

20237016er

1
2 An act relating to the Department of Corrections;
3 amending s. 944.35, F.S.; defining the terms "private
4 correctional facility" and "volunteer"; providing
5 criminal penalties for any volunteer or employee of a
6 contractor or subcontractor of the Department of
7 Corrections who engages in sexual misconduct with
8 specified inmates or offenders; 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 providing construction; amending ss. 287.042,
13 394.9151, 943.13, 944.02, 944.115, 944.72, 944.8041,
14 945.215, 946.504, 957.04, 957.06, 957.07, 957.08,
15 957.12, 957.14, 957.15, and 957.16, F.S.; conforming
16 provisions to changes made by the act; reenacting s.
17 944.47(2)(b), F.S., relating to the penalty for the
18 introduction, removal, or possession of contraband, to
19 incorporate the amendment made to s. 944.115, F.S., in
20 a reference thereto; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsection (3) of section 944.35, Florida
25 Statutes, is amended to read:

26 944.35 Authorized use of force; malicious battery and
27 sexual misconduct prohibited; reporting required; penalties.—

28 (3)(a)1. Any employee of the department who, with malicious
29 intent, commits a battery upon an inmate or an offender

20237016er

30 supervised by the department in the community, commits a
31 misdemeanor of the first degree, punishable as provided in s.
32 775.082 or s. 775.083.

33 2. Any employee of the department who, with malicious
34 intent, commits a battery or inflicts cruel or inhuman treatment
35 by neglect or otherwise, and in so doing causes great bodily
36 harm, permanent disability, or permanent disfigurement to an
37 inmate or an offender supervised by the department in the
38 community, commits a felony of the third degree, punishable as
39 provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

43 b. "Private correctional facility" has the same meaning as
44 in s. 944.710.

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

51 d. "Volunteer" means a person registered with the
52 department or a private correctional facility who is engaged in
53 specific voluntary service activities on an ongoing or continual
54 basis.

55 2. Any employee of the department or a private correctional
56 facility or any volunteer in, or any employee of a contractor or
57 subcontractor of, the department or a private correctional
58 facility as defined in s. 944.710 who engages in sexual

20237016er

59 misconduct with an inmate or an offender supervised by the
60 department in the community, without committing the crime of
61 sexual battery, commits a felony of the third degree, punishable
62 as provided in s. 775.082, s. 775.083, or s. 775.084.

63 3. The consent of the inmate or offender supervised by the
64 department in the community to any act of sexual misconduct may
65 not be raised as a defense to a prosecution under this
66 paragraph.

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

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

85 (d) Each employee who witnesses, or has reasonable cause to
86 suspect, that an inmate or an offender under the supervision of
87 the department in the community has been unlawfully abused or is

20237016er

88 the subject of sexual misconduct pursuant to this subsection
89 shall immediately prepare, date, and sign an independent report
90 specifically describing the nature of the force used or the
91 nature of the sexual misconduct, the location and time of the
92 incident, and the persons involved. The report shall be
93 delivered to the inspector general of the department with a copy
94 to be delivered to the warden of the institution or the regional
95 administrator. The inspector general shall immediately conduct
96 an appropriate investigation, and, if probable cause is
97 determined that a violation of this subsection has occurred, the
98 respective state attorney in the circuit in which the incident
99 occurred shall be notified.

100 Section 2. (1) All powers, duties, functions, records,
101 personnel, associated administrative support positions,
102 property, administrative authority, and administrative rules
103 relating to private correctional facilities are transferred by a
104 type two transfer, as defined in s. 20.06(2), Florida Statutes,
105 from the Department of Management Services to the Department of
106 Corrections. The Department of Management Services must ensure
107 any unexpended funds or trust funds are transferred. Any binding
108 contract or interagency agreement concerning private
109 correctional facilities entered into and between the Department
110 of Management Services and any other agency, entity, or person
111 continues as a binding contract or an interagency agreement with
112 the Department of Corrections for the remainder of the term of
113 the contract or agreement, except for any contract or agreement
114 entered into as a result of state appropriations from the
115 federal Coronavirus State Fiscal Recovery Fund (Public Law 117-
116 2) for fixed capital outlay projects. The Department of

20237016er

117 Corrections assumes all rights and responsibilities of the
118 Department of Management Services under such contract or
119 interagency agreement as if it were the original party to the
120 agreement, except as it pertains to the Department of Management
121 Services' rights with regard to action against any state
122 contractor pursuant to law, which rights remain with the
123 Department of Management Services. Notwithstanding the above,
124 for any client agency agreements concerning private correctional
125 facilities, the rights and responsibilities of the client
126 agency, and only those rights and responsibilities, are
127 transferred to the Department of Corrections.

128 (2) In no way shall the transfer under this act affect any
129 existing agreements, bonds, certificates of participation, or
130 other instruments of indebtedness entered into by the Department
131 of Management Services. All undertakings of the Department of
132 Management Services in connection with the issuance of
133 certificates of participation and the obligations to make rent
134 payments thereunder to the Florida Correctional Finance
135 Corporation are validated and continue to be valid and binding
136 on the Department of Corrections in accordance with their
137 respective terms, conditions, and covenants.

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

140 287.042 Powers, duties, and functions.—The department shall
141 have the following powers, duties, and functions:

142 ~~(17) (a) To enter into contracts pursuant to chapter 957 for~~
143 ~~the designing, financing, acquiring, leasing, constructing, or~~
144 ~~operating of private correctional facilities. The department~~
145 ~~shall enter into a contract or contracts with one contractor per~~

20237016er

146 ~~facility for the designing, acquiring, financing, leasing,~~
147 ~~constructing, and operating of that facility or may, if~~
148 ~~specifically authorized by the Legislature, separately contract~~
149 ~~for any such services.~~

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

152
153 ~~The department may not delegate the responsibilities conferred~~
154 ~~by this subsection.~~

155 Section 4. Section 394.9151, Florida Statutes, is amended
156 to read:

157 394.9151 Contract authority.—The Department of Children and
158 Families may contract with a private entity or state agency for
159 use of and operation of facilities to comply with the
160 requirements of this act. The Department of Children and
161 Families may also contract with the Department of Corrections
162 ~~Management Services~~ to issue a request for proposals and monitor
163 contract compliance for these services.

164 Section 5. Section 943.13, Florida Statutes, is amended to
165 read:

166 943.13 Officers' minimum qualifications for employment or
167 appointment.—On or after October 1, 1984, any person employed or
168 appointed as a full-time, part-time, or auxiliary law
169 enforcement officer or correctional officer; on or after October
170 1, 1986, any person employed as a full-time, part-time, or
171 auxiliary correctional probation officer; and on or after
172 October 1, 1986, any person employed as a full-time, part-time,
173 or auxiliary correctional officer by a private entity under
174 contract to the Department of Corrections or, to a county

20237016er

175 ~~commission, or to the Department of Management Services~~ shall:

176 (1) Be at least 19 years of age, except that any person
177 employed as a full-time, a part-time, or an auxiliary
178 correctional officer must be at least 18 years of age.

179 (2) Be a citizen of the United States, notwithstanding any
180 law of the state to the contrary.

181 (3) Be a high school graduate or its "equivalent" as the
182 commission has defined the term by rule.

183 (4) Not have been convicted of any felony or of a
184 misdemeanor involving perjury or a false statement, or have
185 received a dishonorable discharge from any of the Armed Forces
186 of the United States. Any person who, after July 1, 1981, pleads
187 guilty or nolo contendere to or is found guilty of any felony or
188 of a misdemeanor involving perjury or a false statement is not
189 eligible for employment or appointment as an officer,
190 notwithstanding suspension of sentence or withholding of
191 adjudication. Notwithstanding this subsection, any person who
192 has pled nolo contendere to a misdemeanor involving a false
193 statement, prior to December 1, 1985, and has had such record
194 sealed or expunged shall not be deemed ineligible for employment
195 or appointment as an officer.

196 (5) Have documentation of his or her processed fingerprints
197 on file with the employing agency or, if a private correctional
198 officer, have documentation of his or her processed fingerprints
199 on file with the Department of Corrections or the Criminal
200 Justice Standards and Training Commission. The department shall
201 retain and enter into the statewide automated biometric
202 identification system authorized by s. 943.05 all fingerprints
203 submitted to the department as required by this section.

20237016er

204 Thereafter, the fingerprints shall be available for all purposes
205 and uses authorized for arrest fingerprints entered in the
206 statewide automated biometric identification system pursuant to
207 s. 943.051. The department shall search all arrest fingerprints
208 received pursuant to s. 943.051 against the fingerprints
209 retained in the statewide automated biometric identification
210 system pursuant to this section and report to the employing
211 agency any arrest records that are identified with the retained
212 employee's fingerprints. These fingerprints must be forwarded to
213 the department for processing and retention.

214 (6) Have passed a physical examination by a licensed
215 physician, physician assistant, or licensed advanced practice
216 registered nurse, based on specifications established by the
217 commission. In order to be eligible for the presumption set
218 forth in s. 112.18 while employed with an employing agency, a
219 law enforcement officer, correctional officer, or correctional
220 probation officer must have successfully passed the physical
221 examination required by this subsection upon entering into
222 service as a law enforcement officer, correctional officer, or
223 correctional probation officer with the employing agency, which
224 examination must have failed to reveal any evidence of
225 tuberculosis, heart disease, or hypertension. A law enforcement
226 officer, correctional officer, or correctional probation officer
227 may not use a physical examination from a former employing
228 agency for purposes of claiming the presumption set forth in s.
229 112.18 against the current employing agency. The employing
230 agency must maintain records of the physical examination for at
231 least 5 years after the employee's separation from the employing
232 agency. If the employing agency fails to maintain the records of

20237016er

233 the physical examination for the 5-year period after the
234 employee's separation, it is presumed that the employee has met
235 the requirements of this subsection.

236 (7) Have a good moral character as determined by a
237 background investigation under procedures established by the
238 commission.

239 (8) Execute and submit to the employing agency or, if a
240 private correctional officer, submit to the appropriate
241 governmental entity an affidavit-of-applicant form, adopted by
242 the commission, attesting to his or her compliance with
243 subsections (1)-(7). The affidavit shall require the applicant
244 to disclose any pending investigation by a local, state, or
245 federal agency or entity for criminal, civil, or administrative
246 wrongdoing and whether the applicant separated or resigned from
247 previous criminal justice employment while he or she was under
248 investigation. The affidavit shall be executed under oath and
249 constitutes an official statement within the purview of s.
250 837.06. The affidavit shall include conspicuous language that
251 the intentional false execution of the affidavit constitutes a
252 misdemeanor of the second degree. The affidavit shall be
253 retained by the employing agency.

254 (9) Complete a commission-approved basic recruit training
255 program for the applicable criminal justice discipline, unless
256 exempt under this subsection. An applicant who has:

257 (a) Completed a comparable basic recruit training program
258 for the applicable criminal justice discipline in another state
259 or for the Federal Government and served as a full-time sworn
260 officer in another state or for the Federal Government for at
261 least 1 year, provided there is no more than an 8-year break in

20237016er

262 employment, as measured from the separation date of the most
263 recent qualifying employment to the time a complete application
264 for an exemption under this subsection is submitted; or

265 (b) Served in the special operations forces for a minimum
266 of 5 years, provided there is no more than a 4-year break from
267 the applicant's special operations forces experience, as
268 measured from the separation date from the special operations
269 forces to the time a complete application for an exemption under
270 this subsection is submitted,

271
272 is exempt in accordance with s. 943.131(2) from completing the
273 commission-approved basic recruit training program.

274 (10) Achieve an acceptable score on the officer
275 certification examination for the applicable criminal justice
276 discipline.

277 (11) Comply with the continuing training or education
278 requirements of s. 943.135.

279 Section 6. Subsection (4) of section 944.02, Florida
280 Statutes, is amended, and subsection (3) of that section is
281 republished, to read:

282 944.02 Definitions.—The following words and phrases used in
283 this chapter shall, unless the context clearly indicates
284 otherwise, have the following meanings:

285 (3) "Department" means the Department of Corrections.

286 (4) "Elderly offender" means a prisoner age 50 or older in
287 a state correctional institution or facility operated by the
288 department ~~of Corrections or the Department of Management~~
289 ~~Services.~~

290 Section 7. Paragraph (b) of subsection (2) of section

20237016er

291 944.115, Florida Statutes, is amended, and paragraph (a) of that
292 subsection is republished, to read:

293 944.115 Smoking prohibited inside state correctional
294 facilities.—

295 (2) As used in this section, the term:

296 (a) "Department" means the Department of Corrections.

297 (b) "Employee" means an employee of the department or a
298 private vendor in a contractual relationship with ~~either the~~
299 ~~department of Corrections or the Department of Management~~
300 ~~Services~~, and includes persons such as contractors, volunteers,
301 or law enforcement officers who are within a state correctional
302 facility to perform a professional service.

303 Section 8. Subsection (1) of section 944.72, Florida
304 Statutes, is amended to read:

305 944.72 Privately Operated Institutions Inmate Welfare Trust
306 Fund.—

307 (1) There is hereby created in the Department of
308 Corrections the Privately Operated Institutions Inmate Welfare
309 Trust Fund. The purpose of the trust fund shall be the benefit
310 and welfare of inmates incarcerated in private correctional
311 facilities under contract with the department pursuant to this
312 chapter or ~~the Department of Management Services pursuant to~~
313 chapter 957. Moneys shall be deposited in the trust fund and
314 expenditures made from the trust fund as provided in s. 945.215.

315 Section 9. Section 944.8041, Florida Statutes, is amended
316 to read:

317 944.8041 Elderly offenders; annual review.—For the purpose
318 of providing information to the Legislature on elderly offenders
319 within the correctional system, the department and the

20237016er

320 Correctional Medical Authority shall each submit annually a
321 report on the status and treatment of elderly offenders in the
322 state-administered and private state correctional systems and
323 the department's geriatric facilities and dorms. In order to
324 adequately prepare the reports, the department ~~and the~~
325 ~~Department of Management Services~~ shall grant access to the
326 Correctional Medical Authority that includes access to the
327 facilities, offenders, and any information the agencies require
328 to complete their reports. The review shall also include an
329 examination of promising geriatric policies, practices, and
330 programs currently implemented in other correctional systems
331 within the United States. The reports, with specific findings
332 and recommendations for implementation, shall be submitted to
333 the President of the Senate and the Speaker of the House of
334 Representatives on or before December 31 of each year.

335 Section 10. Subsection (3) of section 945.215, Florida
336 Statutes, is amended to read:

337 945.215 Inmate welfare and employee benefit trust funds.—

338 (3) PRIVATELY OPERATED INSTITUTIONS INMATE WELFARE TRUST
339 FUND; PRIVATE CORRECTIONAL FACILITIES.—

340 (a) For purposes of this subsection, privately operated
341 institutions or private correctional facilities are those
342 correctional facilities under contract with the department
343 pursuant to chapter 944 or ~~the Department of Management Services~~
344 ~~pursuant to~~ chapter 957.

345 (b)1. The net proceeds derived from inmate canteens,
346 vending machines used primarily by inmates, telephone
347 commissions, and similar sources at private correctional
348 facilities shall be deposited in the Privately Operated

20237016er

349 Institutions Inmate Welfare Trust Fund.

350 2. Funds in the Privately Operated Institutions Inmate
351 Welfare Trust Fund shall be expended only pursuant to
352 legislative appropriation.

353 (c) The department ~~of Management Services~~ shall annually
354 compile a report that documents Privately Operated Institutions
355 Inmate Welfare Trust Fund receipts and expenditures at each
356 private correctional facility. This report must specifically
357 identify receipt sources and expenditures. The department ~~of~~
358 ~~Management Services~~ shall compile this report for the prior
359 fiscal year and shall submit the report by September 1 of each
360 year to the chairs of the appropriate substantive and fiscal
361 committees of the Senate and House of Representatives and to the
362 Executive Office of the Governor.

363 Section 11. Subsection (3) and paragraph (a) of subsection
364 (6) of section 946.504, Florida Statutes, are amended to read:

365 946.504 Organization of corporation to operate correctional
366 work programs; lease of facilities.—

367 (3) The corporation shall negotiate with the department ~~of~~
368 ~~Management Services~~ to reach and enter into an agreement for the
369 lease of each correctional work program proposed by the
370 corporation. The facilities to be leased and the amount of
371 rental for such facilities shall be agreed upon by the
372 department ~~of Management Services~~ and the corporation, ~~with~~
373 ~~consultation with the department~~. The length of such lease shall
374 be mutually agreed upon between ~~among~~ the department, ~~the~~
375 ~~Department of Management Services~~, and the corporation; however,
376 the initial lease may not exceed 7 years. The department shall
377 continue to manage and operate the various correctional work

20237016er

378 programs until the lease between the department and the
379 corporation is effective.

380 (6) (a) Upon the effective date of each lease of each
381 correctional work program, the department shall cause to be
382 remitted to the corporation all funds appropriated for,
383 associated with, or budgeted for the operation of that
384 correctional work program, as agreed upon between ~~among~~ the
385 department, ~~the Department of Management Services,~~ and the
386 corporation.

387 Section 12. Section 957.04, Florida Statutes, is amended to
388 read:

389 957.04 Contract requirements.—

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

393 (a) Be negotiated with the firm found most qualified.
394 However, a contract for private correctional services may not be
395 entered into by the department ~~of Management Services~~ unless the
396 department ~~of Management Services~~ determines that the contractor
397 has demonstrated that it has:

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

400 2. The ability to expedite the siting, design, and
401 construction of correctional facilities.

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

404 (b) Indemnify the state and the department, including their
405 officials and agents, against any and all liability, including,
406 but not limited to, civil rights liability. Proof of

20237016er

407 satisfactory insurance is required in an amount to be determined
408 by the department ~~of Management Services~~.

409 (c) Require that the contractor seek, obtain, and maintain
410 accreditation by the American Correctional Association for the
411 facility under that contract. Compliance with amendments to the
412 accreditation standards of the association is required upon the
413 approval of such amendments by the department ~~commission~~.

414 (d) Require that the proposed facilities and the management
415 plans for the inmates meet applicable American Correctional
416 Association standards and the requirements of all applicable
417 court orders and state law.

418 (e) Establish operations standards for correctional
419 facilities subject to the contract. However, if the department
420 and the contractor disagree with an operations standard, the
421 contractor may propose to waive any rule, policy, or procedure
422 of the department related to the operations standards of
423 correctional facilities which is inconsistent with the mission
424 of the contractor to establish cost-effective, privately
425 operated correctional facilities. The department ~~of Management~~
426 ~~Services~~ shall be responsible for considering all proposals from
427 the contractor to waive any rule, policy, or procedure and shall
428 render a final decision granting or denying such request.

429 (f) Require the contractor to be responsible for a range of
430 dental, medical, and psychological services; diet; education;
431 and work programs at least equal to those provided by the
432 department in comparable facilities. The work and education
433 programs must be designed to reduce recidivism, and include
434 opportunities to participate in such work programs as authorized
435 pursuant to s. 946.523.

20237016er

436 (g) Require the selection and appointment of a full-time
437 contract monitor. The contract monitor shall be appointed and
438 supervised by the department ~~of Management Services~~. The
439 contractor is required to reimburse the department ~~of Management~~
440 ~~Services~~ for the salary and expenses of the contract monitor. It
441 is the obligation of the contractor to provide suitable office
442 space for the contract monitor at the correctional facility. The
443 contract monitor shall have unlimited access to the correctional
444 facility.

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

449 (2) Each contract entered into for the design and
450 construction of a private correctional facility or juvenile
451 commitment facility must include:

452 (a) Notwithstanding any provision of chapter 255 to the
453 contrary, a specific provision authorizing the use of tax-exempt
454 financing through the issuance of tax-exempt bonds, certificates
455 of participation, lease-purchase agreements, or other tax-exempt
456 financing methods. Pursuant to s. 255.25, approval is hereby
457 provided for the lease-purchase of up to two private
458 correctional facilities and any other facility authorized by the
459 General Appropriations Act.

460 (b) A specific provision requiring the design and
461 construction of the proposed facilities to meet the applicable
462 standards of the American Correctional Association and the
463 requirements of all applicable court orders and state law.

464 (c) A specific provision requiring the contractor, and not

20237016er

465 the department ~~of Management Services~~, to obtain the financing
466 required to design and construct the private correctional
467 facility or juvenile commitment facility built under this
468 chapter.

469 (d) A specific provision stating that the state is not
470 obligated for any payments that exceed the amount of the current
471 annual appropriation.

472 (3) (a) Each contract for the designing, financing,
473 acquiring, leasing, constructing, and operating of a private
474 correctional facility shall be subject to ss. 255.2502 and
475 255.2503.

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

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

482 (5) Each contract entered into by the department ~~of~~
483 ~~Management Services~~ must include substantial minority
484 participation unless demonstrated by evidence, after a good
485 faith effort, as impractical and must also include any other
486 requirements the department ~~of Management Services~~ considers
487 necessary and appropriate for carrying out the purposes of this
488 chapter.

489 (6) Notwithstanding s. 253.025(9), the Board of Trustees of
490 the Internal Improvement Trust Fund need not approve a lease-
491 purchase agreement negotiated by the department ~~of Management~~
492 ~~Services~~ if the department ~~of Management Services~~ finds that
493 there is a need to expedite the lease-purchase.

20237016er

494 (7) (a) Notwithstanding s. 253.025 or s. 287.057, whenever
495 the department ~~of Management Services~~ finds it to be in the best
496 interest of timely site acquisition, it may contract without the
497 need for competitive selection with one or more appraisers whose
498 names are contained on the list of approved appraisers
499 maintained by the Division of State Lands of the Department of
500 Environmental Protection in accordance with s. 253.025(8). In
501 those instances when the department ~~of Management Services~~
502 directly contracts for appraisal services, it shall also
503 contract with an approved appraiser who is not employed by the
504 same appraisal firm for review services.

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

510 Section 13. Subsection (2) of section 957.06, Florida
511 Statutes, is amended to read:

512 957.06 Powers and duties not delegable to contractor.—A
513 contract entered into under this chapter does not authorize,
514 allow, or imply a delegation of authority to the contractor to:

515 (2) Choose the facility to which an inmate is initially
516 assigned or subsequently transferred. The contractor may
517 request, in writing, that an inmate be transferred to a facility
518 operated by the department. The ~~Department of Management~~
519 ~~Services, the contractor,~~ and the department shall develop and
520 implement a cooperative agreement for transferring inmates
521 between a correctional facility operated by the department and a
522 private correctional facility. The department, ~~the Department of~~

20237016er

523 ~~Management Services,~~ and the contractor must comply with the
524 cooperative agreement.

525 Section 14. Section 957.07, Florida Statutes, is amended to
526 read:

527 957.07 Cost-saving requirements.—

528 (1) The department ~~of Management Services~~ may not enter
529 into a contract or series of contracts unless the department
530 determines that the contract or series of contracts in total for
531 the facility will result in a cost savings to the state of at
532 least 7 percent over the public provision of a similar facility.
533 Such cost savings as determined and certified by the Auditor
534 General ~~Department of Management Services~~ must be based upon the
535 actual costs associated with the construction and operation of
536 similar facilities or services as determined by the department
537 ~~of Corrections and certified by the Auditor General~~. The
538 department ~~of Corrections~~ shall calculate all of the cost
539 components that determine the inmate per diem in correctional
540 facilities of a substantially similar size, type, and location
541 that are operated by the department ~~of Corrections~~, including
542 administrative costs associated with central administration.
543 Services that are provided to the department ~~of Corrections~~ by
544 other governmental agencies at no direct cost to the department
545 shall be assigned an equivalent cost and included in the per
546 diem.

547 (2) Reasonable projections of payments of any kind to the
548 state or any political subdivision thereof for which the private
549 entity would be liable because of its status as private rather
550 than a public entity, including, but not limited to, corporate
551 income and sales tax payments, shall be included as cost savings

20237016er

552 in all such determinations. In addition, the costs associated
553 with the appointment and activities of each contract monitor
554 shall be included in such determination.

555 (3) In counties where the department ~~of Corrections~~ pays
556 its employees a competitive area differential, the cost for the
557 public provision of a similar correctional facility may include
558 the competitive area differential paid by the department.

559 (4) The department ~~of Corrections~~ shall provide a report
560 detailing the state cost to design, finance, acquire, lease,
561 construct, and operate a facility similar to the private
562 correctional facility on a per diem basis. This report shall be
563 provided to the Auditor General in sufficient time that it may
564 be certified ~~to the Department of Management Services~~ to be
565 included in the request for proposals.

566 (5) (a) At the request of the Speaker of the House of
567 Representatives or the President of the Senate, the Prison Per-
568 Diem Workgroup shall develop consensus per diem rates for use by
569 the Legislature. The Office of Program Policy Analysis and
570 Government Accountability and the staffs of the appropriations
571 committees of both the Senate and the House of Representatives
572 are the principals of the workgroup. The workgroup may consult
573 with other experts to assist in the development of the consensus
574 per diem rates. All meetings of the workgroup shall be open to
575 the public as provided in chapter 286.

576 (b) When developing the consensus per diem rates, the
577 workgroup must:

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

20237016er

581 a. Custody and control;
582 b. Health services;
583 c. Substance abuse programs; and
584 d. Educational programs;
585 2. Include the cost of departmental, regional,
586 institutional, and program administration and any other fixed
587 costs of the department;
588 3. Calculate average per diem rates for the following
589 offender populations: adult male, youthful offender male, and
590 female; and
591 4. Make per diem adjustments, as appropriate, to account
592 for variations in size and location of correctional facilities.
593 (c) The consensus per diem rates determined by the
594 workgroup may be used to assist the Legislature in determining
595 the level of funding provided to privately operated prisons to
596 meet the 7-percent savings required of private prisons by this
597 chapter.
598 (d) If a private vendor chooses not to renew the contract
599 at the appropriated level, the department ~~of Management Services~~
600 shall terminate the contract as provided in s. 957.14.
601 Section 15. Section 957.08, Florida Statutes, is amended to
602 read:
603 957.08 Capacity requirements.—The department ~~of Corrections~~
604 shall transfer and assign prisoners to each private correctional
605 facility opened pursuant to this chapter in an amount not less
606 than 90 percent or more than 100 percent of the capacity of the
607 facility pursuant to the contract ~~with the Department of~~
608 ~~Management Services~~. The prisoners transferred by the department
609 ~~of Corrections~~ shall represent a cross-section of the general

20237016er

610 inmate population, based on the grade of custody or the offense
611 of conviction, at the most comparable facility operated by the
612 department.

613 Section 16. Section 957.12, Florida Statutes, is amended to
614 read:

615 957.12 Prohibition on contact.—A bidder or potential bidder
616 is not permitted to have any contact with any member or employee
617 of or consultant to the department ~~commission~~ regarding a
618 request for proposal, a proposal, or the evaluation or selection
619 process from the time a request for proposals for a private
620 correctional facility is issued until the time a notification of
621 intent to award is announced, except if such contact is in
622 writing or in a meeting for which notice was provided in the
623 Florida Administrative Register.

624 Section 17. Section 957.14, Florida Statutes, is amended to
625 read:

626 957.14 Contract termination and control of a correctional
627 facility by the department.—A detailed plan shall be provided by
628 a private vendor under which the department shall assume
629 temporary control of a private correctional facility upon
630 termination of the contract. The department ~~of Management~~
631 ~~Services~~ may terminate the contract with cause after written
632 notice of material deficiencies and after 60 workdays in order
633 to correct the material deficiencies. If any event occurs that
634 involves the noncompliance with or violation of contract terms
635 and that presents a serious threat to the safety, health, or
636 security of the inmates, employees, or the public, the
637 department may temporarily assume control of the private
638 correctional facility, ~~with the approval of the department of~~

20237016er

639 ~~Management Services~~. A plan shall also be provided by a private
640 vendor for the purchase and temporary assumption of operations
641 of a correctional facility by the department in the event of
642 bankruptcy or the financial insolvency of the private vendor.
643 The private vendor shall provide an emergency plan to address
644 inmate disturbances, employee work stoppages, strikes, or other
645 serious events in accordance with standards of the American
646 Correctional Association.

647 Section 18. Section 957.15, Florida Statutes, is amended to
648 read:

649 957.15 Funding of contracts for operation, maintenance, and
650 lease-purchase of private correctional facilities.—The request
651 for appropriation of funds to make payments pursuant to
652 contracts entered into by the department ~~of Management Services~~
653 for the operation, maintenance, and lease-purchase of the
654 private correctional facilities authorized by this chapter shall
655 be included ~~made by the Department of Management Services in a~~
656 ~~request to the department. The department shall include such~~
657 ~~request~~ in its budget request to the Legislature as a separately
658 identified item ~~and shall forward the request of the Department~~
659 ~~of Management Services without change~~. After an appropriation
660 has been made by the Legislature to the department for the
661 private correctional facilities, the department shall have no
662 authority over such funds other than to pay from such
663 appropriation to the appropriate private vendor such amounts as
664 are certified for payment by the department ~~of Management~~
665 ~~Services~~.

666 Section 19. Section 957.16, Florida Statutes, is amended to
667 read:

20237016er

668 957.16 Expanding capacity.—The department ~~of Management~~
669 ~~Services~~ is authorized to modify and execute agreements with
670 contractors to expand up to the total capacity of contracted
671 correctional facilities. Total capacity means the design
672 capacity of all contracted correctional facilities increased by
673 one-half as described under s. 944.023(1)(b). Any additional
674 beds authorized under this section must comply with the cost-
675 saving requirements set forth in s. 957.07. Any additional beds
676 authorized as a result of expanded capacity under this section
677 are contingent upon specified appropriations.

678 Section 20. For the purpose of incorporating the amendment
679 made by this act to section 944.115, Florida Statutes, in a
680 reference thereto, paragraph (b) of subsection (2) of section
681 944.47, Florida Statutes, is reenacted to read:

682 944.47 Introduction, removal, or possession of contraband;
683 penalty.—

684 (2)

685 (b) A violation of this section by an employee, as defined
686 in s. 944.115(2)(b), who uses or attempts to use the powers,
687 rights, privileges, duties, or position of his or her employment
688 in the commission of the violation is ranked one level above the
689 ranking specified in s. 921.0022 or s. 921.0023 for the offense
690 committed.

691 Section 21. This act shall take effect October 1, 2023.