

By the Appropriations Committee on Criminal and Civil Justice;
and the Committee on Criminal Justice

604-02848-23

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1 A bill to be entitled
2 An act relating to the Department of Corrections;
3 amending s. 944.35, F.S.; providing criminal penalties
4 for any volunteer or employee of a contractor or
5 subcontractor of the Department of Corrections who
6 engages in sexual misconduct with specified inmates or
7 offenders; defining the terms "private correctional
8 facility" and "volunteer"; providing exceptions;
9 providing for a type two transfer of private
10 correctional facilities from the Department of
11 Management Services to the Department of Corrections;
12 amending ss. 287.042, 957.04, 957.06, 957.07, 957.08,
13 957.14, 957.15, and 957.16, F.S.; conforming
14 provisions to changes made by the act; providing
15 effective dates.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Effective October 1, 2023, subsection (3) of
20 section 944.35, Florida Statutes, is amended to read:

21 944.35 Authorized use of force; malicious battery and
22 sexual misconduct prohibited; reporting required; penalties.—

23 (3) (a) 1. Any employee of the department who, with malicious
24 intent, commits a battery upon an inmate or an offender
25 supervised by the department in the community, commits a
26 misdemeanor of the first degree, punishable as provided in s.
27 775.082 or s. 775.083.

28 2. Any employee of the department who, with malicious
29 intent, commits a battery or inflicts cruel or inhuman treatment

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30 by neglect or otherwise, and in so doing causes great bodily
31 harm, permanent disability, or permanent disfigurement to an
32 inmate or an offender supervised by the department in the
33 community, commits a felony of the third degree, punishable as
34 provided in s. 775.082, s. 775.083, or s. 775.084.

35 (b)1. As used in this paragraph, the term:

36 a. "Female genitals" includes the labia minora, labia
37 majora, clitoris, vulva, hymen, and vagina.

38 b. "Private correctional facility" has the same meaning as
39 in s. 944.710.

40 c.~~b.~~ "Sexual misconduct" means the oral, anal, or female
41 genital penetration by, or union with, the sexual organ of
42 another or the anal or female genital penetration of another by
43 any other object, but does not include an act done for a bona
44 fide medical purpose or an internal search conducted in the
45 lawful performance of the employee's duty.

46 d. "Volunteer" means a person registered with the
47 department or a private correctional facility who is engaged in
48 specific voluntary service activities on an ongoing or continual
49 basis.

50 2. Any employee of the department or a private correctional
51 facility or any volunteer in, or any employee of a contractor or
52 subcontractor of, the department or a private correctional
53 facility as defined in s. 944.710 who engages in sexual
54 misconduct with an inmate or an offender supervised by the
55 department in the community, without committing the crime of
56 sexual battery, commits a felony of the third degree, punishable
57 as provided in s. 775.082, s. 775.083, or s. 775.084.

58 3. The consent of the inmate or offender supervised by the

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59 department in the community to any act of sexual misconduct may
60 not be raised as a defense to a prosecution under this
61 paragraph.

62 4. This paragraph does not apply to any employee,
63 volunteer, or employee of a contractor or subcontractor of the
64 department or any employee, volunteer, or employee of a
65 contractor or subcontractor of a private correctional facility
66 who is legally married to an inmate or an offender supervised by
67 the department in the community, nor does it apply to any
68 employee, volunteer, or employee of a contractor or
69 subcontractor who has no knowledge, and would have no reason to
70 believe, that the person with whom the employee, volunteer, or
71 employee of a contractor or subcontractor has engaged in sexual
72 misconduct is an inmate or an offender under community
73 supervision of the department.

74 (c) Notwithstanding prosecution, any violation of the
75 provisions of this subsection, as determined by the Public
76 Employees Relations Commission, shall constitute sufficient
77 cause under s. 110.227 for dismissal from employment with the
78 department, and such person shall not again be employed in any
79 capacity in connection with the correctional system.

80 (d) Each employee who witnesses, or has reasonable cause to
81 suspect, that an inmate or an offender under the supervision of
82 the department in the community has been unlawfully abused or is
83 the subject of sexual misconduct pursuant to this subsection
84 shall immediately prepare, date, and sign an independent report
85 specifically describing the nature of the force used or the
86 nature of the sexual misconduct, the location and time of the
87 incident, and the persons involved. The report shall be

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88 delivered to the inspector general of the department with a copy
89 to be delivered to the warden of the institution or the regional
90 administrator. The inspector general shall immediately conduct
91 an appropriate investigation, and, if probable cause is
92 determined that a violation of this subsection has occurred, the
93 respective state attorney in the circuit in which the incident
94 occurred shall be notified.

95 Section 2. All powers, duties, functions, records, offices,
96 personnel, associated administrative support positions,
97 property, administrative authority, and administrative rules
98 relating to private correctional facilities are transferred by a
99 type two transfer, as defined in s. 20.06(2), Florida Statutes,
100 from the Department of Management Services to the Department of
101 Corrections. Any binding contract or interagency agreement
102 entered into and between the Department of Management Services
103 concerning private correctional facilities and any other agency,
104 entity, or person continues as a binding contract or agreement
105 with the Department of Corrections for the remainder of the term
106 of the contract or agreement.

107 Section 3. Subsection (17) of section 287.042, Florida
108 Statutes, is amended to read:

109 287.042 Powers, duties, and functions.—The department shall
110 have the following powers, duties, and functions:

111 ~~(17) (a) To enter into contracts pursuant to chapter 957 for~~
112 ~~the designing, financing, acquiring, leasing, constructing, or~~
113 ~~operating of private correctional facilities. The department~~
114 ~~shall enter into a contract or contracts with one contractor per~~
115 ~~facility for the designing, acquiring, financing, leasing,~~
116 ~~constructing, and operating of that facility or may, if~~

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117 ~~specifically authorized by the Legislature, separately contract~~
118 ~~for any such services.~~

119 ~~(b) To manage and enforce compliance with existing or~~
120 ~~future contracts entered into pursuant to chapter 957.~~

121

122 ~~The department may not delegate the responsibilities conferred~~
123 ~~by this subsection.~~

124 Section 4. Section 957.04, Florida Statutes, is amended to
125 read:

126 957.04 Contract requirements.—

127 (1) A contract entered into under this chapter for the
128 operation of private correctional facilities shall maximize the
129 cost savings of such facilities and shall:

130 (a) Be negotiated with the firm found most qualified.

131 However, a contract for private correctional services may not be
132 entered into by the department ~~of Management Services~~ unless the
133 department ~~of Management Services~~ determines that the contractor
134 has demonstrated that it has:

135 1. The qualifications, experience, and management personnel
136 necessary to carry out the terms of the contract.

137 2. The ability to expedite the siting, design, and
138 construction of correctional facilities.

139 3. The ability to comply with applicable laws, court
140 orders, and national correctional standards.

141 (b) Indemnify the state and the department, including their
142 officials and agents, against any and all liability, including,
143 but not limited to, civil rights liability. Proof of
144 satisfactory insurance is required in an amount to be determined
145 by the department ~~of Management Services~~.

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146 (c) Require that the contractor seek, obtain, and maintain
147 accreditation by the American Correctional Association for the
148 facility under that contract. Compliance with amendments to the
149 accreditation standards of the association is required upon the
150 approval of such amendments by the commission.

151 (d) Require that the proposed facilities and the management
152 plans for the inmates meet applicable American Correctional
153 Association standards and the requirements of all applicable
154 court orders and state law.

155 (e) Establish operations standards for correctional
156 facilities subject to the contract. However, if the department
157 and the contractor disagree with an operations standard, the
158 contractor may propose to waive any rule, policy, or procedure
159 of the department related to the operations standards of
160 correctional facilities which is inconsistent with the mission
161 of the contractor to establish cost-effective, privately
162 operated correctional facilities. The department of ~~Management~~
163 ~~Services~~ shall be responsible for considering all proposals from
164 the contractor to waive any rule, policy, or procedure and shall
165 render a final decision granting or denying such request.

166 (f) Require the contractor to be responsible for a range of
167 dental, medical, and psychological services; diet; education;
168 and work programs at least equal to those provided by the
169 department in comparable facilities. The work and education
170 programs must be designed to reduce recidivism, and include
171 opportunities to participate in such work programs as authorized
172 pursuant to s. 946.523.

173 (g) Require the selection and appointment of a full-time
174 contract monitor. The contract monitor shall be appointed and

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175 supervised by the department ~~of Management Services~~. The
176 contractor is required to reimburse the department ~~of Management~~
177 ~~Services~~ for the salary and expenses of the contract monitor. It
178 is the obligation of the contractor to provide suitable office
179 space for the contract monitor at the correctional facility. The
180 contract monitor shall have unlimited access to the correctional
181 facility.

182 (h) Be for a period of 3 years and may be renewed for
183 successive 2-year periods thereafter. However, the state is not
184 obligated for any payments to the contractor beyond current
185 annual appropriations.

186 (2) Each contract entered into for the design and
187 construction of a private correctional facility or juvenile
188 commitment facility must include:

189 (a) Notwithstanding any provision of chapter 255 to the
190 contrary, a specific provision authorizing the use of tax-exempt
191 financing through the issuance of tax-exempt bonds, certificates
192 of participation, lease-purchase agreements, or other tax-exempt
193 financing methods. Pursuant to s. 255.25, approval is hereby
194 provided for the lease-purchase of up to two private
195 correctional facilities and any other facility authorized by the
196 General Appropriations Act.

197 (b) A specific provision requiring the design and
198 construction of the proposed facilities to meet the applicable
199 standards of the American Correctional Association and the
200 requirements of all applicable court orders and state law.

201 (c) A specific provision requiring the contractor, and not
202 the department ~~of Management Services~~, to obtain the financing
203 required to design and construct the private correctional

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204 facility or juvenile commitment facility built under this
205 chapter.

206 (d) A specific provision stating that the state is not
207 obligated for any payments that exceed the amount of the current
208 annual appropriation.

209 (3) (a) Each contract for the designing, financing,
210 acquiring, leasing, constructing, and operating of a private
211 correctional facility shall be subject to ss. 255.2502 and
212 255.2503.

213 (b) Each contract for the designing, financing, acquiring,
214 leasing, and constructing of a private juvenile commitment
215 facility shall be subject to ss. 255.2502 and 255.2503.

216 (4) A contract entered into under this chapter does not
217 accord third-party beneficiary status to any inmate or juvenile
218 offender or to any member of the general public.

219 (5) Each contract entered into by the department ~~of~~
220 ~~Management Services~~ must include substantial minority
221 participation unless demonstrated by evidence, after a good
222 faith effort, as impractical and must also include any other
223 requirements the department ~~of Management Services~~ considers
224 necessary and appropriate for carrying out the purposes of this
225 chapter.

226 (6) Notwithstanding s. 253.025(9), the Board of Trustees of
227 the Internal Improvement Trust Fund need not approve a lease-
228 purchase agreement negotiated by the department ~~of Management~~
229 ~~Services~~ if the department ~~of Management Services~~ finds that
230 there is a need to expedite the lease-purchase.

231 (7) (a) Notwithstanding s. 253.025 or s. 287.057, whenever
232 the department ~~of Management Services~~ finds it to be in the best

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233 interest of timely site acquisition, it may contract without the
234 need for competitive selection with one or more appraisers whose
235 names are contained on the list of approved appraisers
236 maintained by the Division of State Lands of the Department of
237 Environmental Protection in accordance with s. 253.025(8). In
238 those instances when the department ~~of Management Services~~
239 directly contracts for appraisal services, it shall also
240 contract with an approved appraiser who is not employed by the
241 same appraisal firm for review services.

242 (b) Notwithstanding s. 253.025(8), the department ~~of~~
243 ~~Management Services~~ may negotiate and enter into lease-purchase
244 agreements before an appraisal is obtained. Any such agreement
245 must state that the final purchase price cannot exceed the
246 maximum value allowed by law.

247 Section 5. Subsection (2) of section 957.06, Florida
248 Statutes, is amended to read:

249 957.06 Powers and duties not delegable to contractor.—A
250 contract entered into under this chapter does not authorize,
251 allow, or imply a delegation of authority to the contractor to:

252 (2) Choose the facility to which an inmate is initially
253 assigned or subsequently transferred. The contractor may
254 request, in writing, that an inmate be transferred to a facility
255 operated by the department. The ~~Department of Management~~
256 ~~Services, the contractor,~~ and the department shall develop and
257 implement a cooperative agreement for transferring inmates
258 between a correctional facility operated by the department and a
259 private correctional facility. The department, ~~the Department of~~
260 ~~Management Services,~~ and the contractor must comply with the
261 cooperative agreement.

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262 Section 6. Section 957.07, Florida Statutes, is amended to
263 read:

264 957.07 Cost-saving requirements.—

265 (1) The department ~~of Management Services~~ may not enter
266 into a contract or series of contracts unless the department
267 determines that the contract or series of contracts in total for
268 the facility will result in a cost savings to the state of at
269 least 7 percent over the public provision of a similar facility.
270 Such cost savings as determined and certified by the Auditor
271 General ~~Department of Management Services~~ must be based upon the
272 actual costs associated with the construction and operation of
273 similar facilities or services as determined by the department
274 ~~of Corrections and certified by the Auditor General~~. The
275 department ~~of Corrections~~ shall calculate all of the cost
276 components that determine the inmate per diem in correctional
277 facilities of a substantially similar size, type, and location
278 that are operated by the department ~~of Corrections~~, including
279 administrative costs associated with central administration.
280 Services that are provided to the department ~~of Corrections~~ by
281 other governmental agencies at no direct cost to the department
282 shall be assigned an equivalent cost and included in the per
283 diem.

284 (2) Reasonable projections of payments of any kind to the
285 state or any political subdivision thereof for which the private
286 entity would be liable because of its status as private rather
287 than a public entity, including, but not limited to, corporate
288 income and sales tax payments, shall be included as cost savings
289 in all such determinations. In addition, the costs associated
290 with the appointment and activities of each contract monitor

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291 shall be included in such determination.

292 (3) In counties where the department ~~of Corrections~~ pays
293 its employees a competitive area differential, the cost for the
294 public provision of a similar correctional facility may include
295 the competitive area differential paid by the department.

296 (4) The department ~~of Corrections~~ shall provide a report
297 detailing the state cost to design, finance, acquire, lease,
298 construct, and operate a facility similar to the private
299 correctional facility on a per diem basis. This report shall be
300 provided to the Auditor General in sufficient time that it may
301 be certified ~~to the Department of Management Services~~ to be
302 included in the request for proposals.

303 (5) (a) At the request of the Speaker of the House of
304 Representatives or the President of the Senate, the Prison Per-
305 Diem Workgroup shall develop consensus per diem rates for use by
306 the Legislature. The Office of Program Policy Analysis and
307 Government Accountability and the staffs of the appropriations
308 committees of both the Senate and the House of Representatives
309 are the principals of the workgroup. The workgroup may consult
310 with other experts to assist in the development of the consensus
311 per diem rates. All meetings of the workgroup shall be open to
312 the public as provided in chapter 286.

313 (b) When developing the consensus per diem rates, the
314 workgroup must:

315 1. Use data provided by the department ~~of Corrections~~ from
316 the most recent fiscal year to determine per diem costs for the
317 following activities:

- 318 a. Custody and control;
319 b. Health services;

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320 c. Substance abuse programs; and
321 d. Educational programs;

322 2. Include the cost of departmental, regional,
323 institutional, and program administration and any other fixed
324 costs of the department;

325 3. Calculate average per diem rates for the following
326 offender populations: adult male, youthful offender male, and
327 female; and

328 4. Make per diem adjustments, as appropriate, to account
329 for variations in size and location of correctional facilities.

330 (c) The consensus per diem rates determined by the
331 workgroup may be used to assist the Legislature in determining
332 the level of funding provided to privately operated prisons to
333 meet the 7-percent savings required of private prisons by this
334 chapter.

335 (d) If a private vendor chooses not to renew the contract
336 at the appropriated level, the department ~~of Management Services~~
337 shall terminate the contract as provided in s. 957.14.

338 Section 7. Section 957.08, Florida Statutes, is amended to
339 read:

340 957.08 Capacity requirements.—The department ~~of Corrections~~
341 shall transfer and assign prisoners to each private correctional
342 facility opened pursuant to this chapter in an amount not less
343 than 90 percent or more than 100 percent of the capacity of the
344 facility pursuant to the contract ~~with the Department of~~
345 ~~Management Services~~. The prisoners transferred by the department
346 ~~of Corrections~~ shall represent a cross-section of the general
347 inmate population, based on the grade of custody or the offense
348 of conviction, at the most comparable facility operated by the

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349 department.

350 Section 8. Section 957.14, Florida Statutes, is amended to
351 read:

352 957.14 Contract termination and control of a correctional
353 facility by the department.—A detailed plan shall be provided by
354 a private vendor under which the department shall assume
355 temporary control of a private correctional facility upon
356 termination of the contract. The department ~~of Management~~
357 ~~Services~~ may terminate the contract with cause after written
358 notice of material deficiencies and after 60 workdays in order
359 to correct the material deficiencies. If any event occurs that
360 involves the noncompliance with or violation of contract terms
361 and that presents a serious threat to the safety, health, or
362 security of the inmates, employees, or the public, the
363 department may temporarily assume control of the private
364 correctional facility, with the approval of the department ~~of~~
365 ~~Management Services~~. A plan shall also be provided by a private
366 vendor for the purchase and temporary assumption of operations
367 of a correctional facility by the department in the event of
368 bankruptcy or the financial insolvency of the private vendor.
369 The private vendor shall provide an emergency plan to address
370 inmate disturbances, employee work stoppages, strikes, or other
371 serious events in accordance with standards of the American
372 Correctional Association.

373 Section 9. Section 957.15, Florida Statutes, is amended to
374 read:

375 957.15 Funding of contracts for operation, maintenance, and
376 lease-purchase of private correctional facilities.—The request
377 for appropriation of funds to make payments pursuant to

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378 contracts entered into by the department ~~of Management Services~~
379 for the operation, maintenance, and lease-purchase of the
380 private correctional facilities authorized by this chapter shall
381 be made by the ~~Department of Management Services in a request to~~
382 ~~the~~ department. The department shall include such request in its
383 budget request to the Legislature as a separately identified
384 item and ~~shall forward the request of the Department of~~
385 ~~Management Services without change. After an appropriation has~~
386 ~~been made by the Legislature to the department for the private~~
387 ~~correctional facilities, the department shall have no authority~~
388 ~~over such funds other than to pay from such appropriation to the~~
389 ~~appropriate private vendor such amounts as are certified for~~
390 ~~payment by the Department of Management Services.~~

391 Section 10. Section 957.16, Florida Statutes, is amended to
392 read:

393 957.16 Expanding capacity.—The department ~~of Management~~
394 ~~Services~~ is authorized to modify and execute agreements with
395 contractors to expand up to the total capacity of contracted
396 correctional facilities. Total capacity means the design
397 capacity of all contracted correctional facilities increased by
398 one-half as described under s. 944.023(1)(b). Any additional
399 beds authorized under this section must comply with the cost-
400 saving requirements set forth in s. 957.07. Any additional beds
401 authorized as a result of expanded capacity under this section
402 are contingent upon specified appropriations.

403 Section 11. Except as otherwise expressly provided in this
404 act, this act shall take effect July 1, 2023.