

FOR CONSIDERATION By the Committee on Criminal Justice

591-02247-23

20237016pb

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; providing for a type two transfer of
8 private correctional facilities from the Department of
9 Management Services to the Department of Corrections;
10 amending ss. 287.042, 957.04, 957.06, 957.07, 957.08,
11 957.14, 957.15, and 957.16, F.S.; conforming
12 provisions to changes made by the act; providing
13 effective dates.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Effective October 1, 2023, subsection (3) of
18 section 944.35, Florida Statutes, is amended to read:

19 944.35 Authorized use of force; malicious battery and
20 sexual misconduct prohibited; reporting required; penalties.—

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

26 2. Any employee of the department who, with malicious
27 intent, commits a battery or inflicts cruel or inhuman treatment
28 by neglect or otherwise, and in so doing causes great bodily
29 harm, permanent disability, or permanent disfigurement to an

591-02247-23

20237016pb

30 inmate or an offender supervised by the department in the
31 community, commits a felony of the third degree, punishable as
32 provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

42 2. Any employee of the department or a private correctional
43 facility as defined in s. 944.710 or any volunteer or employee
44 of a contractor or subcontractor of the department who engages
45 in sexual misconduct with an inmate or an offender supervised by
46 the department in the community, without committing the crime of
47 sexual battery, commits a felony of the third degree, punishable
48 as provided in s. 775.082, s. 775.083, or s. 775.084.

49 3. The consent of the inmate or offender supervised by the
50 department in the community to any act of sexual misconduct may
51 not be raised as a defense to a prosecution under this
52 paragraph.

53 4. This paragraph does not apply to any employee of the
54 department or any employee of a private correctional facility
55 who is legally married to an inmate or an offender supervised by
56 the department in the community, nor does it apply to any
57 employee who has no knowledge, and would have no reason to
58 believe, that the person with whom the employee has engaged in

591-02247-23

20237016pb

59 sexual misconduct is an inmate or an offender under community
60 supervision of the department.

61 (c) Notwithstanding prosecution, any violation of the
62 provisions of this subsection, as determined by the Public
63 Employees Relations Commission, shall constitute sufficient
64 cause under s. 110.227 for dismissal from employment with the
65 department, and such person shall not again be employed in any
66 capacity in connection with the correctional system.

67 (d) Each employee who witnesses, or has reasonable cause to
68 suspect, that an inmate or an offender under the supervision of
69 the department in the community has been unlawfully abused or is
70 the subject of sexual misconduct pursuant to this subsection
71 shall immediately prepare, date, and sign an independent report
72 specifically describing the nature of the force used or the
73 nature of the sexual misconduct, the location and time of the
74 incident, and the persons involved. The report shall be
75 delivered to the inspector general of the department with a copy
76 to be delivered to the warden of the institution or the regional
77 administrator. The inspector general shall immediately conduct
78 an appropriate investigation, and, if probable cause is
79 determined that a violation of this subsection has occurred, the
80 respective state attorney in the circuit in which the incident
81 occurred shall be notified.

82 Section 2. All powers, duties, functions, records, offices,
83 personnel, associated administrative support positions,
84 property, administrative authority, and administrative rules
85 relating to private correctional facilities are transferred by a
86 type two transfer, as defined in s. 20.06(2), Florida Statutes,
87 from the Department of Management Services to the Department of

591-02247-23

20237016pb

88 Corrections. Any binding contract or interagency agreement
89 entered into and between the Department of Management Services
90 concerning private correctional facilities and any other agency,
91 entity, or person continues as a binding contract or agreement
92 with the Department of Corrections for the remainder of the term
93 of the contract or agreement.

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

96 287.042 Powers, duties, and functions.—The department shall
97 have the following powers, duties, and functions:

98 ~~(17) (a) To enter into contracts pursuant to chapter 957 for~~
99 ~~the designing, financing, acquiring, leasing, constructing, or~~
100 ~~operating of private correctional facilities. The department~~
101 ~~shall enter into a contract or contracts with one contractor per~~
102 ~~facility for the designing, acquiring, financing, leasing,~~
103 ~~constructing, and operating of that facility or may, if~~
104 ~~specifically authorized by the Legislature, separately contract~~
105 ~~for any such services.~~

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

108
109 ~~The department may not delegate the responsibilities conferred~~
110 ~~by this subsection.~~

111 Section 4. Section 957.04, Florida Statutes, is amended to
112 read:

113 957.04 Contract requirements.—

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

591-02247-23

20237016pb

117 (a) Be negotiated with the firm found most qualified.
118 However, a contract for private correctional services may not be
119 entered into by the department ~~of Management Services~~ unless the
120 department ~~of Management Services~~ determines that the contractor
121 has demonstrated that it has:

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

124 2. The ability to expedite the siting, design, and
125 construction of correctional facilities.

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

128 (b) Indemnify the state and the department, including their
129 officials and agents, against any and all liability, including,
130 but not limited to, civil rights liability. Proof of
131 satisfactory insurance is required in an amount to be determined
132 by the department ~~of Management Services~~.

133 (c) Require that the contractor seek, obtain, and maintain
134 accreditation by the American Correctional Association for the
135 facility under that contract. Compliance with amendments to the
136 accreditation standards of the association is required upon the
137 approval of such amendments by the commission.

138 (d) Require that the proposed facilities and the management
139 plans for the inmates meet applicable American Correctional
140 Association standards and the requirements of all applicable
141 court orders and state law.

142 (e) Establish operations standards for correctional
143 facilities subject to the contract. However, if the department
144 and the contractor disagree with an operations standard, the
145 contractor may propose to waive any rule, policy, or procedure

591-02247-23

20237016pb

146 of the department related to the operations standards of
147 correctional facilities which is inconsistent with the mission
148 of the contractor to establish cost-effective, privately
149 operated correctional facilities. The department ~~of Management~~
150 ~~Services~~ shall be responsible for considering all proposals from
151 the contractor to waive any rule, policy, or procedure and shall
152 render a final decision granting or denying such request.

153 (f) Require the contractor to be responsible for a range of
154 dental, medical, and psychological services; diet; education;
155 and work programs at least equal to those provided by the
156 department in comparable facilities. The work and education
157 programs must be designed to reduce recidivism, and include
158 opportunities to participate in such work programs as authorized
159 pursuant to s. 946.523.

160 (g) Require the selection and appointment of a full-time
161 contract monitor. The contract monitor shall be appointed and
162 supervised by the department ~~of Management Services~~. The
163 contractor is required to reimburse the department ~~of Management~~
164 ~~Services~~ for the salary and expenses of the contract monitor. It
165 is the obligation of the contractor to provide suitable office
166 space for the contract monitor at the correctional facility. The
167 contract monitor shall have unlimited access to the correctional
168 facility.

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

173 (2) Each contract entered into for the design and
174 construction of a private correctional facility or juvenile

591-02247-23

20237016pb

175 commitment facility must include:

176 (a) Notwithstanding any provision of chapter 255 to the
177 contrary, a specific provision authorizing the use of tax-exempt
178 financing through the issuance of tax-exempt bonds, certificates
179 of participation, lease-purchase agreements, or other tax-exempt
180 financing methods. Pursuant to s. 255.25, approval is hereby
181 provided for the lease-purchase of up to two private
182 correctional facilities and any other facility authorized by the
183 General Appropriations Act.

184 (b) A specific provision requiring the design and
185 construction of the proposed facilities to meet the applicable
186 standards of the American Correctional Association and the
187 requirements of all applicable court orders and state law.

188 (c) A specific provision requiring the contractor, and not
189 the department ~~of Management Services~~, to obtain the financing
190 required to design and construct the private correctional
191 facility or juvenile commitment facility built under this
192 chapter.

193 (d) A specific provision stating that the state is not
194 obligated for any payments that exceed the amount of the current
195 annual appropriation.

196 (3) (a) Each contract for the designing, financing,
197 acquiring, leasing, constructing, and operating of a private
198 correctional facility shall be subject to ss. 255.2502 and
199 255.2503.

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

203 (4) A contract entered into under this chapter does not

591-02247-23

20237016pb

204 accord third-party beneficiary status to any inmate or juvenile
205 offender or to any member of the general public.

206 (5) Each contract entered into by the department ~~of~~
207 ~~Management Services~~ must include substantial minority
208 participation unless demonstrated by evidence, after a good
209 faith effort, as impractical and must also include any other
210 requirements the department ~~of Management Services~~ considers
211 necessary and appropriate for carrying out the purposes of this
212 chapter.

213 (6) Notwithstanding s. 253.025(9), the Board of Trustees of
214 the Internal Improvement Trust Fund need not approve a lease-
215 purchase agreement negotiated by the department ~~of Management~~
216 ~~Services~~ if the department ~~of Management Services~~ finds that
217 there is a need to expedite the lease-purchase.

218 (7) (a) Notwithstanding s. 253.025 or s. 287.057, whenever
219 the department ~~of Management Services~~ finds it to be in the best
220 interest of timely site acquisition, it may contract without the
221 need for competitive selection with one or more appraisers whose
222 names are contained on the list of approved appraisers
223 maintained by the Division of State Lands of the Department of
224 Environmental Protection in accordance with s. 253.025(8). In
225 those instances when the department ~~of Management Services~~
226 directly contracts for appraisal services, it shall also
227 contract with an approved appraiser who is not employed by the
228 same appraisal firm for review services.

229 (b) Notwithstanding s. 253.025(8), the department ~~of~~
230 ~~Management Services~~ may negotiate and enter into lease-purchase
231 agreements before an appraisal is obtained. Any such agreement
232 must state that the final purchase price cannot exceed the

591-02247-23

20237016pb

233 maximum value allowed by law.

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

236 957.06 Powers and duties not delegable to contractor.—A
237 contract entered into under this chapter does not authorize,
238 allow, or imply a delegation of authority to the contractor to:

239 (2) Choose the facility to which an inmate is initially
240 assigned or subsequently transferred. The contractor may
241 request, in writing, that an inmate be transferred to a facility
242 operated by the department. The ~~Department of Management~~
243 ~~Services, the contractor,~~ and the department shall develop and
244 implement a cooperative agreement for transferring inmates
245 between a correctional facility operated by the department and a
246 private correctional facility. The department, ~~the Department of~~
247 ~~Management Services,~~ and the contractor must comply with the
248 cooperative agreement.

249 Section 6. Section 957.07, Florida Statutes, is amended to
250 read:

251 957.07 Cost-saving requirements.—

252 (1) The department ~~of Management Services~~ may not enter
253 into a contract or series of contracts unless the department
254 determines that the contract or series of contracts in total for
255 the facility will result in a cost savings to the state of at
256 least 7 percent over the public provision of a similar facility.
257 Such cost savings as determined and certified by the Auditor
258 General ~~Department of Management Services~~ must be based upon the
259 actual costs associated with the construction and operation of
260 similar facilities or services as determined by the department
261 ~~of Corrections and certified by the Auditor General~~. The

591-02247-23

20237016pb

262 department ~~of Corrections~~ shall calculate all of the cost
263 components that determine the inmate per diem in correctional
264 facilities of a substantially similar size, type, and location
265 that are operated by the department ~~of Corrections~~, including
266 administrative costs associated with central administration.
267 Services that are provided to the department ~~of Corrections~~ by
268 other governmental agencies at no direct cost to the department
269 shall be assigned an equivalent cost and included in the per
270 diem.

271 (2) Reasonable projections of payments of any kind to the
272 state or any political subdivision thereof for which the private
273 entity would be liable because of its status as private rather
274 than a public entity, including, but not limited to, corporate
275 income and sales tax payments, shall be included as cost savings
276 in all such determinations. In addition, the costs associated
277 with the appointment and activities of each contract monitor
278 shall be included in such determination.

279 (3) In counties where the department ~~of Corrections~~ pays
280 its employees a competitive area differential, the cost for the
281 public provision of a similar correctional facility may include
282 the competitive area differential paid by the department.

283 (4) The department ~~of Corrections~~ shall provide a report
284 detailing the state cost to design, finance, acquire, lease,
285 construct, and operate a facility similar to the private
286 correctional facility on a per diem basis. This report shall be
287 provided to the Auditor General in sufficient time that it may
288 be certified ~~to the Department of Management Services~~ to be
289 included in the request for proposals.

290 (5) (a) At the request of the Speaker of the House of

591-02247-23

20237016pb

291 Representatives or the President of the Senate, the Prison Per-
292 Diem Workgroup shall develop consensus per diem rates for use by
293 the Legislature. The Office of Program Policy Analysis and
294 Government Accountability and the staffs of the appropriations
295 committees of both the Senate and the House of Representatives
296 are the principals of the workgroup. The workgroup may consult
297 with other experts to assist in the development of the consensus
298 per diem rates. All meetings of the workgroup shall be open to
299 the public as provided in chapter 286.

300 (b) When developing the consensus per diem rates, the
301 workgroup must:

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

- 305 a. Custody and control;
- 306 b. Health services;
- 307 c. Substance abuse programs; and
- 308 d. Educational programs;

309 2. Include the cost of departmental, regional,
310 institutional, and program administration and any other fixed
311 costs of the department;

312 3. Calculate average per diem rates for the following
313 offender populations: adult male, youthful offender male, and
314 female; and

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

317 (c) The consensus per diem rates determined by the
318 workgroup may be used to assist the Legislature in determining
319 the level of funding provided to privately operated prisons to

591-02247-23

20237016pb

320 meet the 7-percent savings required of private prisons by this
321 chapter.

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

325 Section 7. Section 957.08, Florida Statutes, is amended to
326 read:

327 957.08 Capacity requirements.—The department ~~of Corrections~~
328 shall transfer and assign prisoners to each private correctional
329 facility opened pursuant to this chapter in an amount not less
330 than 90 percent or more than 100 percent of the capacity of the
331 facility pursuant to the contract ~~with the Department of~~
332 ~~Management Services~~. The prisoners transferred by the department
333 ~~of Corrections~~ shall represent a cross-section of the general
334 inmate population, based on the grade of custody or the offense
335 of conviction, at the most comparable facility operated by the
336 department.

337 Section 8. Section 957.14, Florida Statutes, is amended to
338 read:

339 957.14 Contract termination and control of a correctional
340 facility by the department.—A detailed plan shall be provided by
341 a private vendor under which the department shall assume
342 temporary control of a private correctional facility upon
343 termination of the contract. The department ~~of Management~~
344 ~~Services~~ may terminate the contract with cause after written
345 notice of material deficiencies and after 60 workdays in order
346 to correct the material deficiencies. If any event occurs that
347 involves the noncompliance with or violation of contract terms
348 and that presents a serious threat to the safety, health, or

591-02247-23

20237016pb

349 security of the inmates, employees, or the public, the
350 department may temporarily assume control of the private
351 correctional facility, with the approval of the department of
352 ~~Management Services~~. A plan shall also be provided by a private
353 vendor for the purchase and temporary assumption of operations
354 of a correctional facility by the department in the event of
355 bankruptcy or the financial insolvency of the private vendor.
356 The private vendor shall provide an emergency plan to address
357 inmate disturbances, employee work stoppages, strikes, or other
358 serious events in accordance with standards of the American
359 Correctional Association.

360 Section 9. Section 957.15, Florida Statutes, is amended to
361 read:

362 957.15 Funding of contracts for operation, maintenance, and
363 lease-purchase of private correctional facilities.—The request
364 for appropriation of funds to make payments pursuant to
365 contracts entered into by the department of ~~Management Services~~
366 for the operation, maintenance, and lease-purchase of the
367 private correctional facilities authorized by this chapter shall
368 be made by the ~~Department of Management Services~~ in a request to
369 ~~the~~ department. The department shall include such request in its
370 budget request to the Legislature as a separately identified
371 item and shall ~~forward the request of the Department of~~
372 ~~Management Services without change. After an appropriation has~~
373 ~~been made by the Legislature to the department for the private~~
374 ~~correctional facilities, the department shall have no authority~~
375 ~~ever such funds other than to pay from such appropriation to the~~
376 ~~appropriate private vendor such amounts as are certified for~~
377 ~~payment by the Department of Management Services.~~

591-02247-23

20237016pb

378 Section 10. Section 957.16, Florida Statutes, is amended to
379 read:

380 957.16 Expanding capacity.—The department ~~of Management~~
381 ~~Services~~ is authorized to modify and execute agreements with
382 contractors to expand up to the total capacity of contracted
383 correctional facilities. Total capacity means the design
384 capacity of all contracted correctional facilities increased by
385 one-half as described under s. 944.023(1)(b). Any additional
386 beds authorized under this section must comply with the cost-
387 saving requirements set forth in s. 957.07. Any additional beds
388 authorized as a result of expanded capacity under this section
389 are contingent upon specified appropriations.

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