

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1742

SPONSOR: Criminal Justice Committee and Senator Brown-Waite

SUBJECT: Corrections

DATE: March 23, 1999

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barrow</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

This CS would authorize the reorganization of the Department of Corrections. The secretary of the department would have increased flexibility in devising the upper-management structure of the department and the administration of state appropriations to the department to perform its duties.

The department's administrative structure would narrow at the regional level by deleting: the requirement that there be five regional offices in the state, the requirement that there be five regional directors, and the mandate that *each* region have six division directors.

The department would assume a new goal of ensuring that victim's rights and needs are recognized and met. The responsibility of overseeing the inmate grievance process would be shifted from the department's Office of the Inspector General to the Office of General Counsel.

The CS would clarify that when an inmate escapes from a *privatized* correctional facility, it is a second-degree felony.

The CS would amend s. 944.10 (7), F.S., by deleting reference to "planning" and "design" as authorized activities for the Department of Corrections in providing services and inmate labor for various projects to governmental entities. The practical effect would be to shift the delivery of planning and design services from the public to the private sector.

This CS would take effect upon becoming law.

This CS would substantially amend sections 20.315, 944.10, 944.31, 944.331, and 944.40 of the Florida Statutes.

## II. Present Situation:

### History of the Florida Department of Corrections

The Correctional Organizational Act of 1975 created the Department of Offender Rehabilitation by combining the former Division of Corrections and the field staff of the Florida Parole and Probation Commission. Prior to that time, responsibility for corrections facilities and programs was with the Division of Corrections, established in 1957 and located within the Department of Health and Rehabilitative Services (DHRS). The Department of Offender Rehabilitation was created with a structure similar to that upon which the DHRS was patterned. These departments were considered matrix organizations, ones in which significant central office authority over decision-making was delegated to sub-headquarter units.

The 1975 act reorganized central office management structure into programs, operations, and management and budget areas of responsibility. Also included in the act was a requirement for the department to evaluate 20 percent of its major programs on an annual basis and the development of a single offender information and records system for joint use by the Florida Parole and Probation Commission and the department.

The act also divided Florida into five regions through which the department could distribute its administrative responsibility. According to the department's 1975-76 annual report, the regional concept provided opportunity for field staff and facilities personnel to interact while working together for the same purpose. The five regional directors were also given some program and fiscal autonomy in implementing statewide program objectives. *See generally*, Florida Department of Offender Rehabilitation, *Annual Report 1975-76* (1977).

On June 30, 1975, Louie L. Wainwright was appointed secretary of the new department by Governor Askew. At the time of his appointment, the department was responsible for 53,311 offenders under supervision. The department employed 7,410 persons and had a budget for fiscal year 1975-76 of \$78,943,649.95. The average daily cost to incarcerate an inmate was \$12.07. In 1978, the Department of Offender Rehabilitation was renamed the Department of Corrections.

### **Purpose of the Department's Creation and Legislative Intent**

Section 20.315, F.S., currently provides for the creation and organization of the Department of Corrections. Pursuant to statute, the purpose of the department is to "integrate the delivery of all offender rehabilitation and incarceration services that are deemed necessary for the rehabilitation of offenders and protection of society." s. 20.315 (1), F.S. To fulfill this purpose mandated by law, statutory goals and objectives are established that stress:

- ▶ protecting society by providing incarceration that will support the intentions of established criminal law;
- ▶ ensuring inmates work while they are incarcerated and that the department makes every effort to collect restitution and other monetary assessments from inmates while they are incarcerated or under supervision;
- ▶ working in partnerships with local communities to further efforts toward crime prevention;

- ▶ providing a safe and humane environment for offenders and staff in which rehabilitation is possible. This should include the protection of the offender from victimization within the institution and the development of a system of due process, where applicable;
- ▶ providing appropriate supervision for offenders released on community supervision, based on public safety risks and offender needs, and, in conjunction with the judiciary, public safety agencies, and local communities, develop safe, community-based alternatives to traditional incarceration;
- ▶ providing programs, which may include academic, vocational, and career education and treatment, to incarcerated offenders and supervised offenders which will prepare them for occupations available in the community;
- ▶ providing library services at correctional institutions, which includes general and law library services;
- ▶ providing judges with effective evaluative tools and information for use in sentencing decisions;
- ▶ providing the level of security in institutions commensurate with the custody requirements and management needs of inmates; and
- ▶ utilizing advanced technology to accomplish the responsibilities of the department.

Legislative intent language set forth in s. 20.315 (2), F.S., is very similar to the statutory purpose that is set out for the department in subsection (1). The Legislative intent portion of s. 20.315, F.S., states that the department should focus its attention on the removal of barriers that could prevent the inmate's successful return to society while supervising and incarcerating offenders at a security level that is commensurate with the danger they present to the public. It is also the intent of the Legislature that the department develop a comprehensive program for the treatment of youthful offenders and other special needs offenders committed to the department including female, elderly, and disabled offenders. The Legislature also expressly states that the department should pursue partnerships with other governmental entities and private industry for the purpose of furthering mutual goals and expanding work and educational opportunities for offenders.

### **Growth and Reorganization of the Department of Corrections**

In 1996, the Department of Corrections underwent a reorganization. Prior to 1996, the basic organizational structure of the Department of Corrections had remained unchanged since the department's creation in 1975. Over the past 15 years, the state prison population and staffing levels have nearly tripled.

As of June 30, 1998, the department was responsible for nearly 67,00 inmates and 144,700 offenders under community supervision. Through June 1998, the department had a total of 28,672 authorized positions. *See*, 1997-98 General Appropriations Act, p. 200 (May 15, 1997). For fiscal year 1997-98, the legislative appropriation to the department was approximately \$1,544,200,000.

*Id.* For fiscal year 1998-99, the legislative appropriation is approximately \$1,591,100,000 for 29,663 positions. *See*, 1998-99 General Appropriations Act, p. 516 (April 18, 1998).

The staffing levels for Select Exempt Service (SES) and for Senior Management Service (SMS) has nearly doubled since the last reorganization of the department, which occurred in 1996, according to data provided by the Department of Corrections. The following table provides comparisons of the number of these positions in 1995 and 1999.

Location of Positions	1995 Staffing Totals for SES and SMS Positions	1999 Staffing Totals for SES and SMS Positions
Central Office	53	82
Region I	5	10
Region II	8	13
Region III	6	13
Region IV	5	10
Region V	7	12
<b>Department-Wide Total</b>	82	140

Source: Department of Corrections, Legislative Office (March 1999).

In January 1999, Florida's newly elected governor, Governor Jeb Bush, appointed Michael Moore as the new secretary of the Department of Corrections. Secretary Moore has proposed a reorganization of the department in order to create "economies of scale" and to focus the department's efforts more on the custody and control of inmates as well as their rehabilitation. The Senate Proposed Budget for fiscal year 1999-2000 for the Department of Corrections is approximately \$1,673,600,000 for a total of 29,180 positions. *See*, 1999 Florida Senate, Proposed General Appropriations for Fiscal Year 1999-2000, p. 420.

## **Organizational Structure of the Department of Corrections**

### **A. Secretary**

The head of the department is the secretary, who is appointed by the Governor. The secretary's appointment is subject to Senate confirmation and serves at the Governor's pleasure. As the chief administrative officer of the department, the secretary is responsible for planning, coordinating, and managing the corrections system of the state. s. 20.315 (3), F.S.

In addition to these general duties, the secretary must appoint a deputy secretary, an inspector general, a general counsel, six assistant secretaries, and regional directors. *Id.*; *id.* at (4). The secretary must also establish the geographical boundaries of up to five regions. *Id.* at (4).

The secretary is also responsible for duties conferred under s. 20.05, F.S., which generally establishes duties for all department heads. Unless otherwise provided by law, department heads, among other responsibilities, are required to execute powers, duties and functions vested in the department, compile annual budgets, use their authority to adopt rules, accept gifts, bequests and endowments on behalf of the department, and recommend more effective internal departmental structuring to the Legislature.

#### **B. Deputy Secretary**

The deputy secretary is directly responsible to the secretary and serves at the secretary's pleasure. s. 20.315 (3) (a), F.S. Further duties are not specified by statute; however, the deputy secretary generally assists in supervising the activities of top management staff in the department.

#### **C. Inspector General**

The inspector general is directly responsible to the secretary and serves at the secretary's pleasure. The inspector general is statutorily authorized to conduct prison inspections and investigations, internal affairs investigations, inmate grievances and management reviews. s. 944.31, F.S.

#### **D. Assistant Secretaries**

The Assistant Secretary for Security and Institutional Management is responsible for providing inmate work, offender programs, security administration, emergency operations response, and technical assistance to regions. Organizationally, the regional directors are administratively placed under the Assistant Secretary for Security and Institutional Management. s. 20.315 (3) (c), F.S. Areas of responsibility include: inmate classification and management, sentence structure, program services, security operations, central records, population management, and victim services.

The Assistant Secretary for Health Services must be a physician licensed under ch. 458 or 459, F.S., or a professionally trained health care administrator with experience in health care administration. This assistant secretary is responsible for the delivery of health care services to offenders in the system and has direct professional authority over such services. s. 20.315 (3) (d), F.S. Areas of responsibility include: dental care, mental health care, nursing services, and medical services.

The Assistant Secretary for Executive Services is responsible for the provision of support to the agency through the management of human resources, research, planning and evaluation, and technology. s. 20.315 (3) (e), F.S. Areas of responsibility include oversight and management of the Corrections Data Center, research and data analysis, and personnel and staff development.

The Assistant Secretary for Community Corrections is responsible for coordination of community alternatives to incarceration. Included within this office would be the community supervision of offenders who are being supervised pursuant to court order or statutory

mandate. s. 20.315 (3) (f), F.S. Areas of responsibility include probation and parole field services, community residential programs, and interstate compacts for community supervision.

The Assistant Secretary for Administration is responsible for the budget and accounting services activities within the department, including the construction and maintenance of correctional facilities. s. 20.315 (3) (g), F.S. Areas of responsibility include asset management, food and general services, finance and accounting, and budget and management evaluation.

The Assistant Secretary for Education and Job Training coordinates and delivers education and job training to offenders who are in the custody of the department. s. 20.315 (3) (h), F.S. More specific areas of responsibilities include academic, special and vocation education, substance abuse counseling and treatment, chaplaincy services, library services, wellness education, and distance learning.

**E. Regional Offices**

The department plans and administers its correctional services programs through five (5) regions. The secretary has the ability to designate the geographical boundaries of the regions and must, to the extent possible, follow the boundaries of the judicial circuits and balance the regions by geographical size or workload of the department. Regional offices are located in Marianna (Region 1), Gainesville (Region 2), Orlando (Region 3), Lauderhill (Region 4), and Tampa (Region 5).

As of June 30, 1998, administrative data revealed the following information about the regions' facilities, offender populations and staff:

<b>Region</b>	<b>Total Staff (incl. Central Office)</b>	<b>Number of Major Institutions</b>	<b>Number of Incarcerated Offenders</b>	<b>Number of Offenders on Supervision</b>
<b>Region I</b>	6,665	18	18,029	15,764
<b>Region II</b>	7,547	17	19,541	19,319
<b>Region III</b>	3,767	7	8,676	22,923
<b>Region IV</b>	4,298	9	10,982	44,305
<b>Region V</b>	4,199	9	9,052	42,342

Source: DOC 1997-98 Annual Report, pp. 10-14.

**F. Regional Directors**

Regional directors serve as the chief administrative officers of each region. They are appointed by the secretary and are directly responsible to the Assistant Secretary for Operations. Regional directors are classified at a level equal to division director.

Regional directors administer and coordinate financial affairs and personnel management in their respective regions, ensuring that departmental policies are carried out and standards met. Further, they supervise the activities of the superintendents of major institutions within each region, the superintendents of community facilities, and the regional probation and parole supervisors. Each regional director is responsible for staff training, budgeting, property management and accounting within the regions. s. 20.315(13), F.S.

Currently, the five (5) regional directors appoint the following positions within their respective regions: Medical Executive Director (appointed in conjunction with the Assistant Secretary for Health Services), Correctional Officer Colonel, Chief of Regional Administration, Corrections Probation Regional Administrator, Correctional Programs Administrator, Regional Personnel Officer, Staff Development and Training Manager, correctional superintendents and circuit administrators. According to the department, none of these positions are classified at the level of division director.

### **Departmental Budget Entities - Performance Based Budgeting**

The secretary must develop and submit annually to the Legislature a comprehensive departmental summary budget document that arrays budgets along program lines. s. 20.315 (16), F.S. Currently, this document consists of the following four (4) distinct budget entities:

- (1) Department Administration.
- (2) Department Operations.
- (3) Health Services.
- (4) Education and Job Training.

The 1996 reorganization of the department condensed the four budget entities down from ten (10) separate budget entities. The six assistant secretaries must furnish recommendations on annual department budget priorities to the secretary. The Office of Management and Budget promulgates the necessary budget timetables, formats, and data requirements for all departmental budget requests, according to the Governor's statewide budget requirements. Further, regional directors must develop annual budget requests to be reviewed, amended, and approved by the secretary.

In 1994, the Legislature passed the Government Performance and Accountability Act. Ch. 94-249, 1994 *Fla. Laws* 1848. This law requires each agency to develop performance planning and budgeting systems in an attempt, among other things, to improve program coordination, eliminate duplicative programs, and provide better information to the Governor and Legislature. Each state agency must initially list proposed state agency programs and performance measures for the Governor's review and approval. Subsequently, agencies must submit their performance-based program budgets based on a statutorily established time schedule.

The department initiated its performance budgeting effort in October 1995. Currently, the department is in its first year, fiscal year 1998-99, for implementing performance-based program budgeting. *See*, s. 216.0172(4), F.S.

### **Escapes from Correctional Facilities**

Florida Statutes currently classify escapes from a correctional facility as a second-degree felony. Section 944.40, F.S., states the following:

Any prisoner confined in any prison, jail, road camp, or other penal institution, state, county, or municipal, working upon the public roads, or being transported to or from a place of confinement who escapes or attempts to escape from such confinement shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or 775.084. The punishment of imprisonment imposed under this section shall run consecutive to any former sentence imposed upon any prisoner.

The interpretation of current law is unclear as to whether escapees from correctional facilities that are operated pursuant to a contract with a private vendor can be prosecuted for a criminal violation of the escape statute under s. 944.40, F.S.

The Department of Corrections provides the following comparative information regarding the number of escapes from various departmental facilities that are operated by the department:

Facility Type	2nd Quarter of FY 1996-97	2nd Quarter of FY 1997-98	2nd Quarter of FY 1998-99
<b>Correctional Institutions</b>	2 (4.7%)*	1 (2.3%)*	2 (4.5%)*
<b>Work Camps/ Road Prisons</b>	7 (16.3%)*	1 (2.3%)*	1 (2.3%)*
<b>C.C.C./Contract Centers</b>	34 (79.1%)*	41 (95.3%)*	41 (93.2%)*

Source: Florida Department of Corrections. \*Percentage reflects percentage of all escapes for that period.

**The Department’s Design/Build Program**

In 1996, the Legislature codified the authority for the Department of Corrections to engage in construction and public service activities it had been previously engaging in prior to the passage of such authority. See, Ch. 96-312, s. 40, 1996 Fla. Laws 1413, 1447-1449. This language created in subsection (7) of s. 944.10, F.S., unequivocally allowed the department to be able to charge nominal fees for providing services to be able to recoup costs it incurred in doing so.

The program created by the 1996 statutory authority is called the “Design/Build Program.” According to the department, the focus of the program and statute is to use inmate labor to construct buildings. The department maintains that design services are provided only to support inmate construction. The design services vary from new designs to reusing prototype plans. The department states that, to date, most of the Design/Build projects have been designed by private sector architects when a modest amount of design services are warranted. The department can apparently provide only limited design services due to staffing issues.



Rather than contract for private professional services, the Department of Corrections employs architects, engineers, and draftspersons who use computer-aided drafting systems to prepare construction and renovation documents for buildings owned or leased by the Department of Corrections. According to the department, it has chosen to employ such personnel rather than contracting with outside architects and engineers because it believes it is much more cost-efficient for the state to do so. The buildings that are subject to such efforts by the department are designed to facilitate the use of inmate labor as much as possible.

According to the Department of Corrections, other state agencies and local governments have, rather than contracting with private architects and engineers, requested assistance by the department for both correctional and other public service projects. The department has also provided inmate labor for these projects.

The Department of Corrections has stated that it has encouraged such projects because it has found the projects to be mutually beneficial for the department and the local and state governments. Some of the benefits cited by the department are as follows:

- a. Strengthens the department’s partnerships with other governmental entities;
- b. Significant cost savings by other agencies and local governments are realized when the department allows such entities to use the department’s designs and inmate labor, which enables them to undertake projects that they would not otherwise be able to afford;
- c. Reduces inmate idleness by providing inmates jobs; and
- d. Provides inmates with skills and training that can be utilized by the inmates after their release from prison.

The Department of Corrections has used inmates to construct prisons for a long time and now ostensibly has one of the largest inmate construction programs in the country. As a result, the department occasionally contracted with other state agencies to use inmates to construct buildings. The department has also always attempted to provide inmate labor for community service purposes to local communities and other state agencies.

The department has provided the following information on completed projects and projects under contract with other state agencies utilizing the Design/Build Program.

<b>COMPLETED Projects</b>	<b>Cost of Project</b>	<b>Location</b>	<b>Agency</b>	<b>Scope</b>	<b>Inmate hours</b>
Hendry Wilderness Camp	\$2,100,000	Hendry County	DJJ	Construct a new multi-building facility	57,247

<b>COMPLETED Projects</b>	<b>Cost of Project</b>	<b>Location</b>	<b>Agency</b>	<b>Scope</b>	<b>Inmate hours</b>
Tri-County Work Camp Conversion	\$500,000	Marion County	DJJ	Renovate a multi-building DOC work camp to single cell housing for juveniles	Estimated at 8,500
McCarty Phase I	\$40,000	Orlando	DMS	Renovation of interior office space	2,000
McCarty Phase II	\$120,000	Orlando	DMS	Renovation of interior office space	4, 079
Wall of Orlando Phase I	\$150,000	Orlando	DJJ	Construction of CMU Wall	17,839
Wall of Orlando Phase II	\$60,000	Orlando	DJJ	Change metal panels to block	2,051
Citrus County Maximum Risk Facility (Level 10)	\$500,000	Citrus County	DJJ	Provide labor to construction manager on a new facility	28,905
<b>TOTAL</b>	<b>\$3,470,000</b>				<b>120,621 hours</b>

<b>Projects UNDER CONTRACT</b>	<b>Cost of Project</b>	<b>Location</b>	<b>Agency</b>	<b>Scope</b>	<b>Inmate hours</b>
Avon Park Phase I	\$1,000,000	Polk County	DJJ	Renovate Air Force housing, medical and ADA compliant	estimated 8,500
Avon Park Phase II	\$2,100,000	Polk County	DJJ	Design and build food service, academic, and administration buildings	estimated 70,000
Sebring Building	\$4,100,000	St. Petersburg	DMS	Design/renovate 5 story office building	estimated 65,000
Marion Assessment Center	\$230,000	Ocala	DJJ	Renovate interior office space	estimated 12,000

<b>Projects UNDER CONTRACT</b>	<b>Cost of Project</b>	<b>Location</b>	<b>Agency</b>	<b>Scope</b>	<b>Inmate hours</b>
110-Bed Juvenile Detention Facility	3,700,000	Santa Rosa County	DJJ	Construct a new multi-building facility	estimated 60,000
<b>TOTAL</b>	<b>\$11,130,000</b>				<b>215,500 hours</b>

**III. Effect of Proposed Changes:**

This CS would authorize the reorganization of the Department of Corrections. The secretary of the department would have increased flexibility in devising the middle- and upper-management structure of the department and the administration of state appropriations to the department to perform its duties.

The CS would delete the mandate that there be six assistant secretaries. Instead, the secretary would have the flexibility to determine what is necessary to manage the department through assistant secretaries, directors, and other persons necessary to accomplish the mission and goals of the department.

The organizational statute for the department would still delineate the several areas of program responsibility. The area of security and institutional operations would provide inmate work programs, offender programs, security administration, emergency operations response, and operational oversight of the regions. The area of health services would still be headed by a physician or a professionally trained health care administrator, as is currently required of the Assistant Secretary of Health Services. The area of community corrections would coordinate community alternatives to incarceration and operational oversight of community corrections regions. There would be an area of program services, which would provide for the direct management and supervision of all departmental programs, including the coordination and delivery of education and job training to offenders. There would no longer be a separate area delineated for “executive services.” Rather the responsibilities of the Assistant Secretary of Executive Services would be shifted to the area of administrative services. The area of administrative services would additionally provide the budget and accounting services within the department, including the construction and maintenance of correctional institutions.

The department’s administrative structure would narrow at the regional level by deleting: the requirement that there be five regional offices in the state, the necessity that each region develop and submit budgets to be included in the department’s comprehensive budget, the requirement that there be five regional directors, and the mandate that *each* region have six division directors. The secretary would have more flexibility to appoint persons that would oversee the regions that would be established by the secretary.

The secretary would have the flexibility to establish “regions” as he or she decides. Therefore, the geographical boundaries of the department will be solely determined by the secretary. Although there will remain a requirement that the provision of services for community corrections, security, and institutional operations be accomplished through regions, there is not mandate or limit as to the number of regions and no guidance as to how the geographical boundaries of regions would be established by the secretary.

Subsection (7) of s. 20.315, F.S., would no longer enumerate four budget entities for the department’s summary document for legislative appropriation. Rather, the department must revise its budget entity designations to conform to the budget entities that are designated by the Executive Office of the Governor under s. 216.0235, F.S. The department must remain consistent with ch. 216, F.S., in transferring funds and positions that are necessary to realign appropriations with the revised budget entity designations. The authorized revisions must still be consistent with the intent of the approved operating budget.

The department would assume a new goal of ensuring that victim’s rights and needs are recognized and met.

The responsibility of overseeing the inmate grievance process would be shifted from the department’s Office of the Inspector General to the Office of General Counsel.

The CS would clarify that when an inmate escapes from a *privatized* correctional facility, it is a second-degree felony. Such a change would put escapees from private facilities in the same posture as in situations when an inmate escapes from a correctional facility that is operated by a governmental entity. All escapes from a correctional facility, regardless of who or what type of entity operates the correctional facility, would be proscribed equally under the law.

The CS would delete references to “planning” and “design” as authorized governmental activities for the Department of Corrections in providing services and inmate labor for various projects. The practical effect of this CS will be to shift the delivery of planning and design services from the public to the private sector. Therefore, the Department of Corrections would not be able to utilize its architects and other personnel to assist local, state, federal, or other governmental subdivisions with the planning of any project or the design of any project for which such governmental entities may seek the assistance from the department.

This CS would take effect upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Private architects, draftspersons, and engineers would financially benefit from the passage of CS/SB 1742. The CS would shift the business of planning and design services currently offered or provided by the Department of Corrections to private architects, draftspersons, and engineers.

**C. Government Sector Impact:**

The secretary of the Department of Corrections has established a goal of reaching as much as a 10 percent reduction in the SES and SMS positions in the department as the result of a reorganization authorized by this CS. Therefore, a reduction in the number of the mid- to upper-level management positions would result in a positive fiscal impact, or cost-avoidance, for the state.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.