The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	CS/SB 960
INTRODUCER:	Criminal Justice Committee and Senator Dockery
SUBJECT:	Corrections
DATE:	February 3, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Fav/CS**
2.			CF	
3.			JU	
4.			JA	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill makes a number of changes relating to the Department of Corrections (department), including:

- Removing references to "criminal quarantine community control" because no one has been sentenced to that type of community supervision since it was created in 1993.
- Creating a new 3rd degree felony offense for lewd or lascivious exhibition by an inmate in the presence of a correctional employee.
- Codifying the department's current practice of electronically transmitting the names of inmates and supervised offenders who are eligible for the restoration of civil rights to the Parole Commission.
- Subjecting employees of private correctional facilities to criminal punishment for engaging in sexual misconduct with an inmate, as is the case with department employees.
- Specifically permitting the department to provide information concerning release of certain inmates to law enforcement officials by electronic means.
- Changing references to elderly facilities to include all facilities in which elderly inmates are housed, rather than just River Junction Correctional Institution.

- Revising 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.
- Authorizing the use of inmate work squads on private property for certain public purposes.
- Creating statutory standard conditions of probation that require offenders on community supervision to live without violating any law and to submit to a digital photograph.
- Authorizing Public Safety Coordinating Councils to develop a comprehensive local reentry plan.

This bill substantially amends the following sections of Florida Statutes: 384.34, 775.0877, 796.08, 921.187, 940.061, 944.35, 944.605, 944.804, 944.8041, 945.41, 945.42, 945.43, 945.46, 948.03, 948.09, 948.101, 948.11, and 951.26. It also creates sections 800.09 and 946.42, and repeals sections 944.293 and 948.001(3) of the Florida Statutes.

II. Present Situation:

Lewd or Lascivious Exhibition in Correctional Facilities

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.[1] 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 $1.6 million to date. The department asserts that the punishment that it can give for the lewd behavior is not adequate to deter the conduct.[2]

Restoration of Civil Rights Process

The civil rights of a convicted felon are suspended until restored by pardon or restoration of civil rights. Among the civil rights that are lost are the rights to vote, to hold public office, to serve on a jury, to possess a firearm, and to engage in certain regulated occupations or businesses. The power to restore civil rights is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members pursuant to Article IV, Section 8(a), of the Florida Constitution. The Governor and the Cabinet collectively act as the Clemency Board. The Florida Parole Commission (commission) acts as the agent of the Clemency Board in determining whether offenders are eligible for restoration of rights, investigating applications and conducting hearings when required, and making recommendations to the board.

Section 940.061, F.S., requires the department to: (1) inform and educate inmates and offenders on community supervision about the restoration of civil rights, and (2) assist eligible inmates and

[1] See Rule 33-601.314, Florida Administrative Code (Rules of Prohibited Conduct and Penalties for Infractions).
[2] Department of Corrections' 2010 Bill Analysis, Senate Bill 960. The department's analysis also notes that the $1.6 million in judgments does not include any attorney fees awarded by the court.

offenders on community supervision with the completion of the application for the restoration of civil rights. Section 944.293, F.S., requires the department to obtain the application and any other forms needed to apply for restoration of civil rights, to assist offenders in completing the forms, and to ensure that the forms are forwarded to the governor.

These statutes were enacted when the restoration of civil rights process required persons to fill out and submit paper applications to the commission. Filing of a paper application is no longer required. Since 2001, the department has electronically submitted the names of inmates released from incarceration and offenders terminated from supervision to the commission each month. These lists serve as electronic restoration of civil rights applications. The commission reviews the lists to determine whether a person is eligible for restoration of civil rights without a hearing.

Sexual Misconduct – Private Prisons
Section 944.35(3), F.S., prohibits department employees from engaging in sexual activity with an inmate or an offender under the department's supervision. It is a third degree felony to violate the statute, which applies to sexual acts that in many cases are only illegal because of the status of the participants. The statute does not apply in the case of sexual battery, which may carry a higher penalty and is illegal regardless of the participants' status.

The statute seeks to prevent correctional employees from abusing their authority or becoming subject to coercion from an inmate or offender as the result of a sexual encounter. However, the current statute does not apply to employees of private prisons and thus sexual acts between an employee of a private correctional facility and an inmate cannot be prosecuted unless the acts are illegal under a statute other than s. 944.35(3), F.S.

Notice of Release
Section 944.605, F.S., requires the department to provide prior notification of an inmate's release to a number of persons, including the sheriff of the county in which the inmate intends to reside after release. Section 944.605(3), F.S., requires that additional identifying information be provided concerning inmates who are completing a sentence for, or who have a prior record of, robbery, sexual battery, home-invasion robbery, or carjacking. This information must also be sent to the police chief if the inmate intends to reside in a municipality. The information must be provided within 6 months prior to the inmate's release.

Elderly Facilities
Florida considers an inmate who is 50 years old or older to be "aging or elderly."[3] 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.[4] 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

[3] Chapter 33-601.217, Florida Administrative Code.
[4] State of Florida Correctional Medical Authority 2008-2009 Annual Report, p. 51.

housing, programming, and treating the medical needs of elderly offenders.[5] There were no specific geriatric facilities at the time 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. On June 30, 2009, 15,201 of the 100,894 inmates in the department's custody fit into the elderly or aging classification. This was a 7.5 percent increase in the elderly and aging population from the year before.[6] 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.[7]

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

Corrections Mental Health Act

The Corrections Mental Health Act (ss. 945.40 – 945.49, F.S.) provides for the evaluation and appropriate treatment of mentally ill inmates who are in the department's custody. It establishes procedures that must be followed when an inmate is involuntarily placed into a hospital setting for the purpose of mental health treatment. As such, it is analogous to the Baker Act for persons who are not incarcerated.[8] 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.[9] If an inmate's condition improves, he or she is released from the CMHI. If after six months the inmate still requires CMHI level care, the department may file a petition for continuing admission with the Division of Administrative Hearings.

In most circumstances, inmates are in "crisis stabilization status" before they are admitted to a CMHI. Inmates at those institutions are usually transported to other Crisis Stabilization Units for admission 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.

[5] Section 944.804(1), F.S.
[6] Supra, p. 53.
[7] Supra, p. 56.
[8] The Baker Act is found in chapter 394, F.S.
[9] Section 945.43(2)(e), F.S.

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. 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.[10] Inmates are usually not incarcerated in a facility in the county where they will reside after release, and the department does not have statutory authority to transport an inmate to a receiving facility. Unless the sheriff's office of the home county picks up the inmate, which could involve substantial time and expense, there is a possibility of a disruption in needed treatment.

Inmate Work Squads

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. 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.

Although the section is entitled "Use of prisoners in public works," the phrase "public works" is not in the text of the statute. However, due to other legal consideration the department limits participation of inmates to public work projects. The department also prohibits inmates from entering onto private property to perform work.

[10] Section 394.455(26), F.S., defines a receiving facility as any public or private facility that is designated by the Department of Children and Family Services to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment.

Community Supervision

Overview

More than 118,000 offenders are actively supervised by the Department of Corrections on some form of community supervision.[11] Florida law recommends community supervision for offenders who do not appear likely to reoffend and who present the lowest danger to the welfare of society. Generally, this includes those offenders whose sentencing score sheet result does not fall into the range recommending incarceration under the Criminal Punishment Code.

The two major types of community supervision are probation and community control. Community control is a higher level of supervision that is administered by officers with a statutorily mandated caseload limit. Both probation and community control are judicially-imposed sentences that include standard statutory conditions as well as any special conditions that are directed by the sentencing judge.[12]

Section 948.03, F.S., sets forth standard conditions of probation or community control. Standard conditions are effective even if not orally pronounced at the time of sentencing. The sentencing court may also add special conditions that it considers to be proper. A special condition is not enforceable unless it is orally pronounced by the court at the time of sentencing. The standard conditions in s. 948.03, F.S., require an offender who is sentenced to probation or community control 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.

[11] Department of Corrections Monthly Status Report of Florida's Community Supervision Population, December 2009.

[12] See Jones v. State, 661 So.2d 50 (Fla 2nd Dist. 1995). Some special conditions are included in the statutes as options for the sentencing court, and others are devised by the court.

- 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 conditions of supervision that apply to a particular offender are set forth in the order of supervision that is entered by the court when an offender is sentenced. There is no statewide format for the order of supervision, but the department has developed a uniform order of supervision that it reports is now being used by a majority of judicial circuits. This uniform order is derived in part from the Florida Rules of Criminal Procedure. The uniform order and the Rules set forth statutory standard conditions as well as more restrictive or additional special conditions.[13] While the statutes include a condition prohibiting possession of a firearm without the approval of the court and the probation officer, the uniform order and the Rules strictly prohibit possessing a firearm and add a prohibition against possessing any weapon without the probation officer' approval.

The following special condition is also included in the uniform order and the Rules: "You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation to constitute a violation of your probation." This condition is not a standard condition of community supervision in s. 948.03(1), F.S.

Criminal Quarantine Community Control
Criminal quarantine community control is another form of community supervision that is available for sentencing offenders who are convicted of criminal transmission of HIV pursuant to s. 775.0877, F.S. It is defined in s. 948.001, F.S., 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." Section 948.101, F.S., provides that the court must require 24 hour a day electronic monitoring and confinement to a designated residence during designated hours as a condition of criminal quarantine community control. However, no one has been sentenced to criminal quarantine community control since the statutes were enacted in 1993. Offenders who have been convicted of criminal transmission of HIV have historically been sentenced to regular probation.

Public Safety Coordinating Councils
Section 951.26, F.S., requires each county to establish a public safety coordinating council (PSCC).[14] The purpose of the PSCCs 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

[13] Rule 3.986(e), Fla. R. Crim. P., is an example form for order of probation and Rule 3.986(f), Fla. R. Crim. P., is an example form for order of community control.
[14] 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.

funds under s. 948.51, F.S., the PSCC must develop a public safety plan that meets that section's requirements.

Youthful Offenders

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.[15]

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.[16]

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.[17] 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.[18]

III. Effect of Proposed Changes:

Sections 1, 2, 3, 5, 17, 20 and 21 remove references to criminal quarantine community control. This form of community supervision has never been ordered by a sentencing court since its creation in 1993.

Currently under s. 775.0877, F.S., a person convicted of criminal transmission of HIV may be sentenced to serve a term of criminal quarantine community control. Section 2 of the bill removes criminal quarantine community control as a sentencing option and instead provides that persons convicted of criminal transmission of HIV must be sentenced as provided in ss. 775.082 (fine), 775.083 (imprisonment), or 775.084 (habitual offender), F.S. Conforming changes are also made in ss. 384.34, 796.08, 921.187, 948.001, 948.101, and 948.11, F.S.

[15] Section 958.021, F.S.
[16] Section 958.04(1), F.S.
[17] Section 944.1905(5)(a), F.S.
[18] Section 958.11(6), F.S.

Section 4 creates a new felony offense that applies to lewd actions by inmates in the presence of a correctional employee. The new statute addresses the same types of conduct as does s. 800.04(7), F.S., which prohibits lewd and lascivious exhibition in the presence of a person less than 16 years of age. The new s. 800.09, F.S., provides that it is a 3rd degree felony for a person detained in a facility to intentionally masturbate, intentionally expose the genitals in a lewd or lascivious manner, or intentionally commit any other sexual act in the presence of an employee. These other sexual acts include, but are not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity. The statute will not be applicable to cases in which the sexual act involves actual physical or sexual contact with the victim, since existing law already provides significant punishments for such conduct.

The new statute defines "employee" to include persons who are employed by or performing contractual services for the department, any entity that operates a private correctional facility for persons committed to the department's custody, and PRIDE and other entities that operate correctional work programs under Part II of ch. 946, F.S. The term also includes Parole Commission parole examiners. Unlike s. 784.078, F.S. (battery on a facility employee by throwing, tossing, or expelling bodily fluids), the new statute does not include employees of county or municipal detention facilities within the definition of "employee."

As described in the department's bill analysis, the new offense is intended to create a credible deterrent to lewd actions by inmates. Currently, much of this activity is either not prosecutable or is only prosecutable as the misdemeanor crime of exposing the sexual organs in violation of s. 800.03, F.S. [19]

Sections 6 and 7 of the bill address changes that have been made with regard to the process for requesting restoration of civil rights. Section 940.061, F.S., is amended and s. 944.293, F.S., is repealed to delete an obsolete requirement that the department obtain forms and assist inmates and offenders with completion of a restoration of civil rights application. Section 6 also amends s. 940.061, F.S., to codify the department's current practice of sending the Parole Commission a monthly electronic list containing the names of offenders who are released from incarceration or terminated from supervision and who may be eligible for restoration of civil rights. This list serves as an application for restoration of civil rights.

Section 8 amends s. 944.35, F.S., to make it a 3rd degree felony for an employee of a private correctional facility to engage in sexual misconduct with an inmate. Consequently, private correctional facility employees will face criminal sanctions for sexual misconduct to the same extent as department employees.

Section 9 amends s. 944.605(3), F.S., to specifically state that the department can use electronic means to submit information concerning inmates who have been convicted of armed robbery, sexual battery, home-invasion robbery, or carjacking to the sheriff and police chief where the inmate intends to reside after release. The existing statute does not specifically authorize or prohibit release of the information by electronic means.

[19] See Department of Corrections' 2010 Bill Analysis, Senate Bill 960, pp. 2-3.

Section 10 amends s. 944.804, F.S., to change a reference to a geriatric facility at River Junction Correctional Institution to a general reference to "geriatric facilities or geriatric dorms within a facility." This is more consistent with the current state of geriatric housing within the department. However, the amended statute would no longer require the department to maintain RJCI as a geriatric facility.

The amendment also removes an obsolete requirement that modifications be made to RJCI prior to its reopening to ensure that the facility complied with the federal Americans with Disabilities Act (ADA).

Section 11 amends s. 944.8041, F.S., to change a requirement that the department and the Correctional Medical Authority (CMA) report specifically on RJCI to a general reference to "the department's geriatric facilities and dorms." This broader analysis is already included in the scope of CMA's annual report. The section also amends another specific reference to RJCI to a general reference.

Section 12 amends s. 945.41(4), F.S., to remove the prohibition against placing a youthful offender at Florida State Prison or Union Correctional Institution for mental health treatment. This prohibition has been in effect since the Corrections Mental Health Act was enacted in 1982. Also, s. 945.41(5), F.S., is updated to reflect that the department has more than one mental health treatment facility.

Section 13 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 this requirement in both definitions.

Section 14 amends s. 945.43, F.S., to authorize the department to transport an inmate to a placement hearing if it is not conducted either at the facility where he or she is located or by electronic means.

Section 15 amends s. 945.46, F.S., to authorize the department to transport a mentally ill inmate who is being released from custody to a Baker Act receiving facility for involuntary examination or placement. The department may transport the inmate to the nearest receiving facility if a particular receiving facility is not designated by the Department of Children and Family Services. This amendment will remove the necessity for local sheriff's offices to transport mentally ill inmates after release from the department.

Section 16 creates s. 946.42, F.S., to clearly specify the reasons for which inmate work squads can enter onto private property. Inmates who are eligible to perform service pursuant to s. 946.40, F.S., the inmate work squad statute, will be able to enter onto private property to perform public works or for the following purposes:

(1) Accepting and collecting donations for the use and benefit of the department. A "donation" is a gift of tangible personal property, specifically including equipment, fixtures,

construction materials, food items, and other tangible personal property of a consumable and non-consumable nature.
(2) Assisting federal, state, local, and private agencies before, during, and after emergencies or disasters. An "emergency" is a natural, technological, or manmade occurrence or threat of occurrence which results in or may result in substantial injury or harm to the population or substantial damage to or loss of property. A "disaster" is a natural, technological, or civil emergency that results in a declaration of a state of emergency by a county, the governor, or the president.

Section 18 amends s. 948.03(1), F.S., to change an existing standard condition of probation and add two new standard conditions as follows:

- The prohibition in s. 948.03(1)(l), F.S., against possessing, carrying, or owning any firearm unless authorized by the court and consented to by the probation officer is amended to delete the language requiring court authorization to possess a firearm and expanded to require that possession, carrying or owning of any weapon must be approved by the probation officer. This differs from the special condition in the Florida Rules of Criminal Procedure that strictly prohibits possession of a firearm.
- A standard condition is added to require the offender to live without violating any law. This requirement is already included in the Florida Rules of Criminal Procedure. As in the Rules, the statute clarifies that it is not necessary to prove a conviction for violating a law in order to show that the condition was violated.
- A standard condition is added to require the offender to submit to the taking of a digitized photograph by the department as part of the offender's records. The photograph can be displayed on the department's public website while the offender is on court-ordered supervision, unless the offender is on pretrial intervention supervision or would otherwise be exempt from public records requirements under s. 119.07, F.S. Although the department currently takes such photographs and displays them on its website, it cannot mandate that a photograph be taken. The exception is in the case of sex offenders, who are required to submit to the taking of a photograph.

Section 19 corrects a cross-reference in s. 948.09(7), F.S regarding payment of restitution.

Section 22 amends s. 951.26, F.S., to authorize a county Public Safety Coordinating Council to develop a comprehensive local reentry plan to assist offenders released from incarceration in successfully reentering the community. The bill requires the PSCCs 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.

Section 33 provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

In general, the provisions of the bill are either revenue neutral or may have a positive fiscal impact. However, the following sections could have a negative fiscal impact:

Section 4 creates a new 3rd degree felony for lewd and lascivious exhibition in the presence of an employee. It does not appear that this will have a significant fiscal impact, but it has not yet been considered by the Criminal Justice Impact Conference.

Section 8 makes the existing felony prohibition against sexual activity between an inmate and a corrections employee applicable to employees of private prisons. It is not anticipated that there would be enough cases for this to have a significant fiscal impact, but it has not yet been considered by the Criminal Justice Impact Conference.

Section 15 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 3, 2010:

- Revises the new felony offense of lewd and lascivious exhibition in the presence of a facility employee to: (1) delete a clause that would have made it a felony to harass, annoy, threaten, or alarm a facility employee; (2) protect any person who is within the statute's definition of "employee," not just those who are employees of the facility; and (3) provide that the sexual acts by the inmate do not involve actual physical or sexual contact with the victim. Acts that involve physical or sexual contact with the victim can be charged under other statutes.
- Removes sections of the bill that would have modified and clarified statutory provisions relating to the department's involvement with the competency to stand trial process for inmates who are charged with new crimes.
- Revises the newly-created statute that authorizes the department to allow inmates who meet the criteria for a public works squad to clarify that the inmates may perform public works on private property.
- Removes sections of the bill that would have revised statutes relating to youthful offenders. (WITH TITLE AMENDMENT)

B. Amendments:

None.