup> Section 940.061, F.S., was enacted in 1996.

<sup>2</sup> Section 944.293, F.S., was enacted in 1974 and has not been revised since 1979.

<sup>3</sup> Senate Criminal Justice Committee Interim Report 2008-114.

### *Effect of the Bill*

The bill amends s. 940.061, F.S., to delete the requirement that the department assist inmates and offenders with the completion of the restoration of civil rights application. The bill codifies current practice by adding language requiring the department to send the Florida Parole Commission a monthly electronic list containing the names of inmates released from incarceration and offenders who have been terminated from supervision who may be eligible for restoration of civil rights. The bill also repeals s. 944.293, F.S., as it is obsolete.

### **Sexual Misconduct in Private Prisons**

Section 944.35(3)(b), F.S., currently provides that any employee of the department who engages in sexual misconduct<sup>4</sup> with an inmate or an offender supervised by the department in the community, without committing the crime of sexual battery, commits a felony of the third degree.

Because ch. 944, F.S., defines "department" as the "Department of Corrections," the section relating to sexual misconduct only applies to employees of the Department of Corrections. The statute does not appear to apply to employees of a private correctional facility.<sup>5</sup> As such, it is not a crime for a private correctional facility employee to engage in sexual misconduct with an inmate housed at a private correctional facility.

There are currently six private correctional facilities in Florida. The department's Office of Inspector General has investigated instances of sexual misconduct that have occurred at private correctional facilities. However, state attorney's offices have advised that the current law is not sufficient to prosecute employees of private correctional facilities because the statute is limited to department employees.<sup>6</sup>

### *Effect of the Bill*

The bill amends s. 944.35, F.S., to make it a third degree felony for an employee of a private correctional facility to engage in sexual misconduct with an inmate or an offender supervised by the department in the community.

### **Medical Claims**

When inmates are in need of medical procedures that cannot be performed within the department's facilities, inmates are referred to outside health care providers (provider). In these instances, providers submit medical claims to the department for payment. The department reports that medical claims are more complex than regular trade payables and require a higher degree of scrutiny. These claims require reviews to determine if the services rendered were accurate and reasonable, both for the provider and for the beneficiary of the services. The department estimates that it processes and pays over 65,000 medical claims each year.<sup>7</sup>

Florida law does not set forth a time period in which a provider may submit a medical claim to the department. This permits providers to submit medical claims well beyond reasonable industry standards, as currently defined for providers and health maintenance organizations (HMOs) in s. 641.3155, F.S.

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<sup>4</sup> Section 944.35(3)(b), F.S., defines the term "sexual misconduct" as the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object, but does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee's duty.

<sup>5</sup> Section 944.710, F.S., defines the term "private correctional facility" as any facility, which is not operated by the department, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the department.

<sup>6</sup> Department of Corrections 2009 Analysis.

<sup>7</sup> Department of Corrections 2009 Analysis.

The Florida statutes provide language to guide both providers and HMOs with timelines for submitting claims and payments. This section of statute defines the term “claim”<sup>8</sup> and it requires providers to submit claims for payment or underpayment to HMOs within 6 months after a patient’s discharge for in-service or outpatient services or the provider has been given the correct name and address of the patient’s HMO.<sup>9</sup> Claims for payment must not duplicate a claim previously submitted unless the original claim was not received or lost.<sup>10</sup>

For electronically submitted claims, the HMO is required within 24 hours to acknowledge receipt of the claim and within 20 days to pay the claim or notify the provider if the claim will be contested or denied. The HMO must supply the providers an itemized list for documentation needed to process the claim. The provider must submit the requested information within 35 days. A claim must be paid or denied within 90 days after receipt of the claim. Failure to pay within 120 days creates an uncontestable obligation to pay the claim.<sup>11</sup>

For non-electronically submitted claims, the HMO will within 15 days acknowledge receipt of the claim and within 40 days pay the claim or notify the provider if the claim will be contested or denied. The HMO must supply the providers an itemized list for documentation needed to process the claim. The provider must submit the requested information within 35 days. A claim must be paid or denied within 120 days after receipt of the claim. Failure to pay within 140 days creates an uncontestable obligation to pay the claim.<sup>12</sup>

The statute also requires HMOs to submit a claim for overpayment to providers within 30 months after payment of the claim, unless the claim is sought beyond that time from providers convicted of fraud pursuant to s. 817.234, F.S. Providers must pay, deny, or contest the HMO’s claim for overpayment within 40 days after receiving the claim. Providers who deny or contest an HMO’s claim for overpayment must do so in writing within 35 days of receiving the claim. Such notice must identify the contested portion of the claim and the specific reason for contesting or denying the claim. The HMO will then have 35 days to submit the additional information to the provider. Following receipt of the information, the provider will have 45 days to deny or submit payment. All contested claims for overpayment must be paid or denied within 120 days after receipt of the claim. A provider’s failure to pay or deny the claim for overpayment within 140 days after receipt creates an uncontestable obligation to pay the claim. The HMO may not reduce payment to the provider for other services unless the provider agrees to the reduction or fails to respond to the department’s claim for overpayment. Interest at the rate of 12 percent per year begins to accrue on the date when the claim should have been paid, denied, or contested.<sup>13</sup>

The statutes provide that the provisions of this section may not be waived, voided, or nullified by contract.<sup>14</sup>

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<sup>8</sup> Section 641.3551, F.S., states, “the term ‘claim’ for a noninstitutional provider means a paper or electronic billing instrument submitted to the health maintenance organization’s designated location that consists of the HCFA 1500 data set, or its successor, that has all mandatory entries for a physician licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 463, or psychologists licensed under chapter 490 or any appropriate billing instrument that has all mandatory entries for any other noninstitutional provider. For institutional providers, ‘claim’ means a paper or electronic billing instrument submitted to the health maintenance organization’s designated location that consists of the UB-92 data set or its successor with entries stated as mandatory by the National Uniform Billing Committee.”

<sup>9</sup> Section 641.3155(2)(b), F.S.

<sup>10</sup> Section 641.3551(c), F.S.

<sup>11</sup> Section 641.3155(3), F.S.

<sup>12</sup> Section 641.3155(4), F.S.

<sup>13</sup> Section 641.3155(5), F.S.

<sup>14</sup> Section 641.3155(9), F.S.

### *Effect of the Bill*

The bill's language will provide billing and payment guidelines for healthcare providers (providers) who work with the department. The bill mirrors some of the provisions of s. 641.3155, F.S. The term "claim" is defined the same as in s. 641.3155(1), F.S. The bill requires providers to submit a claim for payment or underpayment to the department within six months of a patient's discharge of in-service or outpatient services or when the provider has been given the correct name and address of the department. The bill specifies that the department is not obligated to pay claims that were not submitted within this timeframe. However, the bill does not specify any timeframes for the department to pay, contest or deny claims made by the provider.

The bill also requires the department to submit a claim for overpayment to providers within 30 months after payment of the claim, unless the claim is sought beyond that time from providers convicted of fraud pursuant to s. 817.234, F.S. Providers would not be required to pay claims that were not submitted within this timeframe. The bill specifies that:

- Providers must pay, deny, or contest the HMO's claim for overpayment within 40 days after receiving the claim.
- Providers who deny or contest an HMO's claim for overpayment must do so in writing within 40 days of receiving the claim. Such notice must identify the contested portion of the claim and the specific reason for contesting or denying the claim.
- All contested claims for overpayment must be paid or denied within 120 days after receipt of the claim. A provider's failure to pay or deny the claim for overpayment within 140 days after receipt creates an uncontestable obligation to pay the claim.
- The department may not reduce payment to the provider for other services unless the provider agrees to the reduction or fails to respond to the department's claim for overpayment.

The bill provides that the provisions in this section may not be waived, voided, or nullified by contract.

### **Inmate Medical Claims Payment Limit**

The department is required to refer inmates to community health care providers (e.g., hospitals, physicians, ambulatory surgical centers, etc.) for emergency inpatient and outpatient procedures when such procedures cannot be performed within department facilities. The department reports that it has been able to contract with many health care providers so that procedures are performed at a discounted or fixed price. However, the department has not been able to contract with all of the health care providers that it uses. The department reports that health care providers routinely give commercial and governmental entities significant discounted rates off billed charges – often more than 50%. Despite this industry standard, many health providers provide little or no discount to the department when the department utilizes the services of a provider that it does not have a contract with. This leaves the department vulnerable to the pricing of each non-contracted provider, resulting in higher costs and less predictability over future costs.<sup>15</sup>

During the 2007-2008 Fiscal Year, the department spent over \$76 million on in-patient/out-patient hospitalization and emergency medical care for inmates. Proviso was added to the General Appropriations Act<sup>16</sup> during the 2008 legislative session that, in part, required the department to pay no more than 110 percent of the Medicare<sup>17</sup> rate for services provided by hospitals licensed under ch. 395, F.S., or health care providers providing services at a hospital licensed under ch. 395, F.S., that the

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<sup>15</sup> Department of Corrections 2009 Analysis.

<sup>16</sup> L.O.F. 2008-152, line 786.

<sup>17</sup> Medicare is a nationally known program and its reimbursement rates are widely accepted throughout the medical industry.

Department has no contract with. If the hospital licensed under ch. 395, F.S., reported a negative operating margin the previous year<sup>18</sup>, the department may pay up to 125 percent of the Medicare rate.

The department reports that this proviso has resulted in savings to the state. The department anticipates cost avoidances of more than \$15 million in expenses for this fiscal year.<sup>19</sup>

#### *Effect of the Bill*

This bill codifies much of the proviso language contained in the 2008 General Appropriations Act. Specifically, the bill provides that if no contract for the provision of inmate medical services exists between the department or a private correctional facility and a health care provider, compensation for such services may not exceed 110 percent of the Medicare allowable rate. The bill specifies that such compensation may not exceed 125 percent of the Medicare allowable rate if the health care provider reported to the Agency for Health Care Administration, through hospital-audited financial data, a negative operating margin for the previous year. Additionally, the bill provides that if no contract for emergency medical transportation services exists between the department or a private correctional facility and an entity that provides emergency medical transportation services, compensation for such services may not exceed 110 percent of the Medicare allowable rate.

The bill defines the term "health care provider" in accordance with s. 766.105, F.S.,<sup>20</sup> and provides that the term "emergency medical transportation services" includes but is not limited to services rendered by ambulances, emergency medical services vehicles, and air ambulances as defined in s. 401.23, F.S. These statutes cited encompass more entities than those defined in ch. 395, F.S., which was used in the original proviso language.

#### **Criminal Quarantine Community Control**

Section 948.001, F.S., defines "criminal quarantine community control" as "intensive supervision, by officers with restricted caseloads, with a condition of 24-hour-per-day electronic monitoring, and a condition of confinement to a designated residence during designated hours." This type of supervision was established<sup>21</sup> in 1993 as a sentencing disposition for offenders sentenced for criminal transmission of HIV.<sup>22</sup> Section 775.0877, F.S., establishes the crime of criminal transmission of HIV, which is currently a third degree felony punishable by a term of criminal quarantine community control.

The department reports that since the statutes were enacted in 1993, no one has been sentenced to criminal quarantine community control for any offense. Those convicted of criminal transmission of HIV have historically been sentenced to regular probation.<sup>23</sup> Thus, this type of supervision has never existed operationally.

#### *Effect of the Bill*

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<sup>18</sup> As reported to the Agency for Healthcare Administration through hospital audited financial data.

<sup>19</sup> Department of Corrections 2009 Analysis.

<sup>20</sup> Section 766.105(1)(b), F.S., defines the term "health care provider" as any hospital licensed under chapter 395, physician or physician assistant licensed under chapter 458, osteopathic physician or physician assistant licensed under chapter 459, podiatric physician licensed under chapter 461, health maintenance organization certificated under part I of chapter 641, ambulatory surgical center licensed under chapter 395, "other medical facility" as defined in s. 766.105(1)(c), F.S., or professional association, partnership, corporation, joint venture, or other association by physicians licensed under chapters 458, 459, or 461, F.S., for professional activity.

<sup>21</sup> L.O.F. 93-227.

<sup>22</sup> Section 775.0877(3), F.S., provides, in part, that an offender commits criminal transmission of HIV if the offender has undergone HIV testing pursuant to s. 775.0877(1), F.S., has received a positive test result, and commits a second or subsequent offense enumerated in s. 775.0877(1)(a)-(n), F.S.

<sup>23</sup> Department of Corrections 2009 Analysis.

The bill removes references to criminal quarantine community control throughout Florida Statutes. Additionally, the bill specifies that criminal transmission of HIV is a third degree felony punishable as provided in s. 775.082, s. 775.083, and s. 775.084.<sup>24</sup>

### **Uniform Order of Supervision**

The order of supervision is the sentencing document used by the court to sentence an offender to state supervision and specifies conditions by which the offender must abide. Current law does not require courts to use a uniform order of supervision. As such, orders of supervision may vary between judicial circuits.

Recently, the department developed a uniform Order of Supervision and requested each judicial circuit to consider using the Order. The goal was to provide consistency in the language used in the conditions of supervision on a statewide basis. The department reports that a majority of circuits agreed to use the Order and are pleased with it.<sup>25</sup>

#### *Effect of the Bill*

The bill amends s. 948.01, F.S., to require courts to use uniform order of supervision forms provided by the department for all persons placed on community supervision. The bill also specifies that the uniform order of supervision forms will be developed by the department in consultation with the Office of the State Court Administrator.

### **Terms and Conditions of Probation**

Offenders on probation and community control must comply with the statutory terms and conditions set forth in s. 948.03, F.S. These terms and conditions require probationers and community controlees to:

- Report to the probation and parole supervisors as directed.
- Permit such supervisors to visit him or her at his or her home or elsewhere.
- Work faithfully at suitable employment insofar as may be possible.
- Remain within a specified place.
- Make reparation or restitution.
- Make payment of the debt due and owing to a county or municipal detention facility for medical care, treatment, hospitalization, or transportation received by the felony probationer while in that detention facility.
- Support his or her legal dependents to the best of his or her ability.
- Pay any monies owed to the crime victim's compensation trust fund.
- Pay the application fee and costs of the public defender.
- Not associate with persons engaged in criminal activities.
- Submit to random testing as directed by the correctional probation officer or the professional staff of the treatment center where he or she is receiving treatment to determine the presence or use of alcohol or controlled substances.
- Not possess, carry, or own any firearm unless authorized by the court *and consented to by the probation officer*.
- Not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician.
- Not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- Submit to the drawing of blood or other biological specimens, and reimburse the appropriate agency for the costs of drawing and transmitting the blood or other biological specimens to the Department of Law Enforcement.

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<sup>24</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine.

<sup>25</sup> Department of Corrections 2009 Analysis.

The "Order of Probation" form in Florida Rules of Criminal Procedure<sup>26</sup> specifically provides many of the provisions found in s. 948.03, F.S. It also adds the condition that an offender should "live without violating any law."

Currently, only sex offenders are required by law to submit to photographs as a condition of probation.<sup>27</sup> The department currently takes such photographs and places them on the public website. Because the requirement to submit to a photograph is not specifically authorized by statute, the department reports that it cannot mandate that an offender do so.<sup>28</sup>

#### *Effect of the Bill*

Offenders on probation are prohibited from possessing, carrying, or owning any firearm unless authorized by the court and consented to by the probation officer. However, the department reports that in practice, the probation officer defers to the court's decision.<sup>29</sup> The bill deletes the language requiring consent of the probation officer. Therefore, an offender will be prohibited from possessing, carrying, or owning any firearm unless authorized by the court.

The bill also adds the following conditions of supervision to s. 948.03, F.S.:

- "Live without violating any law. A conviction in a court of law shall not be necessary for such a violation of law to constitute a violation of probation, community control, or any other form of court-ordered supervision."
- "Submit to the taking of a digitized photograph by the department as part of the offender's records. This photograph may be displayed on the department's public website while the offender is on a form of court-ordered supervision, with the exception of offenders on pretrial intervention supervision, or who would otherwise be exempt from public records due to provisions in s. 119.07."

#### **Electronic Monitoring**

Currently, offenders on all types of community supervision (e.g., probation, community control, conditional release) may be ordered to submit to electronic monitoring.<sup>30</sup> However, only community controlees<sup>31</sup> who are being electronically monitored are statutorily required to pay for such monitoring.<sup>32</sup> The department reports that as of January 12, 2009, 2,209 offenders were on active GPS electronic monitoring, which costs \$8.94 per day (75 percent of these offenders are sexual offenders) and there were 100 offenders on radio frequency electronic monitoring, which costs \$1.97 per day.<sup>33</sup>

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<sup>26</sup> See Rule 3.986(e), Florida Rules of Criminal Procedure.

<sup>27</sup> Sections 775.21(6) and 943.0435(2)(b)2., F.S.

<sup>28</sup> Department of Corrections 2009 Analysis.

<sup>29</sup> Department of Corrections 2009 Analysis.

<sup>30</sup> Sections 947.1405(7), 948.101(1), 948.063, and 948.30(2), F.S.

<sup>31</sup> Section 948.001, F.S., defines "community control" as "a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced."

<sup>32</sup> Section 948.009(2), F.S., provides that "any person being electronically monitored by the department as a result of placement on community control shall be required to pay as a surcharge an amount that may not exceed the full cost of the monitoring service in addition to the cost of supervision fee as directed by the sentencing court. The surcharge shall be deposited in the General Revenue Fund."

<sup>33</sup> Department of Corrections 2009 Analysis.

The department currently obtains electronic monitoring services through an invitation to bid<sup>34</sup> in accordance with s. 287.057, F.S.

Section 948.09, F.S., requires any person being electronically monitored by the department as a result of placement on community control to pay as a surcharge an amount that may not exceed the full cost of the monitoring service in addition to the cost of supervision fee as directed by the sentencing court.

Although community controlees are the only type of offender required to pay for electronic monitoring, the department attempts to collect the monitoring surcharge from offenders on other types of supervision. However, because there is no statutory requirement that such offenders pay for monitoring, the department's efforts to collect such monies are hindered.

The department reports its total expenditures for FY 07-08 as \$5,510,068, while only \$532,812 was collected. As a whole, the department collected 10 percent of their expenditures. All funds collected are deposited into the General Revenue Fund.<sup>35</sup>

#### *Effect of the Bill*

The bill amends electronic monitoring statutes<sup>36</sup> to require offenders on all types of supervision to pay for the monitoring service. The bill specifies that the department may exempt a person from payment of all or any part of the electronic monitoring service if it finds that factors exist as provided in s. 948.09(3), F.S., that would qualify the offender as being indigent.<sup>37</sup>

By requiring offenders on all types of supervision to pay for electronic monitoring, the department projects that collections will increase.

The bill would also allow the department to obtain electronic monitoring services through competitive procurement in accordance with s. 287.057, F.S.

#### **County Detention Facility Reporting Requirements**

Section 951.23(2), F.S., currently instructs county detention facilities to collect the following information:

(a) The number of persons housed per day who are:

- Felons sentenced to cumulative sentences of incarceration of 364 days or less.
- Felons sentenced to cumulative sentences of incarceration of 365 days or more.
- Sentenced misdemeanants.

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<sup>34</sup> Section 287.012(16), F.S., defines "invitation to bid" is defined as "a written solicitation for competitive sealed bids. The invitation to bid is used when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required. A written solicitation includes a solicitation that is electronically posted."

<sup>35</sup> Section 948.09(2), F.S.

<sup>36</sup> Sections 947.1405, 948.09, and 948.11, F.S.

<sup>37</sup> Section 948.09(3), F.S., provides that the department may exempt a person from the payment of all or any part of certain costs of supervision if it finds any of the following factors to exist: the offender has diligently attempted, but has been unable, to obtain employment which provides him or her sufficient income to make such payments; the offender is a student in a school, college, university, or course of career training designed to fit the student for gainful employment. Certification of such student status shall be supplied to the Secretary of Corrections by the educational institution in which the offender is enrolled; the offender has an employment handicap, as determined by a physical, psychological, or psychiatric examination acceptable to, or ordered by, the secretary; the offender's age prevents him or her from obtaining employment; the offender is responsible for the support of dependents, and the payment of such contribution constitutes an undue hardship on the offender; the offender has been transferred outside the state under an interstate compact adopted pursuant to chapter 949; there are other extenuating circumstances, as determined by the secretary.

- Awaiting trial on at least one felony charge.
  - Awaiting trial on misdemeanor charges only.
  - Convicted felons and misdemeanants who are awaiting sentencing.
  - Juveniles.
  - State parole violators.
  - State inmates who were transferred from a state correctional facility to the county detention facility.
- (b) The number of persons housed per day, admitted per month, and housed on the last day of the month, by age, race, sex, country of citizenship, country of birth, and immigration status classified as one of the following:
- Permanent legal resident of the United States.
  - Legal visitor.
  - Undocumented or illegal alien.
  - Unknown status.
- (c) The number of persons housed per day:
- Pursuant to part I of chapter 394, "The Florida Mental Health Act."
  - Pursuant to chapter 397, "Substance Abuse Services."
- (d) The cost per day for housing a person in the county detention facility.
- (e) The number of persons admitted per month, and the number of persons housed on the last day of the month, by age, race, and sex, who are:
- Felons sentenced to cumulative sentences of incarceration of 364 days or less.
  - Felons sentenced to cumulative sentences of incarceration of 365 days or more.
  - Sentenced misdemeanants.
  - Awaiting trial on at least one felony charge.
  - Awaiting trial on misdemeanor charges only.
  - Convicted felons and misdemeanants who are awaiting sentencing.
  - Juveniles.
  - State parole violators.
  - State inmates who were transferred from a state correctional facility to the county detention facility.
- (f) The number of persons admitted per month, by age, race, and sex:
- Pursuant to part I of chapter 394, "The Florida Mental Health Act."
  - Pursuant to chapter 397, "Substance Abuse Services."

The statute currently requires county detention facilities to forward the above information to the department and requires the department to develop an instrument to collect the information provided by the counties.

To comply with the statute, the department developed the Florida County Detention Facility (FCDF) monthly report. This report is filled out by the counties and forwarded to the department on a monthly basis. Once received, the department manually enters the information provided by the counties into an Excel spreadsheet, summarizes the information, and produces a monthly and annual report.<sup>38</sup>

The department reports that for the last ten years, the participation of the county detention facilities has been inconsistent. On average, 4.9 counties each month did not or could not provide the department a report. Counties that do provide reports routinely do not include much of the information required by the statute. For example, counties have historically not been able to provide the information required by paragraphs (2)(b), (2)(d), (2)(e), and (2)(f).<sup>39</sup>

### *Effect of the Bill*

<sup>38</sup> Department of Corrections 2009 Analysis.

<sup>39</sup> Department of Corrections 2009 Analysis.

The bill removes county reporting requirements from sections 951.23(2)(b), 951.23(2)(d), 951.23(2)(e), and 951.23(2)(f), F.S. Counties will still be required to collect the information required by paragraphs (2)(a) and (2)(c) and forward such information to the department.

### **Basic Training Program**

Currently, s. 958.045, F.S., requires the department to develop and maintain a Basic Training Program for persons sentenced or classified by the Department as youthful offenders.<sup>40</sup> The program includes marching drills, calisthenics, a rigid dress code, manual labor assignments, physical training with obstacle courses, training in decision-making and personal development, general education development and adult basic education courses, and drug counseling and other rehabilitation programs. This program has been in operation since 1987 and the purpose is to divert the youthful offender from lengthy incarceration when a short "shock" incarceration could produce the same deterrent effect.<sup>41</sup> The department reports that this program is 120 days long and graduates approximately 169 inmates per year.<sup>42</sup>

Section 948.045(5)(a), F.S., provides the following:

Upon the offender's completion of the basic training program, the department shall submit a report to the court that describes the offender's performance. If the offender's performance has been satisfactory, the court shall issue an order modifying the sentence imposed and placing the offender on probation.

The statute requires the department to wait until the inmate has completed the program before submitting the performance report to the court. As a result, instead of immediately being placed on probation upon successful completion of the program, inmates must wait in prison while the sentencing court reviews the information and issues a modification order. The department reports on average, this process takes 22 days, and the department must pay the cost of incarceration for these additional days.<sup>43</sup>

### *Effect of the Bill*

The bill amends s. 958.045, F.S., to permit the department to submit the performance report to the court within 30 days prior to a youthful offender's scheduled completion of the basic training program. If the offender's performance has been satisfactory, the bill also authorizes the court to issue an order modifying the sentence and place the offender on probation effective upon the offender's successful completion of the remainder of the program. Because s. 958.045, F.S., already requires the court to modify an inmate's sentence to probation upon successful completion of the program, there is no

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<sup>40</sup> Section 958.04, F.S., authorizes the court to sentence as a youthful offender any person who is at least 18 years of age or who has been transferred for prosecution to the criminal division of the circuit court pursuant to chapter 985; who is found guilty of or who has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime that is, under the laws of this state, a felony if the offender is younger than 21 years of age at the time sentence is imposed; and who has not previously been classified as a youthful offender under the provisions of this act.

Section 958.11(4), F.S., authorizes the Department to classify as a youthful offender any person who is at least 18 years of age or who has been transferred for prosecution to the criminal division of the circuit court pursuant to chapter 985; who has not previously been classified as a youthful offender under the provisions of this act; whose age does not exceed 24 years; and whose total length of sentence does not exceed 10 years.

A person who has been found guilty of a capital or life felony may not be sentenced as a youthful offender.

<sup>41</sup> Section 958.045, F.S.

<sup>42</sup> Department of Corrections 2009 Analysis.

<sup>43</sup> Department of Corrections 2009 Analysis.

judicial discretion that would be affected by the bill. This will have a positive financial impact on the department. See "Fiscal Comments."

### **Civil Actions - Costs of Incarceration**

Currently, s. 960.293, F.S., provides that upon conviction, an offender is liable to the state and its local subdivisions for damages and losses for incarceration costs and other correctional costs:

- If the conviction is for a capital or life felony, the convicted offender is liable for incarceration costs and other correctional costs in the liquidated damage amount of \$250,000.
- If the conviction is for an offense other than a capital or life felony, a liquidated damage amount of \$50 per day of the convicted offender's sentence shall be assessed against the convicted offender and in favor of the state or its local subdivisions.

Section 960.297, F.S., authorizes the state and its local subdivisions to seek recovery of these damages and losses in a separate civil action or as a counterclaim in any civil action.

Because, ch. 960, F.S., does not specifically provide a statute of limitation period during which the civil action must be commenced, the default four-year statute of limitations contained in s. 95.11(3)(p), F.S., applies. However, it is unclear when the four-year statute of limitations begins to run. Because current law does not address this matter, it is subject to litigation and judicial interpretation.

Over the past three years, the department has paid out over \$3.2 million to 506 offenders who have been successful in their civil actions. The department uses the existing statutory authority to seek reimbursement for incarceration costs to offset claims paid to offenders.<sup>44</sup>

#### *Effect of the Bill*

The bill specifies that civil actions to recover costs of incarceration may be commenced any time during the offender's incarceration and up to five years after the date of the offender's release from incarceration or supervision, whichever occurs later. Delineation of a specific statute of limitation for the purpose of pursuing costs of incarceration will help avoid litigation regarding the applicable period.

The bill also amends s. 960.293(2), F.S., to specify that damages in cost of incarceration actions should be determined based upon the length of sentence imposed by the court at the time of sentencing rather than the number of days served.<sup>45</sup>

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 940.061, F.S., relating to informing persons about executive clemency and restoration of civil rights.

Section 2. Repeals s. 944.293, F.S., relating to initiation of restoration of civil rights.

Section 3. Amends s. 944.35, F.S., relating to authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties.

Section 4. Creates s. 945.604, F.S., relating to medical claims.

Section 5. Creates s. 945.6041, F.S., relating to inmate medical services.

Section 6. Amends s. 947.1405, F.S., relating to conditional release program.

Section 7. Amends s. 948.001, F.S., relating to definitions.

Section 8. Amends s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.

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<sup>44</sup> Department of Corrections 2009 Analysis.

<sup>45</sup> In *Miami-Dade County v. Moss*, 842 So.2d 284 (Fla. 3d DCA 2003), the court reversed the decision of the trial court and held that damages under section 960.293(2)(b), F.S., are determined by the length of the sentence imposed and not by the number of days actually served by the offender.

Section 9. Amends s. 384.34, F.S., relating to penalties.

Section 10. Amends s. 796.08, F.S., relating to screening for HIV and sexually transmissible diseases; providing penalties.

Section 11. Amends s. 921.187, F.S., relating to disposition and sentencing; alternatives; restitution.

Section 12. Amends s. 948.01, F.S., relating to when court may place defendant on probation or into community control.

Section 13. Amends s. 948.03, F.S., relating to terms and conditions of probation.

Section 14. Amends s. 948.09, F.S., relating to payment for costs of supervision and rehabilitation.

Section 15. Amends s. 948.101, F.S., relating to terms and conditions of community control and criminal quarantine community control.

Section 16. Amends s. 948.11, F.S., relating to electronic monitoring devices.

Section 17. Amends s. 951.23, F.S., relating to county and municipal detention facilities; definitions; administration; standards and requirements.

Section 18. Amends s. 958.045, F.S., relating to youthful offender basic training program.

Section 19. Amends s. 960.292, F.S., relating to enforcement of the civil restitution lien through civil restitution lien order.

Section 20. Amends s. 960.293, F.S., relating to determination of damages and losses.

Section 21. Amends s. 960.297, F.S., relating to authorization for governmental right of restitution for costs of incarceration.

Section 22. Provides an effective date of July 1, 2009.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See "Fiscal Comments."

#### **2. Expenditures:**

See "Fiscal Comments."

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

See "Fiscal Comments."

#### **2. Expenditures:**

See "Fiscal Comments."

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

See "Fiscal Comments."

### **D. FISCAL COMMENTS:**

The Criminal Justice Impact Conference heard this bill April 13, 2009 and determined that the felony provisions would have an insignificant impact on prison beds.

### **Inmate Medical Claims Payment Limit**

The department anticipates that the proviso language currently in effect will result in more than \$15 million in cost avoidance to the state during this fiscal year. The department projects that such savings will continue to be realized if the proviso language is codified as proposed in the bill.

### Electronic Monitoring

The chart below reflects the statewide cost of electronic monitoring and the amount paid by offenders for the past three fiscal years. As a whole, the department reports that offenders only paid about 10 percent of their obligations.

Fiscal Year	Total Expenditures	Number of Offenders on Electronic Monitoring	Revenue Collected	Percent of Collection
07-08	\$5,510,068	2,066	\$532,812	10%
06-07	\$2,862,880	1,415	\$375,573	13%
05-06	\$3,706,180	979	\$256,138	7%

By requiring offenders on all types of supervision to pay for electronic monitoring, the department projects that collections will increase.

### Basic Training Program

In calendar year 2007, 165 inmates graduated from the Basic Training Program and waited an average of 22 days after graduation prior to release for the inmate's modification of sentence to be processed through the courts. This bill would allow the department to process the modification orders 30 days prior to the inmate's graduation so he or she can be released to probation on the date of graduation.

The department reports that the increased cost to community corrections (\$6.69 per diem) subtracted from the projected institutional cost avoidance (\$78.17 per diem) will result in a positive fiscal impact.

Fiscal Summary	FY 2009-10	FY 2010-11	FY 2011-12
Projected Institutional Cost Avoidance	\$ 283,757	\$ 283,757	\$ 283,757
Increased Cost to Community Corrections	(24,285)	(24,285)	(24,285)
<b>Total</b>	<b>\$ 259,472</b>	<b>\$ 259,472</b>	<b>\$ 259,472</b>

## 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 an 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:

**Medical Claims**

The bill provides no timeframes for the department to submit, contest, or deny payment to providers' claims of payment or underpayment.

There are no provisions in the bill that mirror s. 641.3551, F.S., that provide timeframes for providers to contest or deny claims of overpayment or provide the department notice for additional information in contested claims.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On April 13, 2009, the Criminal and Civil Justice Appropriations Council adopted amendments that:

- specifies that the uniform order of supervision forms will be developed by the Department in consultation with the Office of the State Courts Administrator, and
- changes the effective date from October 1, 2009 to July 1, 2009.