

1 A bill to be entitled
2 An act relating to correctional facilities; amending
3 s. 944.35, F.S.; providing definitions; prohibiting
4 sexual misconduct by any volunteer in, or any employee
5 of a contractor or subcontractor of, the Department of
6 Corrections or a private correctional facility;
7 providing criminal penalties; providing applicability;
8 transferring all powers, duties, functions, records,
9 offices, personnel, associated administrative support
10 positions, property, pending issues and existing
11 contracts, administrative authority, trust funds, and
12 unexpended balances of appropriations, allocations,
13 and other funds of the Bureau of Private Prison
14 Monitoring to the Department of Corrections; amending
15 s. 287.042, F.S.; deleting provisions relating to
16 powers and duties of the Department of Management
17 Services concerning private correctional facilities;
18 amending s. 394.9151, F.S.; authorizing the Department
19 of Children and Families to contract with the
20 Department of Corrections, rather than the Department
21 of Management Services, for the operation of
22 facilities for sexually violent predators; amending s.
23 943.13, F.S.; conforming provisions to changes made by
24 the act; amending ss. 944.02, 944.115, 944.72,
25 944.8041, and 945.215, F.S.; requiring the Department

26 of Corrections to assume specified duties and
 27 responsibilities of the Department of Management
 28 Services; amending ss. 957.04, 957.06, 957.07, 957.08,
 29 957.14, 957.15, and 957.16, F.S.; conforming
 30 provisions to changes made by the act; providing an
 31 effective date.

32

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

34

35 Section 1. Paragraph (b) of subsection (3) of section
 36 944.35, Florida Statutes, is amended to read:

37 944.35 Authorized use of force; malicious battery and
 38 sexual misconduct prohibited; reporting required; penalties.—

39 (3)

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
56 correctional facility or any volunteer in, or any employee of a
57 contractor or subcontractor of, the department or a private
58 correctional facility as defined in s. 944.710 who engages in
59 sexual misconduct with an inmate or an offender supervised by
60 the 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 Section 2. All powers; duties; functions; records;
 80 offices; personnel; associated administrative support positions;
 81 property; pending issues and existing contracts; administrative
 82 authority; trust funds; and unexpended balances of
 83 appropriations, allocations, and other funds of the Bureau of
 84 Private Prison Monitoring are transferred by a type two transfer
 85 pursuant to s. 20.06(2), Florida Statutes, to the Department of
 86 Corrections.

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

89 287.042 Powers, duties, and functions.—The department
 90 shall have the following powers, duties, and functions:

91 ~~(17) (a) To enter into contracts pursuant to chapter 957~~
 92 ~~for the designing, financing, acquiring, leasing, constructing,~~
 93 ~~or operating of private correctional facilities. The department~~
 94 ~~shall enter into a contract or contracts with one contractor per~~
 95 ~~facility for the designing, acquiring, financing, leasing,~~
 96 ~~constructing, and operating of that facility or may, if~~
 97 ~~specifically authorized by the Legislature, separately contract~~
 98 ~~for any such services.~~

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

101
 102 ~~The department may not delegate the responsibilities conferred~~
 103 ~~by this subsection.~~

104 Section 4. Section 394.9151, Florida Statutes, is amended
 105 to read:

106 394.9151 Contract authority.—The Department of Children
 107 and Families may contract with a private entity or state agency
 108 for use of and operation of facilities to comply with the
 109 requirements of this act. The Department of Children and
 110 Families may also contract with the Department of Corrections
 111 ~~Management Services~~ to issue a request for proposals and monitor
 112 contract compliance for these services.

113 Section 5. Section 943.13, Florida Statutes, is amended to
 114 read:

115 943.13 Officers' minimum qualifications for employment or
 116 appointment.—On or after October 1, 1984, any person employed or
 117 appointed as a full-time, part-time, or auxiliary law
 118 enforcement officer or correctional officer; on or after October
 119 1, 1986, any person employed as a full-time, part-time, or
 120 auxiliary correctional probation officer; and on or after
 121 October 1, 1986, any person employed as a full-time, part-time,
 122 or auxiliary correctional officer by a private entity under
 123 contract to the Department of Corrections or to a county
 124 commission, ~~or to the Department of Management Services~~ shall:

125 (1) Be at least 19 years of age, except that any person

126 employed as a full-time, a part-time, or an auxiliary
127 correctional officer must be at least 18 years of age.

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

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

132 (4) Not have been convicted of any felony or of a
133 misdemeanor involving perjury or a false statement, or have
134 received a dishonorable discharge from any of the Armed Forces
135 of the United States. Any person who, after July 1, 1981, pleads
136 guilty or nolo contendere to or is found guilty of any felony or
137 of a misdemeanor involving perjury or a false statement is not
138 eligible for employment or appointment as an officer,
139 notwithstanding suspension of sentence or withholding of
140 adjudication. Notwithstanding this subsection, any person who
141 has pled nolo contendere to a misdemeanor involving a false
142 statement, prior to December 1, 1985, and has had such record
143 sealed or expunged shall not be deemed ineligible for employment
144 or appointment as an officer.

145 (5) Have documentation of his or her processed
146 fingerprints on file with the employing agency or, if a private
147 correctional officer, have documentation of his or her processed
148 fingerprints on file with the Department of Corrections or the
149 Criminal Justice Standards and Training Commission. The
150 department shall retain and enter into the statewide automated

151 biometric identification system authorized by s. 943.05 all
152 fingerprints submitted to the department as required by this
153 section. Thereafter, the fingerprints shall be available for all
154 purposes and uses authorized for arrest fingerprints entered in
155 the statewide automated biometric identification system pursuant
156 to s. 943.051. The department shall search all arrest
157 fingerprints received pursuant to s. 943.051 against the
158 fingerprints retained in the statewide automated biometric
159 identification system pursuant to this section and report to the
160 employing agency any arrest records that are identified with the
161 retained employee's fingerprints. These fingerprints must be
162 forwarded to the department for processing and retention.

163 (6) Have passed a physical examination by a licensed
164 physician, physician assistant, or licensed advanced practice
165 registered nurse, based on specifications established by the
166 commission. In order to be eligible for the presumption set
167 forth in s. 112.18 while employed with an employing agency, a
168 law enforcement officer, correctional officer, or correctional
169 probation officer must have successfully passed the physical
170 examination required by this subsection upon entering into
171 service as a law enforcement officer, correctional officer, or
172 correctional probation officer with the employing agency, which
173 examination must have failed to reveal any evidence of
174 tuberculosis, heart disease, or hypertension. A law enforcement
175 officer, correctional officer, or correctional probation officer

176 may not use a physical examination from a former employing
177 agency for purposes of claiming the presumption set forth in s.
178 112.18 against the current employing agency. The employing
179 agency must maintain records of the physical examination for at
180 least 5 years after the employee's separation from the employing
181 agency. If the employing agency fails to maintain the records of
182 the physical examination for the 5-year period after the
183 employee's separation, it is presumed that the employee has met
184 the requirements of this subsection.

185 (7) Have a good moral character as determined by a
186 background investigation under procedures established by the
187 commission.

188 (8) Execute and submit to the employing agency or, if a
189 private correctional officer, submit to the appropriate
190 governmental entity an affidavit-of-applicant form, adopted by
191 the commission, attesting to his or her compliance with
192 subsections (1)-(7). The affidavit shall require the applicant
193 to disclose any pending investigation by a local, state, or
194 federal agency or entity for criminal, civil, or administrative
195 wrongdoing and whether the applicant separated or resigned from
196 previous criminal justice employment while he or she was under
197 investigation. The affidavit shall be executed under oath and
198 constitutes an official statement within the purview of s.
199 837.06. The affidavit shall include conspicuous language that
200 the intentional false execution of the affidavit constitutes a

201 | misdemeanor of the second degree. The affidavit shall be
202 | retained by the employing agency.

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

206 | (a) Completed a comparable basic recruit training program
207 | for the applicable criminal justice discipline in another state
208 | or for the Federal Government and served as a full-time sworn
209 | officer in another state or for the Federal Government for at
210 | least 1 year, provided there is no more than an 8-year break in
211 | employment, as measured from the separation date of the most
212 | recent qualifying employment to the time a complete application
213 | for an exemption under this subsection is submitted; or

214 | (b) Served in the special operations forces for a minimum
215 | of 5 years, provided there is no more than a 4-year break from
216 | the applicant's special operations forces experience, as
217 | measured from the separation date from the special operations
218 | forces to the time a complete application for an exemption under
219 | this subsection is submitted,

220 |
221 | is exempt in accordance with s. 943.131(2) from completing the
222 | commission-approved basic recruit training program.

223 | (10) Achieve an acceptable score on the officer
224 | certification examination for the applicable criminal justice
225 | discipline.

226 (11) Comply with the continuing training or education
 227 requirements of s. 943.135.

228 Section 6. Subsection (4) of section 944.02, Florida
 229 Statutes, is amended to read:

230 944.02 Definitions.—The following words and phrases used
 231 in this chapter shall, unless the context clearly indicates
 232 otherwise, have the following meanings:

233 (4) "Elderly offender" means a prisoner age 50 or older in
 234 a state correctional institution or facility operated by the
 235 Department of Corrections ~~or the Department of Management~~
 236 ~~Services~~.

237 Section 7. Paragraph (b) of subsection (2) of section
 238 944.115, Florida Statutes, is amended to read:

239 944.115 Smoking prohibited inside state correctional
 240 facilities.—

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

242 (b) "Employee" means an employee of the department or a
 243 private vendor in a contractual relationship with ~~either~~ the
 244 department ~~of Corrections or the Department of Management~~
 245 ~~Services~~, and includes persons such as contractors, volunteers,
 246 or law enforcement officers who are within a state correctional
 247 facility to perform a professional service.

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

250 944.72 Privately Operated Institutions Inmate Welfare

251 Trust Fund.—

252 (1) There is hereby created in the department of
 253 ~~Corrections~~ the Privately Operated Institutions Inmate Welfare
 254 Trust Fund. The purpose of the trust fund shall be the benefit
 255 and welfare of inmates incarcerated in private correctional
 256 facilities under contract with the department pursuant to this
 257 chapter or ~~the Department of Management Services pursuant to~~
 258 chapter 957. Moneys shall be deposited in the trust fund and
 259 expenditures made from the trust fund as provided in s. 945.215.

260 Section 9. Section 944.8041, Florida Statutes, is amended
 261 to read:

262 944.8041 Elderly offenders; annual review.—For the purpose
 263 of providing information to the Legislature on elderly offenders
 264 within the correctional system, the department and the
 265 Correctional Medical Authority shall each submit annually a
 266 report on the status and treatment of elderly offenders in the
 267 state-administered and private state correctional systems and
 268 the department's geriatric facilities and dorms. In order to
 269 adequately prepare the reports, the department ~~and the~~
 270 ~~Department of Management Services~~ shall grant access to the
 271 Correctional Medical Authority that includes access to the
 272 facilities, offenders, and any information the agencies require
 273 to complete their reports. The review shall also include an
 274 examination of promising geriatric policies, practices, and
 275 programs currently implemented in other correctional systems

276 within the United States. The reports, with specific findings
277 and recommendations for implementation, shall be submitted to
278 the President of the Senate and the Speaker of the House of
279 Representatives on or before December 31 of each year.

280 Section 10. Paragraphs (a) and (c) of subsection (3) of
281 section 945.215, Florida Statutes, are amended to read:

282 945.215 Inmate welfare and employee benefit trust funds.—

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

285 (a) For purposes of this subsection, privately operated
286 institutions or private correctional facilities are those
287 correctional facilities under contract with the department
288 pursuant to chapter 944 or ~~the Department of Management Services~~
289 ~~pursuant to~~ chapter 957.

290 (c) The department ~~of Management Services~~ shall annually
291 compile a report that documents Privately Operated Institutions
292 Inmate Welfare Trust Fund receipts and expenditures at each
293 private correctional facility. This report must specifically
294 identify receipt sources and expenditures. The department ~~of~~
295 ~~Management Services~~ shall compile this report for the prior
296 fiscal year and shall submit the report by September 1 of each
297 year to the chairs of the appropriate substantive and fiscal
298 committees of the Senate and House of Representatives and to the
299 Executive Office of the Governor.

300 Section 11. Paragraphs (a), (b), (e), and (g) of

301 subsection (1), paragraph (c) of subsection (2), and subsections
 302 (5), (6), and (7) of section 957.04, Florida Statutes, are
 303 amended to read:

304 957.04 Contract requirements.—

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

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

309 However, a contract for private correctional services may not be
 310 entered into by the department ~~of Management Services~~ unless the
 311 department ~~of Management Services~~ determines that the contractor
 312 has demonstrated that it has:

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

315 2. The ability to expedite the siting, design, and
 316 construction of correctional facilities.

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

319 (b) Indemnify the state and the department, including
 320 their officials and agents, against any and all liability,
 321 including, but not limited to, civil rights liability. Proof of
 322 satisfactory insurance is required in an amount to be determined
 323 by the department ~~of Management Services~~.

324 (e) Establish operations standards for correctional
 325 facilities subject to the contract. However, if the department

326 and the contractor disagree with an operations standard, the
327 contractor may propose to waive any rule, policy, or procedure
328 of the department related to the operations standards of
329 correctional facilities which is inconsistent with the mission
330 of the contractor to establish cost-effective, privately
331 operated correctional facilities. The department ~~of Management~~
332 ~~Services~~ shall be responsible for considering all proposals from
333 the contractor to waive any rule, policy, or procedure and shall
334 render a final decision granting or denying such request.

335 (g) Require the selection and appointment of a full-time
336 contract monitor. The contract monitor shall be appointed and
337 supervised by the department ~~of Management Services~~. The
338 contractor is required to reimburse the department ~~of Management~~
339 ~~Services~~ for the salary and expenses of the contract monitor. It
340 is the obligation of the contractor to provide suitable office
341 space for the contract monitor at the correctional facility. The
342 contract monitor shall have unlimited access to the correctional
343 facility.

344 (2) Each contract entered into for the design and
345 construction of a private correctional facility or juvenile
346 commitment facility must include:

347 (c) A specific provision requiring the contractor, and not
348 the department ~~of Management Services~~, to obtain the financing
349 required to design and construct the private correctional
350 facility or juvenile commitment facility built under this

351 chapter.

352 (5) Each contract entered into by the department ~~of~~
 353 ~~Management Services~~ must include substantial minority
 354 participation unless demonstrated by evidence, after a good
 355 faith effort, as impractical and must also include any other
 356 requirements the department ~~of Management Services~~ considers
 357 necessary and appropriate for carrying out the purposes of this
 358 chapter.

359 (6) Notwithstanding s. 253.025(9), the Board of Trustees
 360 of the Internal Improvement Trust Fund need not approve a lease-
 361 purchase agreement negotiated by the department ~~of Management~~
 362 ~~Services~~ if the department ~~of Management Services~~ finds that
 363 there is a need to expedite the lease-purchase.

364 (7)(a) Notwithstanding s. 253.025 or s. 287.057, whenever
 365 the department ~~of Management Services~~ finds it to be in the best
 366 interest of timely site acquisition, it may contract without the
 367 need for competitive selection with one or more appraisers whose
 368 names are contained on the list of approved appraisers
 369 maintained by the Division of State Lands of the Department of
 370 Environmental Protection in accordance with s. 253.025(8). In
 371 those instances when the department ~~of Management Services~~
 372 directly contracts for appraisal services, it shall also
 373 contract with an approved appraiser who is not employed by the
 374 same appraisal firm for review services.

375 (b) Notwithstanding s. 253.025(8), the department ~~of~~

376 ~~Management Services~~ may negotiate and enter into lease-purchase
377 agreements before an appraisal is obtained. Any such agreement
378 must state that the final purchase price cannot exceed the
379 maximum value allowed by law.

380 Section 12. Subsection (2) of section 957.06, Florida
381 Statutes, is amended to read:

382 957.06 Powers and duties not delegable to contractor.—A
383 contract entered into under this chapter does not authorize,
384 allow, or imply a delegation of authority to the contractor to:

385 (2) Choose the facility to which an inmate is initially
386 assigned or subsequently transferred. The contractor may
387 request, in writing, that an inmate be transferred to a facility
388 operated by the department. ~~The Department of Management~~
389 ~~Services, the contractor, and the department~~ and the contractor
390 shall develop and implement a cooperative agreement for
391 transferring inmates between a correctional facility operated by
392 the department and a private correctional facility. The
393 department, ~~the Department of Management Services,~~ and the
394 contractor must comply with the cooperative agreement.

395 Section 13. Subsections (1) and (4) and paragraph (d) of
396 subsection (5) of section 957.07, Florida Statutes, are amended
397 to read:

398 957.07 Cost-saving requirements.—

399 (1) The department ~~of Management Services~~ may not enter
400 into a contract or series of contracts unless the department

401 determines that the contract or series of contracts in total for
402 the facility will result in a cost savings to the state of at
403 least 7 percent over the public provision of a similar facility.
404 Such cost savings as determined by the department ~~of Management~~
405 ~~Services~~ must be based upon the actual costs associated with the
406 construction and operation of similar facilities or services as
407 determined by the department ~~of Corrections~~ and certified by the
408 Auditor General. The department ~~of Corrections~~ shall calculate
409 all of the cost components that determine the inmate per diem in
410 correctional facilities of a substantially similar size, type,
411 and location that are operated by the department ~~of Corrections~~,
412 including administrative costs associated with central
413 administration. Services that are provided to the department ~~of~~
414 ~~Corrections~~ by other governmental agencies at no direct cost to
415 the department shall be assigned an equivalent cost and included
416 in the per diem.

417 (4) The department ~~of Corrections~~ shall provide a report
418 detailing the state cost to design, finance, acquire, lease,
419 construct, and operate a facility similar to the private
420 correctional facility on a per diem basis. This report shall be
421 provided to the Auditor General in sufficient time that it may
422 be certified ~~to the Department of Management Services~~ to be
423 included in the request for proposals.

424 (5)

425 (d) If a private vendor chooses not to renew the contract

426 at the appropriated level, the department ~~of Management Services~~
 427 shall terminate the contract as provided in s. 957.14.

428 Section 14. Section 957.08, Florida Statutes, is amended
 429 to read:

430 957.08 Capacity requirements.—The department ~~of~~
 431 ~~Corrections~~ shall transfer and assign prisoners to each private
 432 correctional facility opened pursuant to this chapter in an
 433 amount not less than 90 percent or more than 100 percent of the
 434 capacity of the facility pursuant to the contract ~~with the~~
 435 ~~Department of Management Services~~. The prisoners transferred by
 436 the department ~~of Corrections~~ shall represent a cross-section of
 437 the general inmate population, based on the grade of custody or
 438 the offense of conviction, at the most comparable facility
 439 operated by the department.

440 Section 15. Section 957.14, Florida Statutes, is amended
 441 to read:

442 957.14 Contract termination and control of a correctional
 443 facility by the department.—A detailed plan shall be provided by
 444 a private vendor under which the department shall assume
 445 temporary control of a private correctional facility upon
 446 termination of the contract. The department ~~of Management~~
 447 ~~Services~~ may terminate the contract with cause after written
 448 notice of material deficiencies and after 60 workdays in order
 449 to correct the material deficiencies. If any event occurs that
 450 involves the noncompliance with or violation of contract terms

451 and that presents a serious threat to the safety, health, or
 452 security of the inmates, employees, or the public, the
 453 department may temporarily assume control of the private
 454 correctional facility, ~~with the approval of the Department of~~
 455 ~~Management Services~~. A plan shall also be provided by a private
 456 vendor for the purchase and temporary assumption of operations
 457 of a correctional facility by the department in the event of
 458 bankruptcy or the financial insolvency of the private vendor.
 459 The private vendor shall provide an emergency plan to address
 460 inmate disturbances, employee work stoppages, strikes, or other
 461 serious events in accordance with standards of the American
 462 Correctional Association.

463 Section 16. Section 957.15, Florida Statutes, is amended
 464 to read:

465 957.15 Funding of contracts for operation, maintenance,
 466 and lease-purchase of private correctional facilities.—The
 467 request for appropriation of funds to make payments pursuant to
 468 contracts entered into by the department ~~of Management Services~~
 469 for the operation, maintenance, and lease-purchase of the
 470 private correctional facilities authorized by this chapter shall
 471 be included ~~made by the Department of Management Services in a~~
 472 ~~request to the department. The department shall include such~~
 473 ~~request~~ in its budget request to the Legislature as a separately
 474 identified item ~~and shall forward the request of the Department~~
 475 ~~of Management Services without change~~. After an appropriation

476 has been made by the Legislature to the department for the
 477 private correctional facilities, the department shall have no
 478 authority over such funds other than to pay from such
 479 appropriation to the appropriate private vendor such amounts as
 480 are certified for payment by the department ~~of Management~~
 481 ~~Services~~.

482 Section 17. Section 957.16, Florida Statutes, is amended
 483 to read:

484 957.16 Expanding capacity.—The department ~~of Management~~
 485 ~~Services~~ is authorized to modify and execute agreements with
 486 contractors to expand up to the total capacity of contracted
 487 correctional facilities. Total capacity means the design
 488 capacity of all contracted correctional facilities increased by
 489 one-half as described under s. 944.023(1)(b). Any additional
 490 beds authorized under this section must comply with the cost-
 491 saving requirements set forth in s. 957.07. Any additional beds
 492 authorized as a result of expanded capacity under this section
 493 are contingent upon specified appropriations.

494 Section 18. This act shall take effect October 1, 2023.