

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 929 Correctional Facilities

SPONSOR(S): Judiciary Committee and Justice Appropriations Subcommittee and Criminal Justice Subcommittee, Lopez, V. and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 7016

FINAL HOUSE FLOOR ACTION: 116 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 929 passed the House on May 3, 2023, as CS/CS/SB 7016.

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 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 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In 2005, the Commission was repealed by the Legislature and its functions, duties, and responsibilities were transferred to DMS.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 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 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 was approved by the Governor on June 20, 2023, ch. 2023-268, L.O.F., and will become effective on October 1, 2023.

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

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DATE: 6/22/2023

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

The Florida Department of Corrections (FDC) is responsible for all prisons and other state correctional institutions or facilities under its jurisdiction.¹ 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.²

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.³

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.⁴

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.⁵

When the offender is a law enforcement officer, correctional officer, or correctional probation officer⁶, or is an elected official exempt from such certification,⁷ or any other person in a position

¹ S. 944.02(2), F.S.

² S. 944.710, F.S.

³ 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.

⁴ S. 944.35(3)(b)4., F.S.

⁵ See 794.011, F.S.

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

⁷ Under ss. 943.1395 or 943.253, F.S.

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,⁸ the penalty for committing sexual battery increases to a first degree felony.⁹

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.¹⁰

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.¹¹ 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.¹² The Commission, which was housed within the Department of Management Services (DMS), was independent of 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, 2005.¹³ Currently, the Bureau of

⁸ S. 794.011(4)(e)7., F.S.

⁹ 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.

¹⁰ Volunteers and Programs, Florida Department of Corrections, www.dc.state.fl.us/volunteer/volunteersandprograms.html (last visited Mar. 16, 2023).

¹¹ Ch. 89-526, Laws of Fla.

¹² Ch. 93-406, Laws of Fla.

¹³ Ch. 04-248, Laws of Fla.

Private Prison Monitoring (Bureau) within DMS is responsible for contract negotiation and oversight relating to privately operated correctional facilities in Florida.¹⁴

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.

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.¹⁵ The Bureau currently has 15 authorized FTE positions and appropriations totaling \$3,034,190.¹⁶

Effect of the Bill

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 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.¹⁷ Under the bill, any binding contract or interagency agreement concerning private correctional facilities entered into and between DMS and any other agency, entity, or person continues as a binding contract or an interagency agreement with FDC for the remainder of the term of the contract or agreement, except for any contract or agreement entered into as a result of state appropriations from the federal Coronavirus State Fiscal Recovery Fund for fixed capital outlay projects. FDC assumes all rights and responsibilities of DMS under such contract or interagency agreement as if it were the original party to the agreement, except as it pertains to DMS' rights with regard to action against any state contractor pursuant to law, which rights remain with DMS.

The bill specifies that the type two transfer does not affect existing agreements, bonds, certificates of participation, or other instruments of indebtedness entered into by DMS and that such undertakings continue to be valid and binding on FDC in accordance with their respective terms,

¹⁴ Private Prison Monitoring, https://www.dms.myflorida.com/business_operations/private_prison_monitoring (last visited Mar. 16, 2023)

¹⁵ *Id.*

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

¹⁷ S. 20.06(2), F.S.

conditions, and covenants.

The effective date of this bill is 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.