HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1005 Criminal Justice
SPONSOR(S): Holder
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Krol	Cunningham
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

House bill 1005 changes several statutes related to the Department of Corrections (department):

- Removes references to "criminal quarantine community control," a type of community supervision that has never been used since it was created in 1993;
- Creates a new 3rd degree felony offense for lewd or lascivious exhibition by an inmate in the presence of a correctional employee;
- Authorizes the department to retain physical custody of inmates who are serving a sentence after having been found to be incompetent to proceed or who have been acquitted by reason of insanity;
- Updates statutory language regarding the department's current practice of electronically sending the Florida Parole Commission the names of inmates and offenders who are eligible for the restoration of civil rights;
- Adds private correctional facility employees to those who can be charged with sexual misconduct against an inmate;
- Authorizes the department to electronically send specific information to sheriffs and chiefs of police if the department is releasing inmates convicted of certain offenses into their counties or municipalities;
- Revises the Correctional Mental Health Act regarding custody and treatment of mentally ill inmates, and specifically authorizing the department to transport mentally ill inmates to placement hearings while incarcerated and to a receiving facility upon release;
- Updates the elderly offender statutes to reflect that the department has more than one geriatric facility;
- Authorizes inmates who meet certain criteria to work on public work squads and to enter onto private property to collect donations and to assist federal, state, local, and private agencies before, during, and after emergencies and disasters;
- Requires offenders on community supervision to live without violating any law and to submit to a digital photograph;
- Authorizes Public Safety Coordinating Councils to develop a 5-year comprehensive local reentry plan that is designed to assist offenders released from incarceration in successfully reentering the community; and
- Adds to the list of reasons why the department can remove a youthful offender from a youthful offender facility, specifies that youthful offenders may be disciplined in accordance with department rule, and creates a provision that delineates when the department may terminate a youthful offender from the basic training program.

On February 23, 2010, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the department.

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:

Criminal Quarantine Community Control (Sections 1, 2, 3, 8, 21, 24, 25)
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[1] in 1993 as a sentencing disposition for offenders sentenced for criminal transmission of HIV.[2] 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.[3] Thus, this type of supervision has never existed operationally.

Effect of the Bill
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. 775.084.24.[4]

Lewd or Lascivious Exhibition in Correctional Facilities (Section 4)
An inmate who intentionally performs lewd acts in the presence of a correctional facility employee is subject to significant punishment under department disciplinary rules - 60 days in disciplinary confinement and the loss of 90 days of gain time.[5] Depending on the facts of the case, the behavior may also be a criminal act that could subject the inmate to further prosecution. However, if the employee is not touched by the inmate the offense is a misdemeanor and is not normally prosecuted. The department indicates that in recent years it has been sued several times by female employees alleging sexual harassment because the department failed to exercise reasonable care to prevent the inmate's lewd behavior. Some of these lawsuits have been successful, resulting in judgments totaling

[1] L.O.F. 93-227.
[2] 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.
[3] Department of Corrections 2010 Analysis of HB 1005.
[4] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine.
[5] See Rule 33-601.314, Florida Administrative Code (Rules of Prohibited Conduct and Penalties for Infractions).

$1.6 million to date. The department asserts that the punishment that it can give for the lewd behavior is not adequate to deter the conduct.[6]

Effect of the Bill
The bill creates s. 800.09, F.S., entitled, "Lewd or lascivious exhibition in the presence of a facility employee."

The bill provides that it is unlawful for any person, while being detained in a facility, in the presence of a facility employee, and with intent to harass, annoy, threaten, or alarm a person who he or she knows or reasonably should know is an employee of the facility to intentionally:

- Masturbate,
- Expose his or her genitals in a lewd or lascivious manner, or
- Commit any other sexual act, including but not limited to sadomasochistic abuse, sexual bestiality or the simulation of any act involving sexual activity.

The bill provides definitions for "employee" as any person employed by or performing contractual services for a public or private entity operating a facility or any person employed by or performing contractual services for the corporation operating the prison industry enhancement programs or the correctional work programs under part II of ch. 946. The term also includes any person who is a parole examiner with the Florida Parole Commission. The bill also defines "facility" as a state correctional institution defined in s. 944.02, F.S.,[7] or a private correctional facility as defined in s. 944.710, F.S.[8]

Inmates as Forensic Clients (Sections 5, 6 and 7)
The Department of Children and Family (DCF) is required to establish, locate, and maintain separate and secure forensic facilities and programs for the treatment or training of defendants who have been charged with a felony and who have been found to be incompetent to proceed due to their mental illness or who have been acquitted of a felony by reason of insanity.[9] Defendants in such facilities are entitled to certain rights,[10] such as forensic treatment and training. DCF is the entity responsible for providing forensic treatment and training programs to defendants in forensic facilities.[11]

Inmates who are already incarcerated in a department facility can also be involved in continuing or new criminal proceedings. In these instances, s. 907.04, F.S., specifies that such inmates shall be housed with the department pending disposition of the charge. The statutes do not specify where such inmates should be housed if the inmate is found to be incompetent to proceed due to mental illness or is acquitted by reason of insanity. Florida Rules of Criminal Procedure state that if a court finds a criminal defendant incompetent to proceed and the defendant is incarcerated, the court may order forensic treatment to be administered at the custodial facility, or may order the defendant transferred to another facility for treatment, or may commit the defendant for treatment with DCF.[12]

Effect of the Bill
This bill authorizes the department to retain physical custody of inmates who are serving a sentence after having been found to be incompetent to proceed or who have been acquitted by reason of insanity. The bill specifies that such inmates will have the same duties, rights, and responsibilities as other inmates in the custody of the department and will be subject to department rules.

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[6] Department of Corrections 2010 Analysis of HB 1005. The department's analysis also notes that the $1.6 million in judgments does not include any attorney fees awarded by the court.
[7] Section 944.02(8), F.S., defines "state correctional institution" as any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the department.
[8] Section 944.710 (3), F.S., defines "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.
[9] Section 916.105, F.S.
[10] Section 916.107, F.S.
[11] Sections 916.105(2) and 916.106, F.S.
[12] Rule 3.212, Florida Rules of Criminal Procedure.

The bill also specifies that DCF will continue to be responsible for providing forensic treatment and training to such inmates. The bill provides the treating psychiatrist from DCF may order the department to provide and administer any necessary medication to the inmate.

The bill requires DCF to file a report with the court within 6 months after the administration of forensic training or treatment and every 12 months thereafter, or at any time DCF determines the forensic client has regained competency to proceed. Within 20 days of such notification by DCF, the forensic client must be transported to the county jail for purposes of holding a competency hearing. This hearing must be held within 30 days after the court receives notification that the forensic client if competent to proceed.

The bill also specifies that if DCF receives a forensic client from a county jail or from the department who was receiving psychotherapeutic medication for a mental disorder and who lacks that capacity to make an informed decision regarding mental health treatment, DCF may order a continuation of such medication if abrupt cessation of the medication would risk the client's health.

Civil Rights Restoration Process (Sections 9 and 11)

Currently, s. 940.061, F.S., requires the 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.[13]

The department is also required, 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.[14] This statute was enacted in 1974 and has not been revised since 1979.

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.[15]

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.[16]

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.

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.

[13] Section 940.061, F.S., was enacted in 1996.

[14] Section 944.293, F.S., was enacted in 1974 and has not been revised since 1979.

[15] Senate Criminal Justice Committee Interim Report 2008-114.

[16] Department of Corrections 2010 Analysis of HB 1005.

Sexual Misconduct in Private Prisons (Section 12)
Presently any employee of the department who engages in sexual misconduct[17] 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.[18]

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.[19] 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.[20]

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.

Electronic Release Notification (Section 13)
Currently, s. 944.605(3), F.S., provides that the department shall release specific information to the sheriff or the chief of police in the county or municipality which the inmate plans to reside if the inmate is to be released after having served one or more sentences for a conviction of:

- Robbery,
- Sexual battery,
- Home-invasion robbery, or
- Carjacking.

The department must also release this information if the inmate to be released has a prior conviction for:

- Robbery,
- Sexual battery,
- Home-invasion robbery, or
- Carjacking, or
- A similar offense, in this state or in another jurisdiction, and if such prior conviction information is contained in department records.

The information regarding the inmate, must include, but not be limited to:

- Name;
- Social security number;
- Date of birth;
- Race;
- Sex;
- Height;
- Weight;

[17] 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.
[18] Section 944.35(3)(b), F.S.
[19] 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.
[20] Department of Corrections 2010 Analysis of HB 1005.

- Hair and eye color;
- Tattoos or other identifying marks;
- Fingerprints; and
- A digitized photograph.

The department shall release the information within 6 months prior to the discharge of the inmate from the custody of the department.

Section 944.605, F.S., does not currently authorize the department to provide the above-listed information in an electronic format.

Effect of the Bill
The bill authorizes the department to electronically submit the above-listed information to the sheriff or chief of police.

Corrections Mental Health Act (Sections 16, 17, 18, and 19)
Chapter 394, Part I, F.S., is the Florida Mental Health Act also known as "The Baker Act," which sets forth the procedures to be followed when a person is involuntarily civilly committed due to mental health reasons. Similarly, ss. 945.40 through 945.49, F.S., known as the Corrections Mental Health Act, establishes procedures that must be followed when an inmate is involuntarily placed into a hospital setting for the purpose of mental health treatment.

Inmates who require intensive psychiatric inpatient care and treatment are housed at correctional mental health institutes (CMHI) at specified prisons. In order to admit an inmate into a CMHI, the correctional institution's warden must file a petition in the circuit court for the county where the inmate is imprisoned. The court holds a placement hearing to determine whether the inmate meets the statutory criteria for involuntary placement in the hospital setting. If so, the inmate is ordered to be housed in one of the correctional institutions designated as a CMHI for 6 months.[21] If an inmate's condition improves, he or she is released from the CMHI. If after 6 months the inmate still requires CMHI level care, the department may file a petition for continuing admission with the Division of Administrative Hearings.

Section 945.41(4), F.S., provides that a youthful offender cannot be placed at Florida State Prison or Union Correctional Institution for mental health treatment.

Sections 945.42(5) and (6), F.S., are the definitions of "in immediate need of care and treatment" and "in need of care and treatment" for purposes of admission or emergency placement of an inmate in a mental health treatment facility. The definitions include basically the same criteria, with the difference being the degree of urgency. The criteria include:

- The inmate refuses to care for himself or herself and is likely to continue to do so, posing a threat of substantial harm to his or her well-being, or there is a threat that the inmate will inflict serious bodily harm on himself or herself or another person;
- The inmate has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement, or is unable to determine for himself or herself whether placement is necessary; and
- All available less restrictive treatment alternatives that would offer an opportunity for improvement of the inmate's condition have been clinically determined to be inappropriate.

Section 945.46, F.S., provides for involuntary placement proceedings under the Baker Act for a mentally ill inmate who is in need of continued treatment after release from the department's custody. Currently, the Baker Act requires counties to designate a law enforcement agency within the county to transport individuals to the nearest receiving facility for involuntary examination.[22] There is no statutory authority for the department to transport an inmate who has been involuntarily civilly committed and who is being released to a receiving facility.

[21] Section 945.43(2)(e), F.S.
[22] Section 394.462(1)(a), F.S.

Effect of the Bill
The bill removes provisions that would prohibit the department from placing youthful offenders at the Florida State Prison or the Union Correctional Institution for mental health treatment.

The bill amends the definitions of "in immediate need of care and treatment" and "in need of care and treatment" in s. 945.42, F.S. The definitions currently require that an inmate who meets the criteria for involuntary placement must refuse voluntary placement after being given "sufficient and conscientious explanation and disclosure of the purpose of placement" or that the inmate is unable to determine for himself or herself whether placement is necessary. The amendment removes the refusal of voluntary placement requirement in both definitions.

The bill amends s. 945.43, F.S., to require that a petition for placement in a mental health treatment facility be filed in the county in which the inmate is located. The bill specifies that the attorney who is representing the inmate shall have reasonable access to the inmate and records that are relevant to the representation of the inmate. The bill also allows for the department to transport the inmate to the hearing if the hearing is not held at the facility and the inmate is unable to participate through electronic means.

The bill amends s. 945.46, F.S., to authorize the department to transport inmates who are being released from the department's custody to a receiving or treatment facility for involuntary exam or placement. The bill specifies that transport will be made to a facility specified by DCF. If DCF does not specify a facility, the transport must be made to the nearest receiving facility.

Elderly Facilities (Sections 14 and 15)
Florida considers an inmate who is 50 years old or older to be "aging or elderly."[23] The age when an inmate is considered to be elderly is far lower than in the general population because of generally poorer health. This may be due to life experiences before and during incarceration that contribute to lower life expectancy.[24]

Section 944.804, F.S., the Elderly Offenders' Correctional Facilities Program of 2000, reflected the Legislature's concern that the population of elderly inmates was increasing then and would continue to increase. Because on average it costs approximately three times more to incarcerate an elderly offender as it does to incarcerate a younger inmate, the statute required exploration of alternatives to the current approaches to housing, programming, and treating the medical needs of elderly offenders.[25] In 2000 there were no specific geriatric facilities when the law was passed, but the new statute specifically required the department to establish River Junction Correctional Institution (RJCI) as a geriatric facility and to establish rules for which offenders are eligible to be housed there.

The elderly population has continued to increase since RJCI was opened as a geriatric facility. The department reports that from fiscal year 00-01 through fiscal year 07-08, the elderly inmate population rose from 5,872 to 14,143 inmates.[26]

Due to the continuing increase since s. 944.804, F.S., was enacted, the department has designated other institutions and dorms within institutions to house elderly and aging inmates. River Junction Work Camp, the successor to RJCI, still has the largest concentration of elderly inmates with 292 of its 340 inmates (86% of the population) classified as elderly. However, in three other institutions more than half of the inmate population is elderly.[27]

Section 944.8041, F.S, requires the department and the Correctional Medical Authority to each submit an annual report on the status and treatment of elderly offenders in the state-administered and private state correctional systems, as well as specific information on RJCI. The report must also include an

[23] Chapter 33-601.217, Florida Administrative Code.
[24] State of Florida Correctional Medical Authority 2008-2009 Annual Report, p. 51
[25] Section 944.804(1), F.S.
[26] Department of Corrections 2010 Analysis of HB 1005.
[27] State of Florida Correctional Medical Authority 2008-2009 Annual Report, p. 56.

examination of promising geriatric policies, practices, and programs currently implemented in other correctional systems within the United States.

Effect of the Bill
The bill amends ss. 944.804 and 944.8041, F.S., to remove specific references to RJCI, and to instead require the department to establish and operate geriatric facilities or geriatric dorms.

Inmate Work Squads (Section 20)
Section 946.40, F.S., authorizes the department to enter into agreements with state agencies, political subdivisions, and non-profit corporations to provide the services of inmates. The department must determine that the work is not detrimental to the welfare of the inmates or in the state's interest in the inmate's rehabilitation.[28] A person who has been convicted of sexual battery under s. 794.011, F.S., is not eligible for a work program under this section.

Effect of the Bill
The bill creates s. 946.42, F.S., to allow inmates who meet the criteria to work on public work squads to enter onto private property to:
- Accept and collect donations for the use and benefit of the department.
- Assist federal, state, local, and private agencies before, during, and after emergencies and disasters.

The bill provides the following definitions:
- "Disaster" is defined as "any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of state of emergency by a county, the Governor, or the President of the United States."
- "Donations" is defined as "gifts of tangible personal property" and includes "equipment, fixtures, construction materials, food items, and other tangible personal property of both a consumable and nonconsumable nature."
- "Emergency" is defined as "any occurrence or threat of an occurrence, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property."

Terms and Conditions of Probation (Section 22 and 23)
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.

[28] Section 946.40(1), F.S.

- 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.

The "Order of Probation" form in Florida Rules of Criminal Procedure[29] 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.[30] 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.[31]

Effect of the Bill
The bill amends the condition of supervision relating to firearms to prohibit offenders from possessing, carrying, or owning any firearm. The bill also prohibits the offender from possessing, carrying, or owning any weapon other than a firearm without first procuring the consent of the correctional probation officer. This change mirrors the Florida Rules of Criminal Procedure.[32]

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."

Public Safety Coordinating Councils (Section 26)
Section 951.26, F.S., requires each county to establish a public safety coordinating council (PSCC).[33] The purpose of the PSCC is to assess the population status of all detention or correctional facilities owned or contracted by the county and to formulate recommendations to ensure that the capacities of such facilities are not exceeded. The recommendations must include assessment of the availability of pretrial intervention, probation, work release, and substance abuse programs; gain-time and bail bond schedules; and the confinement status of inmates. PSCCs are also authorized to develop a local public safety plan for future construction needs that covers at least 5 years. If the county or consortium of counties receives community corrections funds under s. 948.51, F.S., the PSCC must develop a public safety plan that meets that section's requirements.

Effect of the Bill
The bill authorizes the PSCC to develop a 5-year comprehensive local reentry plan designed to assist offenders released from incarceration in successfully reentering the community. The bill requires the PSCC to develop the plan in coordination with public safety officials and local community organizations who can provide offenders with reentry services, such as assistance with housing, healthcare, education, substance abuse treatment, and employment.

Youthful Offenders (Sections 10, 27, 28, 29, 30, 31, and 32)

[29] See Rule 3.986(e), Florida Rules of Criminal Procedure.
[30] Sections 775.21(6) and 943.0435(2)(b)2., F.S.
[31] Department of Corrections 2010 Analysis of HB 1005.
[32] Rule 3.986, Florida Rules of Criminal Procedure.
[33] Section 951.26, F.S., also authorizes a board of county commissioners to join with a consortium of one or more other counties to establish a PSCC for the member counties.

The Florida Youthful Offender Act (ss. 958.011 – 958.15, F.S.) was passed in 1978 with the purpose of improving the chances of corrections and successful reentry to the community of youthful offenders sentenced to prison. The Act intended to accomplish this by providing youthful offenders enhanced programs and services, opportunities for further service, and preventing them from associating with older and more experienced criminals. It was also intended to provide a sentencing alternative for courts in dealing with an offender who could no longer be safely treated as a juvenile.[34]

A court may sentence a defendant as a youthful offender if the defendant:

- Is at least 18 years of age or was prosecuted as an adult pursuant to ch. 985, F.S., but is under 21 years old at the time of sentencing;
- Has been found guilty of or has pled nolo contendere or guilty to a felony that is not punishable by death or imprisonment for life; and
- Has not previously been classified as a youthful offender.[35]

The department must assign an inmate who is less than 18 years old to a youthful offender facility even if he or she was not sentenced as a youthful offender.[36] The department is also required to screen for and may classify as a youthful offender any inmate who is under 25 years old and does not have a sentence in excess of 10 years if he or she has not previously been classified as a youthful offender and has not committed a capital or life felony. The department may classify any inmate 19 years of age or younger, except a capital or life felon, as a youthful offender if it determines that the inmate's mental or physical vulnerability would substantially or materially jeopardize his or her safety in a non-youthful offender facility.[37]

Effect of the Bill

The bill makes various technical changes to correct inaccurate terms, incorrect references, and outdated language.

It appears that the definition's statutory reference is incorrect in that s. 958.04, F.S., authorizes the court to sentence a person as a youthful offender, while s. 958.11(4), F.S., authorizes the department to designate an inmate as a youthful offender. The bill corrects the statutory citation. Additionally, the bill defines the term "youthful offender facility" as "any facility in the state correctional system that the department designates for the care, custody, control, and supervision of youthful offenders."

The bill amends s. 958.11, F.S., to add the following to the list of reasons the department can remove a youthful offender from a youthful offender facility:

- If the youthful offender becomes such a serious management or disciplinary problem resulting from repeated violations of the rules of the department that his or her original assignment would be detrimental to the interests of the program and to other inmates committed thereto.
- If the youthful offender as reached the age of 25.
- If the department cannot adequately ensure the safety of a youthful offender within a youthful offender facility.
- If the youthful offender has a documented history of benefiting, promoting, or furthering the interests of a criminal gang, as defined in s. 874.03, while housed in a youthful offender facility.
- If the department has classified an inmate as a youthful offender and the department determines such assignment is necessary for population management purposes.

Additionally, if the department removes a youthful offender from a youthful offender facility, the bill authorizes the department to manage the offender in a manner consistent with inmates in the adult population.

[34] Section 958.021, F.S.
[35] Section 958.04(1), F.S.
[36] Section 944.1905(5)(a), F.S.
[37] Section 958.11(6), F.S.

The bill removes the provisions of s. 958.09, F.S., entirely; to allow the same statutes and rules that authorize inmates to participate in work release, furloughs, etc. to apply to youthful offenders. This will enable the department to provide uniform work release standards throughout its inmate population.

Youthful Offenders and the Basic Training Program

Section 958.045, F.S., requires the department to create a basic training program for youthful offenders for both those adjudicated as such by the court and those classified as such by the department. The basic training program must last at least 120 days and include marching drills, calisthenics, a rigid dress code, manual labor assignments, physical training, personal development training, general education and adult basic education courses, and drug counseling and other rehabilitation programs. The department must screen all youthful offenders for the basic training program.[38]

In order to be eligible for the basic training program, a youthful offender must have no physical limitations that preclude strenuous activity, must not be impaired, and must not have previously been incarcerated in a federal or state correctional facility.[39] Additionally, the department must consider the offender's criminal history and potential rehabilitative benefits of "shock" incarceration.[40] However, there is a discrepancy in eligibility requirements between youthful offenders sentenced as such by the court and department-designated youthful offenders. Youthful offenders designated by the department must also be eligible for control release[41] in order to be eligible for the basic training program. This requirement dates back to when s. 958.045, F.S., was enacted and may not be relevant to whether a youthful offender is eligible for the basic training program as it refers to the release of an offender.

If a youthful offender participating in the basic training program becomes unmanageable, the department may revoke the offender's gain time and place the offender in disciplinary confinement for no more than 30 days. Upon completion of the disciplinary process, the offender must be readmitted to the basic training program, unless the offender committed or threatened to commit a violent act.[42]

The statute further provides that if the offender is terminated from the program, the department may place the offender in the general population to complete the remainder of his or her sentenced. Although s. 958.045, F.S., implies that offenders who commit or threaten to commit a violent act may not be readmitted to the basic training program, the statute does not currently specify when the department may terminate a youthful offender from the basic training program.[43]

Effect of the Bill

The bill removes language that is outdated that requires that department to construct a basic training program facility and provide special training for staff selected to work for the program.

The bill eliminates the requirement that department-designated youthful offenders be eligible for control release in order to be eligible for the basic training program. As a result, the eligibility criteria for the basic training program will be the same for both department-designated youthful offenders and youthful offenders sentenced as such by the court.

The bill specifies that youthful offenders may be disciplined in accordance with department rule, and creates a provision that delineates when the department may terminate a youthful offender from the basic training program. Under the bill, the department may terminate an offender from the basic training program if:

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[38] Section s. 958.045(2), F.S.

[39] *Id.*

[40] *Id.*

[41] Control release is an administrative function solely used to manage the state prison population within total capacity. The Control Release Authority, comprised of members of the Parole Commission, has sole responsibility for determining control release eligibility, establishing a control release date, and effectuating the release of a sufficient number of inmates to maintain the inmate population between 99 percent and 100 percent of total capacity. Only certain inmates are eligible for control release. See s. 947.146, F.S.

[42] Section 958.045, F.S.

[43] Rule 33-601.242, F.A.C., specifies when the department can remove a youthful offender from the Basic Training Program.

- The offender has committed or threatened to commit a violent act;
- The department determines that the offender is unable to participate in the basic training activities due to medical reasons;
- The offender's sentence is modified or expires;
- The department reassigns the offender's classification status; or
- The department determines that removing the offender from the program is in the best interests of the inmate or the security of the institution.

The bill specifies that if a youthful offender is terminated from the basic training program, the department may place the offender in a youthful offender institution or in a non-youthful offender institution in accordance with s. 958.11(3), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 384.34, F.S., relating to penalties.

Section 2. Amends s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.

Section 3. Amends s. 796.08, F.S., relating to screening for HIV and sexually transmissible diseases; providing penalties.

Section 4. Creates s. 800.09, F.S., relating to lewd or lascivious exhibition in the presence of a facility employee.

Section 5. Amends s. 916.107, F.S., relating to rights of forensic clients.

Section 6. Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.

Section 7. Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.

Section 8. Amends s. 921.187, F.S., relating to disposition and sentencing; alternatives; restitution.

Section 9. Amends s. 940.061, F.S., relating to informing persons about executive clemency and restoration of civil rights.

Section 10. Amends s. 944.1905, F.S., relating to initial inmate classification; inmate reclassification.

Section 11. Repeals s. 944.293, F.S., relating to initiation of restoration of civil rights.

Section 12. Amends s. 944.35, F.S., relating to authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties.

Section 13. Amends s. 944.605, F.S., relating to inmate release; notification.

Section 14. Amends s. 944.804, F.S., relating to elderly offenders correctional facilities program of 2000.

Section 15. Amends s. 944.8041, F.S., relating to elderly offenders; annual review.

Section 16. Amends s. 945.41, F.S., relating to legislative intent of ss. 945.40-945.49.

Section 17. Amends s. 945.42, F.S., relating to definitions; ss. 945.40-945.49.

Section 18. Amends s. 945.43, F.S., relating to admission of inmate to mental health treatment facility.

Section 19. Amends s. 945.46, F.S., relating to initiation of involuntary placement proceedings with respect to a mentally ill inmate scheduled for release.

Section 20. Creates s. 946.42, F.S., relating to use of inmates on private property.

Section 21. Amends s. 948.001, F.S., relating to definitions.

Section 22. Amends s. 948.03, F.S., relating to terms and conditions of probation.

Section 23. Amends s. 948.09, F.S., relating to payment for cost of supervision and rehabilitation.

Section 24. Amends s. 948.101, F.S., relating to terms and conditions of community control and criminal quarantine community control.

Section 25. Amends s. 948.11, F.S., relating to electronic monitoring devices.

Section 26. Amends s. 951.26, F.S., relating to public safety coordinating councils.

Section 27. Amends s. 958.03, F.S., relating to definitions.

Section 28. Repealing subsections (4) and (5) of s. 958.04, F.S., relating to judicial disposition of youthful offenders.

Section 29. Amends s. 958.045, F.S., relating to youthful offender basic training program.

Section 30. Amends s. 958.09, F.S., relating to extension of limits of confinement.

Section 31. Amends s. 958.11, F.S., relating to designation of institutions and programs for youthful offenders; assignment from youthful offender institutions and programs.

Section 32. Amends s. 951.231, F.S., relating to county residential probation program.

Section 33. This bill takes effect July 1, 2010.

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:

   In general, the provisions of the bill are either revenue neutral or may have a positive fiscal impact.

   On February 23, 2010, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the department.

   Section 19 authorizes the department to transport a mentally ill inmate who is being released to a receiving facility under the Baker Act. This could be more expensive than the current practice, but the department does not indicate whether or not it would have a fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES