

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 7016

INTRODUCER: Fiscal Policy Committee; Appropriations Committee on Criminal and Civil Justice; and Criminal Justice Committee

SUBJECT: Department of Corrections

DATE: April 14, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Parker</u>	<u>Stokes</u>		CJ Submitted as Committee Bill
1.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	Fav/CS
2.	<u>Parker</u>	<u>Yeatman</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 7016 amends s. 944.35, F.S., providing criminal penalties for any volunteer in or employee of a contractor or subcontractor of the Department of Corrections (DOC) or private corrections facility who engages in sexual misconduct with specified inmates or offenders. The bill defines “volunteer” to mean a person registered with the DOC or a private correctional facility who is engaged in specific voluntary service activities on an ongoing or continual basis.

A person who commits this offense commits a third degree felony.¹

The bill provides the following exceptions:

- Any employee, volunteer, contractor or subcontractor, of the department or private correctional facility who is legally married to an inmate or offender under supervision.
- Any employee, volunteer, or employee of a contractor or subcontractor who has no knowledge, and would have no reason to believe, that the person with whom the employee, volunteer, or employee of a contractor or subcontractor has engaged in sexual misconduct is an inmate or offender under supervision.

¹ A felony of the third degree is punishable by a term of imprisonment not exceeding 5 years and a \$5000 fine, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

This bill transfers all power, duties, functions, records, personnel, associated administrative support positions, property, administrative authority, and administrative rules relating to private correctional facilities by a type two transfer, as defined in s. 20.06(2), F.S.,² from the Department of Management Services (DMS) to the DOC.

The bill contains provisions relating to existing contracts, agreements, bonds, certificates of participation and other instruments of indebtedness.

The bill amends s. 287.042, F.S., to remove the ability of DMS to enter into contracts for the designing, financing, acquiring, leasing, constructing, or operating of private correctional facilities.

The bill may have a positive indeterminate fiscal impact on the DOC (indeterminate positive prison bed impact). The provisions of the bill relating to the transfer of oversight of private correctional facilities will likely have no fiscal impact due to the type two transfer provisions.

The bill makes technical and conforming changes.

The bill is effective October 1, 2023.

II. Present Situation:

Sexual Misconduct with Inmates

Section 944.35, F.S., states that any employee of the DOC or a private correctional facility as defined in s. 944.710, F.S., who engages in sexual misconduct with an inmate or an offender supervised by the DOC in the community, without committing the crime of sexual battery, commits a third degree felony.³

The consent of such inmate or offender to any act of sexual misconduct may not be raised as a defense to a prosecution under this paragraph.⁴ This paragraph does not apply to any employee of the DOC or any employee of a private correctional facility who is legally married to an inmate or an offender supervised by the DOC in the community. It also does not apply to any employee who has no knowledge, and would have no reason to believe, that the person with whom the employee has engaged in sexual misconduct is an inmate or an offender under community supervision of the DOC.⁵

“Sexual misconduct” means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object, but does

² Section 20.06(2), F.S., states that a type two transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, merging into an agency or department of the existing agency or department with certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished.

³ Section 944.35(3)(b)2., F.S.; A felony of the third degree is punishable by a term of imprisonment not exceeding 5 years and a \$5000 fine punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

⁴ Section 944.35(3)(b)3., F.S.

⁵ Section 944.35(3)(b)4., F.S.

not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee's duty.⁶

Sexual misconduct by corrections officers and other prison staff can violate the Eighth Amendment, regardless of whether physical force is used.⁷ Under federal and state law, forms of coerced sexual contact are prohibited by general criminal laws that apply to all persons regardless of the setting in which the coerced sexual contact occurs. Forty-one states, including the District of Columbia and the federal government, have laws specifically prohibiting criminalizing certain types of sexual misconduct in prisons.⁸ Florida is one of the states that criminalizes sexual contact between correctional employees of the DOC and a person under the DOC's custody.⁹

Rule 33-208.001(5), F.A.C., governs the conduct of volunteers and non-DOC employees. The rule states that all rules, directives, and policy statements governing conduct of the DOC employees apply to volunteers and non-DOC employees, violation of which may result in immediate removal from the institution or office and future denial of access to such area by the Administrator, Warden, Officer-in-Charge, or Supervisor.

Sexual Misconduct Between Detention Facility Employees and Inmates

Section 951.221, F.S., states that any employee of a county or municipal detention facility or of a private detention facility under contract with a county commission who engages in sexual misconduct, as defined in s. 944.35(3)(b)1., F.S., with an inmate or an offender supervised by the facility without committing the crime of sexual battery commits a third degree felony.¹⁰ The consent of an inmate to any act of sexual misconduct may not be raised as a defense to prosecution under this section.¹¹

Transfer of Private Prison Oversight

The DMS,¹² is responsible for overseeing the State's private prison system and ensuring private correctional facility compliance with contract terms and conditions.¹³

The DMS currently oversees private prisons in Florida and has the powers, duties, and functions to contract.¹⁴ The Bureau of Private Prison Monitoring at DMS currently contracts with three providers, CoreCivic of Tennessee, LLC (CoreCivic); GEO Group, Inc., (GEO); and

⁶ Section 944.35(3)(b)1., F.S.

⁷ *Sconiers v. Lockhart*, 946 F.3d 1256, 1267 (11th Cir. 2020) (holding the Eight Amendment protects prisoners from sexual abuse, even when there is no serious physical injury).

⁸ United States General Accounting Office, *Women in Prison, Sexual Misconduct by Correctional Staff*, p. 5 (June 1999) available at <https://www.gao.gov/products/ggd-99-104> (last visited March 3, 2023).

⁹ Section 944.35, F.S.

¹⁰ A felony of the third degree is punishable by a term of imprisonment not exceeding 5 years and a \$5000 fine punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

¹¹ Section 951.221, F.S.

¹² Bureau of Private Prison Monitoring is a business operation within the Department of Management Services. This information is available at https://www.dms.myflorida.com/business_operations/private_prison_monitoring (last visited March 6, 2023).

¹³ Section 957.04, F.S.

¹⁴ Section 287.042, F.S.

Management and Training Corporation (MTC), to operate and manage the seven private correctional facilities throughout the state.¹⁵

Section 287.057, F.S., provides that state agencies are responsible for enforcing the terms and conditions of all contracts and ensuring that deliverables are appropriately satisfied. In Florida, the Bureau of Private Prison Monitoring at DMS is responsible for the oversight and contractual compliance for the private prison system with the state.¹⁶

In June 2022, the Florida Auditor General conducted an operational audit of the DMS on the oversight of the Bureau of Private Prisons.¹⁷ The audit found seven areas of deficiency.¹⁸

III. Effect of Proposed Changes:

The bill amends s. 944.35, F.S., providing criminal penalties for any volunteer or employee of a contractor or subcontractor of the DOC or private correctional facility who engages in sexual misconduct with an inmate. Any person who commits such offense commits a third degree felony.¹⁹ This language is consistent with the intent of Rule 33-208.001(5), F.A.C.²⁰

The bill defines the term “volunteer” to mean a person registered with the DOC or a private correctional facility who is engaged in specific voluntary service activities on an ongoing or continual basis.

¹⁵ Dixon, Matt, (2013, December 16). *New contracts give private prison giant nearly 80 percent of Florida’s private prison market*. Retrieved from The Florida Times-Union: <https://www.jacksonville.com/story/news/2013/12/16/new-contracts-give-private-prison-giant-nearly-80-percent-floridas-private/15805432007/> (last visited March 3, 2023).

¹⁶ In accordance with ch. 957, F.S., the Bureau of Private Prison Monitoring is responsible for entering into contracts for the design, construction, and operation of privately operated correctional facilities.

¹⁷ Florida Auditor General, *Department of Management Services Oversight of Private Correctional Facilities Operational Audit*. Report No. 2022-23 (June 2022) (on file with the Senate Committee on Criminal Justice).

¹⁸ *Id.* The Florida Auditor General conducted an operational audit of the Department of Management Services finding there to be issues with noncompliance, maintenance, safety, and staffing. The audit found seven areas of deficiency with the Bureau of Private Prison Monitoring at DMS: (1) The Bureau did not always issue written notices of noncompliance or document the basis for not issuing notices of noncompliance to private prison providers when noncompliance was identified; (2) The Bureau had not established policies and procedures for monitoring provider maintenance activities at private correctional facilities and monitoring tools were not always completed; (3) The Bureau policies and procedures for, and documentation of, review of on-site nursing consultant activities were identified as needing improvement to demonstrate that health care monitoring services at private correctional facilities are provided in accordance with contract terms; (4) The Bureau monitoring of private correctional facility staff was identified as needing enhancement to ensure that appropriate and qualified staff were assigned to provide for and maintain security, control, custody, and supervision of inmates; (5) Bureau efforts to review and verify the accuracy and completeness of private correctional facility provider incident reporting need enhancement to ensure that incidents are correctly reported and appropriately handled in accordance with applicable contract provisions and Bureau policies and procedures; (6) The Bureau did not ensure that private correctional facility providers obtained and maintained required insurance coverage; and (7) The Bureau was identified as needing improvement to ensure that audited provider Inmate Bank and Commissary financial statements were timely received and appropriately reviewed.

¹⁹ A felony of the third degree is punishable by a term of imprisonment not exceeding 5 years and a \$5000 fine as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

²⁰ Rule 33-208.001(5), F.A.C. states that “all rules, directives, and policy statement governing conduct of Department of Corrections employees apply to volunteers and non-FDC employees, violation of which may result in immediate removal from the institution or office and future denial of access to such area by the Administrator, Warden, Officer-in-Charge or Supervisor.”

The bill prohibits any employee of the DOC or a private correctional facility or any volunteer in, or any employee of a contractor or subcontractor of, the DOC or a private correctional facility from engaging in sexual misconduct with an inmate or an offender supervised by the DOC in the community, without committing the crime of sexual battery. A person who commits this offense commits a third degree felony.

The bill provides exceptions. Specifically, the bill excludes:

- Any employee, volunteer, or employee of a contractor or subcontractor of the DOC or any employee, volunteer, or employee of a contractor or subcontractor of a private correctional facility who is legally married to an inmate or an offender supervised by the department in the community.
- Any employee, volunteer, or employee of a contractor or subcontractor who has no knowledge, and would have no reason to believe, that the person with whom the employee, volunteer, or employee of a contractor or subcontractor has engaged in sexual misconduct is an inmate.

The bill transfers oversight from the DMS to the DOC. The bill transfers all powers, duties, functions, records, personnel, associated administrative support positions, property, administrative authority, and administrative rules relating to private correctional facilities by a type two transfer, as defined in s. 20.06(2), F.S.,²¹ from the DMS to the DOC. The DMS must ensure any unexpended funds or trust funds are transferred. The bill contains provisions relating to binding contracts and interagency agreements.

The bill provides that the type two transfer shall not affect any existing agreements, bonds, certificates, or other instruments of indebtedness entered into by DMS and provides provisions related to such undertakings by the DMS.

The bill amends s. 287.042, F.S., to remove the ability of DMS to enter into contracts for the designing, financing, acquiring, leasing, constructing, or operating of private correctional facilities.

The bill amends ss. 943.13, 944.02, 944.115, 944.72, 944.8041, 945.215, 946.504, 957.04, 957.06, 957.07, 957.08, 957.12, 957.14, 957.15, 957.16, and 394.9151, F.S., conforming provisions to changes made by the act.

The bill is effective October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²¹ Section 20.06(2), F.S., provides that a type two transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolishes.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a positive indeterminate fiscal impact on the DOC (indeterminate positive prison bed impact). The bill may increase the number of people convicted under this offense because it expands the crime to include volunteers, contractors, and subcontractors.

The provisions of the bill relating to the transfer of oversight of private correctional facilities will likely have no fiscal impact due to the type two transfer provisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 287.042, 394.9151, 943.13, 944.02, 944.115, 944.35, 944.72, 944.8041, 945.215, 946.504, 957.04, 957.06, 957.07, 957.08, 957.12, 957.14, 957.15, and 957.16.

This bill reenacts section 944.47 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Fiscal Policy on April 13, 2023:

The committee substitute:

- Provides that any binding contract or interagency agreement entered into and between the DMS and any other agency, entity, or person continues as a binding contract or agreement with the DOC.
- Provides an exception for certain contracts or agreements.
- Provides that the type two transfer shall not affect any existing agreements, bonds, certificates of participation or other instruments of indebtedness.
- Makes conforming and technical changes.

CS by Appropriations Committee on Criminal and Civil Justice on March 21, 2023:

The committee substitute:

- Provides clarifying language relating to what persons may be charged with a violation.
- Defines “volunteer” to mean a person registered with the department or a private correctional facility who is engaged in specific voluntary service activities on an ongoing or continual basis.
- Provides exceptions to the statute. Specifically, excluding:
 - Any employee, volunteer, contractor or subcontractor of the department or a private correctional facility who is legally married to an inmate.
 - Any employee, volunteer, or employee of a contractor or subcontractor who has no knowledge, and would have no reason to believe, that the person with whom the employee, volunteer, or employee of a contractor or subcontractor has engaged in sexual misconduct is an inmate.

- B. **Amendments:**

None.