

By the Committee on Criminal Justice

591-03176-16

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1 A bill to be entitled
2 An act relating to corrections; amending s. 216.136,
3 F.S.; requiring the Criminal Justice Estimating
4 Conference to develop projections of prison admissions
5 and populations for elderly felony offenders; amending
6 s. 921.0021, F.S.; revising the definition of "victim
7 injury" by removing a prohibition on assessing certain
8 victim injury sentence points for sexual misconduct by
9 an employee of the Department of Corrections or a
10 private correctional facility with an inmate or an
11 offender supervised by the department; conforming a
12 provision to changes made by the act; amending s.
13 944.275, F.S.; prohibiting an inmate from receiving
14 incentive gain-time for completing the requirements
15 for and receiving a high school equivalency diploma or
16 vocational certificate if the inmate is convicted of a
17 specified offense on or after a specified date;
18 amending s. 944.35, F.S.; expanding applicability of a
19 current felony offense to include employees of private
20 providers and private correctional facilities;
21 creating criminal penalties for employees who
22 knowingly and with the intent to cause specified harm
23 withhold food, water, or essential services from an
24 inmate; amending s. 945.6031, F.S.; increasing the
25 frequency of required surveys of health care systems
26 at correctional institutions; amending s. 951.221,
27 F.S.; conforming a cross-reference; reenacting s.
28 944.023(1)(a), F.S., relating to the definition of the
29 term "Criminal Justice Estimating Conference", to
30 incorporate the amendment made to s. 216.136, F.S., in
31 a reference thereto; reenacting ss. 435.04(2)(uu) and
32 921.0022(3)(f), F.S., relating to level 2 screening

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standards and level 6 of the offense severity ranking chart, respectively, to incorporate the amendment made to s. 944.35, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (5) of section 216.136, Florida Statutes, to read:

216.136 Consensus estimating conferences; duties and principals.—

(5) CRIMINAL JUSTICE ESTIMATING CONFERENCE.—The Criminal Justice Estimating Conference shall:

(d) Develop projections of prison admissions and populations for elderly felony offenders. The projections shall also include the ethnicity and health status of those elderly offenders.

Section 2. Subsection (7) of section 921.0021, Florida Statutes, is amended to read:

921.0021 Definitions.—As used in this chapter, for any felony offense, except any capital felony, committed on or after October 1, 1998, the term:

(7) (a) "Victim injury" means the physical injury or death suffered by a person as a direct result of the primary offense, or any additional offense, for which an offender is convicted and which is pending before the court for sentencing at the time of the primary offense.

(b) Except as provided in paragraph (c): ~~or paragraph (d),~~

1. If the conviction is for an offense involving sexual

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62 contact that includes sexual penetration, the sexual penetration
63 must be scored in accordance with the sentence points provided
64 under s. 921.0024 for sexual penetration, regardless of whether
65 there is evidence of any physical injury.

66 2. If the conviction is for an offense involving sexual
67 contact that does not include sexual penetration, the sexual
68 contact must be scored in accordance with the sentence points
69 provided under s. 921.0024 for sexual contact, regardless of
70 whether there is evidence of any physical injury.

71
72 If the victim of an offense involving sexual contact suffers any
73 physical injury as a direct result of the primary offense or any
74 additional offense committed by the offender resulting in
75 conviction, such physical injury must be scored separately and
76 in addition to the points scored for the sexual contact or the
77 sexual penetration.

78 ~~(c) The sentence points provided under s. 921.0024 for~~
79 ~~sexual contact or sexual penetration may not be assessed for a~~
80 ~~violation of s. 944.35(3)(b)2.~~

81 (c)~~(d)~~ If the conviction is for the offense described in s.
82 872.06, the sentence points provided under s. 921.0024 for
83 sexual contact or sexual penetration may not be assessed.

84 (d)~~(e)~~ Notwithstanding paragraph (a), if the conviction is
85 for an offense described in s. 316.027 and the court finds that
86 the offender caused victim injury, sentence points for victim
87 injury may be assessed against the offender.

88 Section 3. Paragraphs (d) and (e) of subsection (4) of
89 section 944.275, Florida Statutes, are amended, and paragraph
90 (b) of that subsection is republished, to read:

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91 944.275 Gain-time.-

92 (4)

93 (b) For each month in which an inmate works diligently,
94 participates in training, uses time constructively, or otherwise
95 engages in positive activities, the department may grant
96 incentive gain-time in accordance with this paragraph. The rate
97 of incentive gain-time in effect on the date the inmate
98 committed the offense which resulted in his or her incarceration
99 shall be the inmate's rate of eligibility to earn incentive
100 gain-time throughout the period of incarceration and shall not
101 be altered by a subsequent change in the severity level of the
102 offense for which the inmate was sentenced.

103 1. For sentences imposed for offenses committed prior to
104 January 1, 1994, up to 20 days of incentive gain-time may be
105 granted. If granted, such gain-time shall be credited and
106 applied monthly.

107 2. For sentences imposed for offenses committed on or after
108 January 1, 1994, and before October 1, 1995:

109 a. For offenses ranked in offense severity levels 1 through
110 7, under former s. 921.0012 or former s. 921.0013, up to 25 days
111 of incentive gain-time may be granted. If granted, such gain-
112 time shall be credited and applied monthly.

113 b. For offenses ranked in offense severity levels 8, 9, and
114 10, under former s. 921.0012 or former s. 921.0013, up to 20
115 days of incentive gain-time may be granted. If granted, such
116 gain-time shall be credited and applied monthly.

117 3. For sentences imposed for offenses committed on or after
118 October 1, 1995, the department may grant up to 10 days per
119 month of incentive gain-time, except that no prisoner is

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120 eligible to earn any type of gain-time in an amount that would
121 cause a sentence to expire, end, or terminate, or that would
122 result in a prisoner's release, prior to serving a minimum of 85
123 percent of the sentence imposed. For purposes of this
124 subparagraph, credits awarded by the court for time physically
125 incarcerated shall be credited toward satisfaction of 85 percent
126 of the sentence imposed. Except as provided by this section, a
127 prisoner shall not accumulate further gain-time awards at any
128 point when the tentative release date is the same as that date
129 at which the prisoner will have served 85 percent of the
130 sentence imposed. State prisoners sentenced to life imprisonment
131 shall be incarcerated for the rest of their natural lives,
132 unless granted pardon or clemency.

133 (d) Notwithstanding paragraph (b) subparagraphs (b)1. and
134 2., the education program manager shall recommend, and the
135 Department of Corrections may grant, a one-time award of 60
136 additional days of incentive gain-time to an inmate who is
137 otherwise eligible and who successfully completes requirements
138 for and is awarded a high school equivalency diploma or
139 vocational certificate. This incentive gain-time award may be
140 granted to reduce any sentence for an offense committed on or
141 after October 1, 1995. However, this gain-time may not be
142 granted to reduce any sentence for an offense committed on or
143 after October 1, 1995, if the inmate is, or has previously been,
144 convicted of a violation of s. 794.011, s. 794.05, former s.
145 796.03, former s. 796.035, s. 800.04, s. 825.1025, s. 827.03, s.
146 827.071, s. 847.0133, s. 847.0135, s. 847.0137, s. 847.0138, s.
147 847.0145, or s. 985.701(1), or a forcible felony offense that is
148 specified in s. 776.08, except burglary as specified in s.

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149 810.02(4). An inmate subject to the 85 percent minimum service
150 requirement pursuant to subparagraph (b)3. may not accumulate
151 gain-time awards at any point when the tentative release date is
152 the same as the 85 percent minimum service date of the sentence
153 imposed. Under no circumstances may an inmate receive more than
154 60 days for educational attainment pursuant to this section.

155 (e) Notwithstanding subparagraph (b)3. and paragraph (d),
156 for sentences imposed for offenses committed on or after October
157 1, 2014, the department may not grant incentive gain-time if the
158 offense is a violation of s. 782.04(1)(a)2.c.; s. 787.01(3)(a)2.
159 or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s.
160 794.011(10); s. 800.04; s. 825.1025; or s. 847.0135(5).

161 Section 4. Subsection (3) of section 944.35, Florida
162 Statutes, is amended to read:

163 944.35 Authorized use of force; malicious battery and
164 sexual misconduct prohibited; reporting required; penalties.—

165 (3)(a)1. Any employee of the department, a private
166 provider, or private correctional facility who, with malicious
167 intent, commits a battery upon an inmate or an offender
168 supervised by the department in the community, commits a
169 misdemeanor of the first degree, punishable as provided in s.
170 775.082 or s. 775.083.

171 2. Any employee of the department, a private provider, or
172 private correctional facility who, with malicious intent,
173 commits a battery or inflicts cruel or inhuman treatment by
174 neglect or otherwise, and in so doing causes great bodily harm,
175 permanent disability, or permanent disfigurement to an inmate or
176 an offender supervised by the department in the community,
177 commits a felony of the third degree, punishable as provided in

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178 s. 775.082, s. 775.083, or s. 775.084.

179 (b) An employee of the department, a private provider, or
180 private correctional facility commits a felony of the third
181 degree, punishable as provided in s. 775.082, s. 775.083, or s.
182 775.084, if the employee:

183 1. Knowingly and with the intent to cause an inmate great
184 bodily harm, permanent disability, or permanent disfigurement,
185 withholds food, water, clothing, shelter, supervision, medicine,
186 or medical services from the inmate; and

187 2. Causes an inmate to suffer great bodily harm, permanent
188 disability, or permanent disfigurement by such action.

189 (c)~~(b)~~1. As used in this paragraph, the term "sexual
190 misconduct" means the oral, anal, or vaginal penetration by, or
191 union with, the sexual organ of another or the anal or vaginal
192 penetration of another by any other object, but does not include
193 an act done for a bona fide medical purpose or an internal
194 search conducted in the lawful performance of the employee's
195 duty.

196 2. Any employee of the department or a private correctional
197 facility as defined in s. 944.710 who engages in sexual
198 misconduct with an inmate or an offender supervised by the
199 department in the community, without committing the crime of
200 sexual battery, commits a felony of the third degree, punishable
201 as provided in s. 775.082, s. 775.083, or s. 775.084.

202 3. The consent of the inmate or offender supervised by the
203 department in the community to any act of sexual misconduct may
204 not be raised as a defense to a prosecution under this
205 paragraph.

206 4. This paragraph does not apply to any employee of the

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207 department or any employee of a private correctional facility
208 who is legally married to an inmate or an offender supervised by
209 the department in the community, nor does it apply to any
210 employee who has no knowledge, and would have no reason to
211 believe, that the person with whom the employee has engaged in
212 sexual misconduct is an inmate or an offender under community
213 supervision of the department.

214 (d)~~(e)~~ Notwithstanding prosecution, any violation of the
215 provisions of this subsection, as determined by the Public
216 Employees Relations Commission, shall constitute sufficient
217 cause under s. 110.227 for dismissal from employment with the
218 department, and such person shall not again be employed in any
219 capacity in connection with the correctional system.

220 (e)~~(d)~~ Each employee who witnesses, or has reasonable cause
221 to suspect, that an inmate or an offender under the supervision
222 of the department in the community has been unlawfully abused or
223 is the subject of sexual misconduct pursuant to this subsection
224 shall immediately prepare, date, and sign an independent report
225 specifically describing the nature of the force used or the
226 nature of the sexual misconduct, the location and time of the
227 incident, and the persons involved. The report shall be
228 delivered to the inspector general of the department with a copy
229 to be delivered to the warden of the institution or the regional
230 administrator. The inspector general shall immediately conduct
231 an appropriate investigation, and, if probable cause is
232 determined that a violation of this subsection has occurred, the
233 respective state attorney in the circuit in which the incident
234 occurred shall be notified.

235 Section 5. Subsection (2) of section 945.6031, Florida

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236 Statutes, is amended to read:

237 945.6031 Required reports and surveys.-

238 (2) The authority shall conduct surveys of the physical and
239 mental health care system at each correctional institution at
240 least every 18 months ~~triennially~~ and shall report the survey
241 findings for each institution to the Secretary of Corrections.

242 Section 6. Subsection (1) of section 951.221, Florida
243 Statutes, is amended to read:

244 951.221 Sexual misconduct between detention facility
245 employees and inmates; penalties.-

246 (1) Any employee of a county or municipal detention
247 facility or of a private detention facility under contract with
248 a county commission who engages in sexual misconduct, as defined
249 in s. 944.35(3)(c)1. ~~s. 944.35(3)(b)1.~~, with an inmate or an
250 offender supervised by the facility without committing the crime
251 of sexual battery commits a felony of the third degree,
252 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
253 The consent of an inmate to any act of sexual misconduct may not
254 be raised as a defense to prosecution under this section.

255 Section 7. For the purpose of incorporating the amendment
256 made by this act to section 216.136, Florida Statutes, in a
257 reference thereto, paragraph (a) of subsection (1) of section
258 944.023, Florida Statutes, is reenacted to read:

259 944.023 Comprehensive correctional master plan.-

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

261 (a) "Criminal Justice Estimating Conference" means the
262 Criminal Justice Estimating Conference referred to in s.
263 216.136(5).

264 Section 8. For the purpose of incorporating the amendment

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265 made by this act to section 944.35, Florida Statutes, in a
 266 reference thereto, paragraph (uu) of subsection (2) of section
 267 435.04, Florida Statutes, is reenacted to read:

268 435.04 Level 2 screening standards.—

269 (2) The security background investigations under this
 270 section must ensure that no persons subject to the provisions of
 271 this section have been arrested for and are awaiting final
 272 disposition of, have been found guilty of, regardless of
 273 adjudication, or entered a plea of nolo contendere or guilty to,
 274 or have been adjudicated delinquent and the record has not been
 275 sealed or expunged for, any offense prohibited under any of the
 276 following provisions of state law or similar law of another
 277 jurisdiction:

278 (uu) Section 944.35(3), relating to inflicting cruel or
 279 inhuman treatment on an inmate resulting in great bodily harm.

280 Section 9. For the purpose of incorporating the amendment
 281 made by this act to section 944.35, Florida Statutes, in a
 282 reference thereto, paragraph (f) of subsection (3) of section
 283 921.0022, Florida Statutes, is reenacted to read:

284 921.0022 Criminal Punishment Code; offense severity ranking
 285 chart.—

286 (3) OFFENSE SEVERITY RANKING CHART

287 (f) LEVEL 6

288

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious

289

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bodily injury.

290

316.193 (2) (b)

3rd

Felony DUI, 4th or subsequent conviction.

291

400.9935 (4) (c)

2nd

Operating a clinic, or offering services requiring licensure, without a license.

292

499.0051 (3)

2nd

Knowing forgery of pedigree papers.

293

499.0051 (4)

2nd

Knowing purchase or receipt of prescription drug from unauthorized person.

294

499.0051 (5)

2nd

Knowing sale or transfer of prescription drug to unauthorized person.

295

775.0875 (1)

3rd

Taking firearm from law enforcement officer.

296

784.021 (1) (a)

3rd

Aggravated assault; deadly weapon without intent to kill.

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298	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
299	784.041	3rd	Felony battery; domestic battery by strangulation.
300	784.048 (3)	3rd	Aggravated stalking; credible threat.
301	784.048 (5)	3rd	Aggravated stalking of person under 16.
302	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
303	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
304	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
305	784.081 (2)	2nd	Aggravated assault on specified official or employee.

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306	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
307	784.083 (2)	2nd	Aggravated assault on code inspector.
308	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
309	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
310	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
311	790.164 (1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
	790.19	2nd	Shooting or throwing

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deadly missiles into dwellings, vessels, or vehicles.

312

794.011 (8) (a)

3rd

Solicitation of minor to participate in sexual activity by custodial adult.

313

794.05 (1)

2nd

Unlawful sexual activity with specified minor.

314

800.04 (5) (d)

3rd

Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.

315

800.04 (6) (b)

2nd

Lewd or lascivious conduct; offender 18 years of age or older.

316

806.031 (2)

2nd

Arson resulting in great bodily harm to firefighter or any other person.

317

810.02 (3) (c)

2nd

Burglary of occupied

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structure; unarmed; no
assault or battery.

318

810.145 (8) (b)

2nd

Video voyeurism; certain
minor victims; 2nd or
subsequent offense.

319

812.014 (2) (b) 1.

2nd

Property stolen \$20,000
or more, but less than
\$100,000, grand theft in
2nd degree.

320

812.014 (6)

2nd

Theft; property stolen
\$3,000 or more;
coordination of others.

321

812.015 (9) (a)

2nd

Retail theft; property
stolen \$300 or more;
second or subsequent
conviction.

322

812.015 (9) (b)

2nd

Retail theft; property
stolen \$3,000 or more;
coordination of others.

323

812.13 (2) (c)

2nd

Robbery, no firearm or
other weapon (strong-arm
robbery).

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	817.4821 (5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
325	825.102 (1)	3rd	Abuse of an elderly person or disabled adult.
326	825.102 (3) (c)	3rd	Neglect of an elderly person or disabled adult.
327	825.1025 (3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
328	825.103 (3) (c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
329	827.03 (2) (c)	3rd	Abuse of a child.
330	827.03 (2) (d)	3rd	Neglect of a child.
331	827.071 (2) & (3)	2nd	Use or induce a child in a sexual performance, or

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promote or direct such performance.

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836.05

2nd

Threats; extortion.

836.10

2nd

Written threats to kill or do bodily injury.

843.12

3rd

Aids or assists person to escape.

847.011

3rd

Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.

847.012

3rd

Knowingly using a minor in the production of materials harmful to minors.

847.0135 (2)

3rd

Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.

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339	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
340	944.35 (3) (a) 2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
341	944.40	2nd	Escapes.
342	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
343	944.47 (1) (a) 5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
	951.22 (1)	3rd	Intoxicating drug, firearm, or weapon introduced into county

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facility.

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345

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Section 10. This act shall take effect July 1, 2016.