

By the Committee on Criminal Justice

591-02504-23

20237016\_\_

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

591-02504-23

20237016\_\_

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

591-02504-23

20237016\_\_

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

591-02504-23

20237016\_\_

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:

591-02504-23

20237016\_\_

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

591-02504-23

20237016\_\_

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

591-02504-23

20237016\_\_

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

591-02504-23

20237016\_\_

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



591-02504-23

20237016\_\_

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

591-02504-23

20237016\_\_

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

591-02504-23

20237016\_\_

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

591-02504-23

20237016\_\_

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

591-02504-23

20237016\_\_

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.~~

591-02504-23

20237016\_\_

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.