

FOR CONSIDERATION By the Committee on Criminal Justice

591-00528-16

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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

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

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. Paragraph (d) is added to subsection (5) of
41 section 216.136, Florida Statutes, to read:

42 216.136 Consensus estimating conferences; duties and
43 principals.—

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

46 (d) Develop projections of prison admissions and
47 populations for elderly felony offenders.

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

50 921.0021 Definitions.—As used in this chapter, for any
51 felony offense, except any capital felony, committed on or after
52 October 1, 1998, the term:

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

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

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59 1. If the conviction is for an offense involving sexual
60 contact that includes sexual penetration, the sexual penetration
61 must be scored in accordance with the sentence points provided
62 under s. 921.0024 for sexual penetration, regardless of whether
63 there is evidence of any physical injury.

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

69
70 If the victim of an offense involving sexual contact suffers any
71 physical injury as a direct result of the primary offense or any
72 additional offense committed by the offender resulting in
73 conviction, such physical injury must be scored separately and
74 in addition to the points scored for the sexual contact or the
75 sexual penetration.

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

79 (c)~~(d)~~ If the conviction is for the offense described in s.
80 872.06, the sentence points provided under s. 921.0024 for
81 sexual contact or sexual penetration may not be assessed.

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

86 Section 3. Paragraphs (d) and (e) of subsection (4) of
87 section 944.275, Florida Statutes, are amended, and paragraph

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88 (b) of that subsection is republished, to read:

89 944.275 Gain-time.—

90 (4)

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

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

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

107 a. For offenses ranked in offense severity levels 1 through
108 7, under former s. 921.0012 or former s. 921.0013, up to 25 days
109 of incentive gain-time may be granted. If granted, such gain-
110 time shall be credited and applied monthly.

111 b. For offenses ranked in offense severity levels 8, 9, and
112 10, under former s. 921.0012 or former s. 921.0013, up to 20
113 days of incentive gain-time may be granted. If granted, such
114 gain-time shall be credited and applied monthly.

115 3. For sentences imposed for offenses committed on or after
116 October 1, 1995, the department may grant up to 10 days per

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117 month of incentive gain-time, except that no prisoner is
118 eligible to earn any type of gain-time in an amount that would
119 cause a sentence to expire, end, or terminate, or that would
120 result in a prisoner's release, prior to serving a minimum of 85
121 percent of the sentence imposed. For purposes of this
122 subparagraph, credits awarded by the court for time physically
123 incarcerated shall be credited toward satisfaction of 85 percent
124 of the sentence imposed. Except as provided by this section, a
125 prisoner shall not accumulate further gain-time awards at any
126 point when the tentative release date is the same as that date
127 at which the prisoner will have served 85 percent of the
128 sentence imposed. State prisoners sentenced to life imprisonment
129 shall be incarcerated for the rest of their natural lives,
130 unless granted pardon or clemency.

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

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146 specified in s. 776.08, except burglary as specified in s.
147 810.02(4). An inmate subject to the 85 percent minimum service
148 requirement pursuant to subparagraph (b)3. may not accumulate
149 gain-time awards at any point when the tentative release date is
150 the same as the 85 percent minimum service date of the sentence
151 imposed. Under no circumstances may an inmate receive more than
152 60 days for educational attainment pursuant to this section.

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

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

161 944.35 Authorized use of force; malicious battery and
162 sexual misconduct prohibited; reporting required; penalties.—

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

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

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175 commits a felony of the third degree, punishable as provided in
176 s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

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

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

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204 4. This paragraph does not apply to any employee of the
205 department or any employee of a private correctional facility
206 who is legally married to an inmate or an offender supervised by
207 the department in the community, nor does it apply to any
208 employee who has no knowledge, and would have no reason to
209 believe, that the person with whom the employee has engaged in
210 sexual misconduct is an inmate or an offender under community
211 supervision of the department.

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

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

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233 Section 5. Subsection (2) of section 945.6031, Florida
234 Statutes, is amended to read:

235 945.6031 Required reports and surveys.—

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

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

242 951.221 Sexual misconduct between detention facility
243 employees and inmates; penalties.—

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

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

257 944.023 Comprehensive correctional master plan.—

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

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

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262 Section 8. For the purpose of incorporating the amendment
 263 made by this act to section 944.35, Florida Statutes, in a
 264 reference thereto, paragraph (uu) of subsection (2) of section
 265 435.04, Florida Statutes, is reenacted to read:

266 435.04 Level 2 screening standards.—

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

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

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

282 921.0022 Criminal Punishment Code; offense severity ranking
 283 chart.—

284 (3) OFFENSE SEVERITY RANKING CHART

285 (f) LEVEL 6

286

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

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crash involving serious
bodily injury.

288

316.193 (2) (b)

3rd

Felony DUI, 4th or
subsequent conviction.

289

400.9935 (4) (c)

2nd

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

290

499.0051 (3)

2nd

Knowing forgery of
pedigree papers.

291

499.0051 (4)

2nd

Knowing purchase or
receipt of prescription
drug from unauthorized
person.

292

499.0051 (5)

2nd

Knowing sale or transfer
of prescription drug to
unauthorized person.

293

775.0875 (1)

3rd

Taking firearm from law
enforcement officer.

294

784.021 (1) (a)

3rd

Aggravated assault;
deadly weapon without
intent to kill.

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

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

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310	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
311	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
312	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
313	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.
314	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
315	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.

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316	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
317	810.145 (8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
318	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
319	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
320	812.015 (9) (a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
321	812.015 (9) (b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
	812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).

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322

817.4821 (5) 2nd Possess cloning paraphernalia with intent to create cloned cellular telephones.

323

825.102 (1) 3rd Abuse of an elderly person or disabled adult.

324

825.102 (3) (c) 3rd Neglect of an elderly person or disabled adult.

325

825.1025 (3) 3rd Lewd or lascivious molestation of an elderly person or disabled adult.

326

825.103 (3) (c) 3rd Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.

327

827.03 (2) (c) 3rd Abuse of a child.

328

827.03 (2) (d) 3rd Neglect of a child.

329

827.071 (2) & (3) 2nd Use or induce a child in

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a sexual performance, or
promote or direct such
performance.

330

836.05

2nd

Threats; extortion.

331

836.10

2nd

Written threats to kill
or do bodily injury.

332

843.12

3rd

Aids or assists person
to escape.

333

847.011

3rd

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

334

847.012

3rd

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

335

847.0135 (2)

3rd

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

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introduced into county
facility.

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