

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/CS/SB 1292

SPONSOR: Governmental Oversight and Productivity Committee, Criminal Justice Committee and Senator Brown-Waite

SUBJECT: Out-of State Inmates

DATE: March 22, 2000

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The CS for CS restricts and regulates the terms and conditions under which a state agency or private vendor may enter into a contract with a state or private entity operating a correctional facility outside Florida to house out-of-state inmates within Florida's borders.

This bill creates a yet to be numbered section of the Florida Statutes.

II. Present Situation:

There are no current provisions in Florida law to prohibit, restrict or regulate the housing of inmates sentenced for committing crimes in other states in Florida, by some entity other than the Department of Corrections. The Department is a party state in the Interstate Corrections Compact wherein inmates from other states may be housed within the Department's institutions. Under ss. 941.55-941.57, F.S., the Department may house Florida inmates in the institutions of other party states as well. This housing of inmates in other states occurs in large part for safety reasons where, for instance, the inmate's life has been threatened.

According to a study published by the Florida Corrections Commission in its 1997 Annual Report, some serious incidents involving out-of-state inmates have occurred in several institutions throughout the country. These include five separate incidents of escapes and/or riots in Texas in 1996. Texas authorities learned that the escapees from one facility could not be prosecuted for the offenses because of deficiencies in Texas law. Further, Texas authorities did not even have knowledge that 240 sex offenders from Oregon had been housed in a Texas facility. In 1997, Texas lawmakers enacted legislation to address these problems, along with issues related to who would bear the expense of recapturing escaped inmates or quelling riots.

III. Effect of Proposed Changes:

The bill provides that no state agency or private vendor operating a correctional facility in Florida may contract with a state, state agency or private vendor operating a correctional facility outside of the state for the purpose of housing inmates from another state's correctional facilities in the State of Florida without proper authorization.

Written authorization to enter into such a contract must be obtained from either the Regional Planning Council for the property upon which the Florida correctional facility is or would be located, or from the Legislature. The bill requires the Regional Planning Council or the Legislature to consider the risks to the citizens of Florida as well as benefits to the community within which the facility is located.

The bill directs the Correctional Privatization Commission to develop and distribute a list of specific factors the Regional Planning Council should consider in determining whether to authorize the contract to house out-of-state inmates.

Under the provisions of the bill, any proposed contract, in substantially final form, would be submitted for review and approval to the Correctional Privatization Commission and either the Regional Planning Council or the Legislature, depending upon which body is considering approving the contract. The approval of the authorizing body, be it the Regional Planning Council or the Legislature, must be maintained for the length of the contract.

All contracts and extensions thereof must state the maximum number of inmates to be housed in the facility, the amount of compensation to be paid, and the custody level of the inmates in terms substantially similar to the Florida Department of Corrections standards for custody levels as well as the crimes the inmates committed.

The Legislature or the Correctional Privatization Commission may withdraw approval for the contract upon a finding that the continued operation of the facility poses a threat to public safety. The bill specifies that threats to public safety include but are not limited to repeated instances of escape; rioting which includes occupation and control of a portion of the facility and the endangering of the life of a facility employee or the public; rioting to the extent that buildings outside the perimeter are destroyed; and destruction of a part of the facility itself resulting in an insecure perimeter which cannot be secured within a reasonable period of time.

The bill requires that if approval of the contract is withdrawn by the Legislature or Correctional Privatization Commission as a result of a finding of a threat to public safety, the state, state agency or private vendor who entered the contract to house the inmates for payment shall move the inmates to another facility that has lawfully agreed to accept them. This requirement provides a mechanism by which the inmates housed within the State of Florida, who are the subject of the contract, will not become the responsibility of the State of Florida should the contract be terminated for lack of the requisite approval.

The bill requires that contracts between the state, its agencies, or private vendors operating facilities for the State of Florida and other states prohibit the release within this state of an out-of-state inmate who is incarcerated as a result of a crime committed in another state. When the

inmate's sentence is over, he/she should be transported out of the State of Florida before the inmate is released from custody.

Before a Regional Planning Council approves a proposed contract, the agency or vendor must receive written confirmation from the Correctional Privatization Commission that certain conditions have been met. These conditions include:

- A written plan for the coordination of law enforcement action in the event of escapes or emergencies which shall require:
 - reimbursement of reasonable costs associated with the escape or emergency;
 - immediate notification of the Executive Director of the Correctional Privatization Commission and local law enforcement agencies in the event of an escape or emergency; and
 - the written concurrence of designated law enforcement.
- An agreement in writing which is acceptable to the Correctional Privatization Commission and the designated law enforcement agencies, effective upon the opening of the institution to inmates, which guarantees payment of all reasonable costs associated with an escape or emergency, which amount shall be specified in the agreement.

This provision should ensure that local law enforcement agencies are not caught by surprise with no plan in effect if there is an escape or emergency at the institution. Further, local law enforcement should not be responsible for the costs incurred for assisting the recapture of escaped inmates or quelling of riot situations.

The bill requires that if a private vendor seeks contract approval from a Regional Planning Council, they must enter into a preliminary agreement with the Correctional Privatization Commission. The preliminary agreement becomes binding upon the approval from the Regional Planning Council being granted. This agreement must contain provisions which impose the following conditions and requirements:

- The Correctional Privatization Commission must approve the design and construction of the facility as being suitable to house the custody classification of inmates to be housed in the facility. The information necessary for the classification of the inmates, to be done by the Department of Corrections, shall be provided by the vendor prior to the inmate entering Florida.
- The private correctional facility must receive and continuously maintain accreditation from the American Correctional Association within 24 months of accepting its first inmates. Failure to comply will result in contract termination.
- Training for employees of the private vendor shall meet or exceed the more stringent of the Department of Corrections standards or the standards of the American Correctional Association. The level of standards shall be determined by the Correctional Privatization Commission.

- The Regional Planning Council shall be reimbursed the reasonable costs incurred in approving and executing the documents required of the approval process.
- Private vendors shall indemnify and hold harmless the state, its officials and agents, against any and all liability resulting from private vendors' operation of correctional facilities.
- The private vendor shall submit fingerprint cards for all prospective employees to the Correctional Privatization Commission for the purpose of a criminal background check. The Florida Department of Law Enforcement shall provide background checks to the Correctional Privatization Commission and the costs shall be paid by the private vendor.
- Employees of private vendors operating facilities that house out-of-state or federal government inmates shall have the same legal authority to use deadly and non-deadly force as do Department of Corrections employees. This provision conveys authority as follows:
 - ▶ a correctional officer may use deadly force to prevent an escape¹; and
 - ▶ an employee of the Department of Corrections may use physical force only when necessary to defend himself or another, prevent escape, prevent property damage, to quell a disturbance, to overcome physical resistance to a lawful command, or when administering necessary medical treatment.²
- Any criminal acts committed by an inmate from another state being housed in Florida shall be subject to criminal prosecution for those acts under Florida law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹ Section 776.07 (2), F.S.

² Section 944.35, F.S.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be some fiscal impact due to the potential need for law enforcement intervention at correctional facilities housing inmates from other states. The court system may have some impact from law violations committed by inmates from other states while housed in the correctional facility.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Florida law provides that private correctional officers may use force only while on the grounds of a facility, while transporting inmates, and while pursuing escapees. They may use non-deadly force in the following situations: to prevent the commission of a crime; to defend oneself or others against physical assault; to prevent serious property damage; to enforce institutional regulations and orders; and to prevent or quell a riot.

As presently drafted the bill would not impair any contractual agreement between a named party and an agency or instrumentality of the United States government.

The bill would appear to apply to only the receipt or discharge of inmates subsequent to its effective date and, thus, would not necessarily present an impairment of contracts issue.

VIII. Amendments:

None.