

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 929 Sexual Misconduct in the Correctional System

**SPONSOR(S):** Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Lopez, V.

**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N, As CS	Loyed	Hall
2) Justice Appropriations Subcommittee	15 Y, 0 N, As CS	Smith	Keith
3) Judiciary Committee			

### SUMMARY ANALYSIS

Section 944.35, F.S., prohibits any employee of the Florida Department of Corrections (FDC) or a private correctional facility from engaging in sexual misconduct, without committing sexual battery, with an inmate or an offender supervised by FDC in the community. Under s. 944.35, F.S., sexual misconduct means the 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 not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of an employee's duty. An employee may not raise the consent of an inmate or a supervised offender as a defense. A violation of the prohibition is a third degree felony. Current law does not prohibit all persons who may perform work or services within FDC or a private correctional facility from engaging in sexual misconduct with an inmate or a supervised offender.

The prohibition against sexual misconduct does not apply to any employee of FDC or any employee of a private correctional facility who is legally married to an inmate or a supervised offender; or 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 a supervised offender.

In 1989, the Legislature authorized the construction and operation of private correctional institutions. FDC was provided authorization to enter into contracts with private corrections firms for the design, construction and operation of private correctional facilities. Chapter 1993-406, Laws of Florida, created the Correctional Privatization Commission (Commission) for the purpose of entering into contracts for the design, construction and operation of private correctional facilities, effective July 1, 1994. The Commission, which was housed within the Department of Management Services (DMS), was independent of the FDC.

In 2005, the Commission was repealed by the Legislature and its functions, duties and responsibilities were transferred to DMS. Currently, the Bureau of Private Prison Monitoring within DMS is responsible for contract negotiation and oversight relating to privately operated correctional facilities in Florida.

The bill amends s. 944.35, F.S., to prohibit any volunteer in, or employee of a contractor or subcontractor of, FDC or a private correctional facility from engaging in sexual misconduct, without committing sexual battery, with an inmate or an offender supervised by FDC in the community. Under the bill, a volunteer or employee of a contractor or subcontractor of FDC or a private correctional facility commits a third degree felony if he or she engages in sexual misconduct with an inmate or a supervised offender.

The bill provides an exception to the criminal penalty for engaging in sexual misconduct if any volunteer, or employee of a contractor or subcontractor, of FDC or a private correctional facility is legally married to an inmate or a supervised offender or if the volunteer or specified employee has no knowledge, or reason to know, the person with whom he or she engaged in sexual misconduct was an inmate or supervised offender.

Under the bill, a volunteer is defined as a person registered with FDC or a private correctional facility who is engaged in specific voluntary service activities on an ongoing or continual basis.

The bill may have a positive indeterminate jail and prison bed impact by expanding the prohibitions of the third degree felony offense of sexual misconduct.

The bill transfers the functions, duties and responsibilities relating to the oversight and operation of private correctional facilities from DMS to FDC via a type two transfer.

The bill provides an effective date of October 1, 2023.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives .**

**STORAGE NAME:** h0929b.JUA

**DATE:** 3/23/2023

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

The Florida Department of Corrections (FDC) is responsible for all prisons and other state correctional institutions or facilities under its jurisdiction.<sup>1</sup> Under s. 944.715, F.S., FDC may assign inmates to a private correctional facility, however, inmates incarcerated in a private correctional facility are still considered to be in the legal custody of FDC. A private correctional facility is any facility, which is not operated by FDC, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of FDC.<sup>2</sup>

Section 948.01, F.S., requires FDC to provide immediate supervision to a defendant placed on probation or into community control by a court for a felony. FDC is authorized to provide supervision to misdemeanor offenders sentenced or placed on probation by a circuit court when such supervision is ordered by the sentencing court.

#### *Sexual Misconduct*

Section 944.35, F.S., prohibits any employee of FDC or a private correctional facility from engaging in sexual misconduct, without committing sexual battery, with an inmate or an offender supervised by FDC in the community.

Under s. 944.35, F.S., sexual misconduct means the 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 not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of an employee's duty.

An employee may not raise the consent of an inmate or a supervised offender as a defense. A violation of the prohibition is a third degree felony.<sup>3</sup>

The prohibition against sexual misconduct does not apply to:

- Any employee of FDC or any employee of a private correctional facility who is legally married to an inmate or a supervised offender; or
- 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 a supervised offender.<sup>4</sup>

#### *Sexual Battery*

Section 794.011, F.S., criminalizes sexual battery offenses. Sexual battery 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. Sexual battery is generally a second degree felony, but the penalty may differ based on the offender's age, the victim's age, and the presence of other specified circumstances.<sup>5</sup>

When the offender is a law enforcement officer, correctional officer, or correctional probation officer<sup>6</sup>, or is an elected official exempt from such certification,<sup>7</sup> or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of the government,<sup>8</sup> the penalty for committing sexual battery increases to a first degree felony.<sup>9</sup>

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<sup>1</sup> S. 944.02(2), F.S.

<sup>2</sup> S. 944.710, F.S.

<sup>3</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

<sup>4</sup> S. 944.35(3)(b)4., F.S.

<sup>5</sup> See 794.011, F.S.

<sup>6</sup> As defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), F.S.

<sup>7</sup> Under ss. 943.1395 or 943.253, F.S.

<sup>8</sup> S. 794.011(4)(e)7, F.S.

<sup>9</sup> A first degree felony is punishable by up to 30 years in prison and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

## *Volunteers*

Section 944.705, F.S., authorizes a nonprofit faith-based or professional business, or a civic or community organization, to apply for registration with FDC to provide inmate reentry services. Such reentry services may include, but are not limited to:

- Counseling;
- Providing information on housing and job placement;
- Money management assistance; and
- Programs that address substance abuse, mental health, or co-occurring conditions.

FDC is required to adopt policies and procedures for screening, approving, and registering an organization that applies to provide inmate reentry services. FDC is authorized to deny approval and registration of an organization or representative from an organization it determines does not meet FDC's criteria. There are over 8,000 citizen volunteers working to deliver programs and provide valuable services and skills to inmates, offenders, and staff in FDC's 143 facilities statewide.<sup>10</sup>

Current law does not prohibit all persons who may perform work or services within FDC or a private correctional facility from engaging in sexual misconduct with an inmate or a supervised offender.

## *Private Correctional Institutions*

In 1989, the Legislature authorized the construction and operation of private correctional institutions. FDC was provided authorization to enter into contracts with private corrections firms for the design, construction and operation of private correctional facilities.<sup>11</sup> The initial purpose of correctional privatization was to discover options to improve efficiencies in the correctional system while also reducing the costs associated with the state's rising inmate population under the supervision of FDC. The first private prison was contracted for by FDC, and upon the completion of construction in 1995, the first privately operated facility opened in Florida.

## *Correctional Privatization Commission Act*

In 1994, The Legislature established the Correctional Privatization Commission (Commission) for the purpose of entering into contracts for the design, construction and operation of private correctional facilities.<sup>12</sup> The Commission, which was housed within the Department of Management Services (DMS), was independent of the FDC. Upon creation of the Commission, oversight for the design, construction and operation of private correctional facilities was transferred from FDC to the Commission. The Commission entered into contracts for six additional private correctional facilities.

## *Department of Management Services – Bureau of Private Prison Monitoring*

During the 2004 legislative session, the Commission was repealed in its entirety and all of its functions, duties and responsibilities were transferred to DMS, effective July 1, 2005.<sup>13</sup> Currently, the Bureau of Private Prison Monitoring (Bureau) within DMS is responsible for contract negotiation and oversight relating to privately operated correctional facilities in Florida.<sup>14</sup>

The Bureau is responsible for the oversight and contractual compliance of the private prison system. The Bureau manages and oversees the operational contracts for the seven private correctional facilities and ensures that vendors comply with contractual obligations to improve the efficiency and effectiveness of private correctional facilities in Florida.

<sup>10</sup> Volunteers and Programs, Florida Department of Corrections, [www.dc.state.fl.us/volunteer/volunteersandprograms.html](http://www.dc.state.fl.us/volunteer/volunteersandprograms.html) (last visited Mar. 16, 2023).

<sup>11</sup> Ch. 89-526, Laws of Fla.

<sup>12</sup> Ch. 93-406, Laws of Fla.

<sup>13</sup> Ch. 04-248, Laws of Fla.

<sup>14</sup> Private Prison Monitoring, [https://www.dms.myflorida.com/business\\_operations/private\\_prison\\_monitoring](https://www.dms.myflorida.com/business_operations/private_prison_monitoring) (last visited Mar. 16, 2023)

In accordance with ch. 957, F.S., the Bureau may not enter into a contract unless it determines that the contract or series of contracts in total for the facility will result in cost savings to the state of at least seven percent over FDC's cost to operate an equivalent facility. Upon a determination of savings, the Bureau enters into an "Operations and Management Contract" with a private vendor to operate the facility for an agreed daily per diem rate, which includes the cost of all facility operations and the cost of the contract manager employed by the Bureau.<sup>15</sup> The Bureau currently has 15 authorized FTE positions and appropriations totaling \$3,034,190.<sup>16</sup>

### **Effect of Proposed Changes**

PCS for CS/HB 929 amends s. 944.35, F.S., to prohibit any volunteer in, or employee of a contractor or subcontractor of, FDC or a private correctional facility from engaging in sexual misconduct, without committing sexual battery, with an inmate or an offender supervised by FDC in the community. Under the bill, a volunteer or employee of a contractor or subcontractor of FDC or a private correctional facility commits a third degree felony if he or she engages in sexual misconduct with an inmate or a supervised offender.

The bill provides an exception to the criminal penalty for engaging in sexual misconduct if any volunteer, or employee of a contractor or subcontractor, of FDC or a private correctional facility is legally married to an inmate or a supervised offender or if the volunteer or specified employee has no knowledge, or reason to know, the person with whom he or she engaged in sexual misconduct was an inmate or supervised offender.

Under the bill, a volunteer is defined as 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.

The bill also transfers the Bureau of Private Prison Monitoring, including all of its functions, duties and responsibilities relating to the oversight and operation of private correctional facilities from DMS to FDC via a type two transfer.

The bill provides an effective date of October 1, 2023.

### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 944.35, F.S., relating to sexual misconduct in the correctional system.

**Section 2:** Authorizes a type two transfer of all records, property, personnel, administrative authority, pending issues, existing contracts, and unexpended balances of appropriations, allocations, and other funds of the Bureau of Private Prison Monitoring within the Department of Management Services to the Department of Corrections.

**Section 3:** Amends s. 287.042(17), F.S., relating to the powers, duties, and functions of the Department of Management Services pertaining to private correctional facilities.

**Section 4:** Amends s. 394.9151, F.S., relating to contract authority of the Department of Children and Families when contracting with the Department of Corrections.

**Section 5:** Amends s. 943.13, F.S., relating to minimum qualifications for employment of appointment by a private entity under contract with the Department of Corrections.

**Section 6:** Amends s. 944.02, F.S., relating to the definition of "Elderly offender."

**Section 7:** Amends s. 944.115, F.S., relating to smoking prohibitions inside state correctional facilities.

**Section 8:** Amends s. 944.72, F.S., relating to the Privately Operated Institutions Inmate Welfare Trust Fund.

**Section 9:** Amends s. 944.8041, F.S., relating to Elderly offenders annual review with the Correctional Medical Authority.

**Section 10:** Amends s. 945.215, F.S., relating to the contracting entity of privately operated correctional institutions and associated reporting.

**Section 11:** Amends s. 957.04, F.S., relating to contractual requirements for contract negotiation.

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<sup>15</sup> *Id.*

<sup>16</sup> Specific Appropriations 2833–2842A, ch. 2022-156, Laws of Fla.

**Section 12:** Amends s. 957.06, F.S., relating to requirements for delegation of powers and/or duties.

**Section 13:** Amends s. 957.07, F.S., relating to cost-saving requirements when negotiating contracts for private correctional facilities.

**Section 14:** Amends s. 957.08, F.S., relating to capacity requirements for private correctional facilities.

**Section 15:** Amends s. 957.14, F.S., relating to contract termination and control of a private correctional facility.

**Section 16:** Amends s. 957.15, F.S., relating to the funding of contracts for operation, maintenance, and lease-purchase of private correctional facilities.

**Section 17:** Amends s. 957.16, F.S., relating to the expansion of capacity for existing private correctional facilities.

**Section 18:** Provides an effective date of October 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive indeterminate prison bed impact by expanding the prohibitions of the third degree felony of sexual misconduct.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive indeterminate jail bed impact by expanding the prohibitions of the third degree felony of sexual misconduct.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill transfers all functions, duties, and responsibilities relating to oversight and operation of private correctional facilities from DMS to FDC via type two transfer, including 15 authorized FTE positions and associated appropriations.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 13, 2023 the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute differed from the original bill as it:

- Added volunteers, and employees of subcontractors or contractors, of a private correctional facility to the persons prohibited from engaging in sexual misconduct with an inmate or supervised offender;
- Revised the exception to the criminal penalty for sexual misconduct to also apply to a volunteer, or employee of a contractor or subcontractor, of DOC or a private correctional facility when such a person is married to an inmate or supervised offender or has no knowledge, or reason to know, the person with whom he or she engaged in sexual misconduct was an inmate or supervised offender; and
- Defined the term “volunteer.”

On March 21, 2023, the Justice Appropriations Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute.

The PCS:

- Added volunteers, and employees of subcontractors or contractors, of a private correctional facility to the persons prohibited from engaging in sexual misconduct with an inmate or supervised offender;
- Revised the exception to the criminal penalty for sexual misconduct to also apply to a volunteer, or employee of a contractor or subcontractor, of DOC or a private correctional facility when such a person is married to an inmate or supervised offender or has no knowledge, or reason to know, the person with whom he or she engaged in sexual misconduct was an inmate or supervised offender; and
- Defined the term “volunteer.”
- Transfers the Bureau of Private Prison Monitoring, including all of its functions, duties and responsibilities relating to the oversight and operation of private correctional facilities from DMS to FDC via a type two transfer.

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.