

Committee Substitute for Senate Bill No. 1722

An act relating to the Department of Corrections; amending s. 775.082, F.S.; requiring that the court sentence certain offenders to a nonstate prison sanction unless the court makes written findings that ordering an offender to a nonstate prison sanction could present a danger to the public; creating s. 921.00241, F.S.; providing that on or after a specified date a court may divert from the state correctional system certain offenders who otherwise would be sentenced to state prison; providing eligibility criteria for participation in the state prison diversion program if such a program is funded and exists in the circuit; requiring the court to make written findings that the offender meets the eligibility criteria for the diversion program; authorizing the court to order the offender to pay the costs of the prison diversion program if the offender is able to do so; amending s. 944.10, F.S.; exempting certain lease agreements by the department from the requirements for advertisement and competitive bids; providing for the future reversion as of a specified date of the statutory text relating to such lease agreements; creating s. 944.171, F.S.; authorizing the Department of Corrections to contract with county and municipal entities to house inmates committed to the department; authorizing the department to enter into contractual agreements with another state, a political subdivision of another state, or a vendor in another state to transfer and confine Florida inmates within that state; requiring the reclassification of inmates before a transfer occurs; providing for the contents of the contract; providing that a transferred inmate remains subject to the rules of the Florida Parole Commission; requiring that contracts for the transfer of inmates be procured according to state law; requiring that additional beds authorized under a contract be added to the total capacity of the state correctional system; authorizing the department to adopt rules; amending s. 945.6037, F.S.; increasing the copayment that an inmate must make for a nonemergency visit to a health care provider; creating s. 945.604, F.S.; defining the term "claim" for purposes of the State of Florida Correctional Medical Authority Act; providing for filing and payment of medical claims for payment or underpayment; providing for filing and payment of claims for overpayment; providing for recovery of overpayment of claims; creating s. 945.6041, F.S.; defining terms; limiting the compensation of health care providers that do not have contracts to provide inmate medical services with the department or private correctional facilities; limiting compensation to entities that provide emergency medical transportation services for inmates if those entities do not have a contract with the department or certain private correctional facilities; amending s. 947.1405, F.S.; requiring any person who has been placed under supervision and is electronically monitored by the department to pay the department for the cost of the electronic monitoring service; requiring that funds collected from the person be deposited into the General Revenue Fund; authorizing the Department of Corrections to exempt a person from the

payment of all or any part of the electronic monitoring service cost under certain circumstances; amending s. 948.01, F.S.; requiring that the department disseminate and that the courts use uniform order of supervision forms when placing a defendant on community supervision; amending s. 948.09, F.S.; requiring a person to pay the department the cost of electronically monitoring the offender while the offender is placed on supervision; providing for a cost cap on the monitoring service; providing that the department may exempt a person from paying all or any part of the costs of the electronic monitoring service under certain circumstances; amending s. 948.11, F.S.; requiring a person who is electronically monitored on supervision to pay the department for the electronic monitoring services; amending s. 957.09, F.S.; providing that the provisions governing private correctional facilities do not apply to contracts between the department and county and municipal entities, other states, political subdivisions of another state, or correctional management service vendors in another state for the transfer and confinement of state inmates; amending s. 958.045, F.S.; requiring the Department of Corrections to submit a report to the court at least 30 days before a youthful offender is scheduled to complete the basic training program; requiring the court to modify the youthful offender's sentence and place the offender on probation if the youthful offender has successfully completed the basic training program; amending s. 960.292, F.S.; providing for retention of court jurisdiction over certain offenders for a specified period after release from incarceration or supervision for the sole purpose of entering civil restitution orders; amending s. 960.293, F.S.; providing that damages due from an offender for correctional costs be based upon the length of the sentence imposed by the court at the time of sentencing; amending s. 960.297, F.S.; providing a time period in which civil actions for the costs of incarceration may be initiated; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsection (10) of section 775.082, Florida Statutes, is renumbered as subsection (11), and a new subsection (10) is added to that section, to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(10) If a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third-degree felony but not a forcible felony as defined in s. 776.08, and excluding any third-degree felony violation under chapter 810, and if the total sentence points pursuant to s. 921.0024 are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to this section.

Section 2. Section 921.00241, Florida Statutes, is created to read:

921.00241 Prison diversion program.—

(1) Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2009, a court may divert from the state correctional system an offender who would otherwise be sentenced to a state facility by sentencing the offender to a nonstate prison sanction as provided in subsection (2). An offender may be sentenced to a nonstate prison sanction if the offender meets all of the following criteria:

(a) The offender's primary offense is a felony of the third degree.

(b) The offender's total sentence points score, as provided in s. 921.0024, is not more than 48 points, or the offender's total sentence points score is 54 points and six of those points are for a violation of probation, community control, or other community supervision, and do not involve a new violation of law.

(c) The offender has not been convicted or previously convicted of a forcible felony as defined in s. 776.08, but excluding any third-degree felony violation under chapter 810.

(d) The offender's primary offense does not require a minimum mandatory sentence.

(2) If the court elects to impose a sentence as provided in this section, the court shall sentence the offender to a term of probation, community control, or community supervision with mandatory participation in a prison diversion program of the Department of Corrections if such program is funded and exists in the judicial circuit in which the offender is sentenced. The prison diversion program shall be designed to meet the unique needs of each judicial circuit and of the offender population of that circuit. The program may require residential, nonresidential, or day reporting requirements, substance abuse treatment, employment, restitution, academic or vocational opportunities, or community service work.

(3) The court that sentences a defendant to a nonstate prison sanction pursuant to subsection (2) shall make written findings that the defendant meets the criteria in subsection (1) and the sentencing order must indicate that the offender was sentenced to the prison diversion program pursuant to subsection (2). The court may order the offender to pay all or a portion of the costs related to the prison diversion program if the court determines that the offender has the ability to pay.

Section 3. Paragraph (a) of subsection (3) of section 944.10, Florida Statutes, is amended to read:

944.10 Department of Corrections to provide buildings; sale and purchase of land; contracts to provide services and inmate labor.—

(3)(a) The department may enter into lease-purchase agreements to provide correctional facilities for the housing of state inmates. However, no such

lease-purchase agreement shall be entered into without specific legislative authorization of that agreement, and funds must be specifically appropriated for each lease-purchase agreement. The facilities provided through such agreements shall meet the program plans and specifications of the department. The department may enter into such lease agreements with private corporations and other governmental entities. However, notwithstanding the provisions of s. 255.25(3)(a), ~~the department may not enter into no such lease agreement may be entered into~~ except upon advertisement for and receipt of competitive bids and award to the lowest and best bidder, unless the lease-purchase agreement is entered into with the Department of Management Services, the Florida Correctional Finance Corporation, or the successors or assignees of either.

Section 4. The amendments to s. 944.10(3)(a), Florida Statutes, made by this act shall expire July 1, 2010, and the text of that paragraph shall revert to that in existence on June 30, 2009, except that any amendments to such text enacted other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of such text which expire pursuant to this section.

Section 5. Section 944.171, Florida Statutes, is created to read:

944.171 Housing of inmates.—

(1) Notwithstanding s. 944.17, the department may contract with county or municipal facilities for the purpose of housing inmates committed to the department.

(a) Notwithstanding ss. 944.17 and 944.1905, before transferring a state inmate to another facility as authorized under this section, the inmate must be reclassified and scored as to custody risk based on the current offense and not on prior criminal history. Upon return to a state correctional institution, the inmate must be reclassified based on ss. 944.17 and 944.1905.

(b) Any inmate placed in another facility under this section remains under the jurisdiction of the department.

(2) Notwithstanding s. 944.17, the department may enter into contracts with another state, a political subdivision of another state, or a correctional management services vendor in another state for the transfer and confinement in that state of inmates who have been committed to the custody of the department.

(a) Any such contract must include:

1. A termination date.

2. Provisions concerning the costs of inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment, including those costs not reasonably included as part of normal maintenance.

3. Provisions concerning participation in programs of inmate employment, if any, the disposition or crediting of any payments received by inmates on account of employment, and the crediting of proceeds or disposal of any products resulting from employment.

4. Provisions for the delivery and retaking of inmates.

5. A provision for a waiver of extradition by the parties to the contract.

6. Retention of jurisdiction of the inmates transferred by Florida.

7. Regular reporting procedures concerning Florida inmates by officials of the state, political subdivision, or correctional management services vendor with which the department is contracting.

8. Provisions concerning procedures for community supervision, including probation, parole, conditional release, and discharge.

9. The same standards of reasonable and humane care as the inmates would receive in an appropriate institution in this state.

10. Any other matters that are necessary and appropriate to establish the obligations, responsibilities, and rights of Florida and the state, political subdivision, or correctional management services vendor with which the department is contracting.

(b) Inmates from Florida state prisons while in an institution in another state are subject to all the laws and rules concerning the confinement of persons committed for violations of the laws of that state, except that the sentence must be executed consistent with the sentencing and gain-time laws of this state and except as otherwise provided for by any contract entered into under this section.

(c) The Florida Parole Commission shall conduct any parole hearing for an inmate confined under a contract pursuant to this section according to the rules of the commission.

(d) Contracts under this section shall be procured in accordance with s. 287.057.

(3) Any beds contracted under this section shall be added to the total capacity of the correctional system as defined in s. 944.023, notwithstanding any law to the contrary.

(4) In making placements authorized by this section, the department shall consider, to the extent possible, the proximity of the receiving facility to the inmate's family, consistent with s. 944.8031.

(5) The Department of Corrections may adopt rules to administer this section.

Section 6. Paragraph (a) of subsection (1) of section 945.6037, Florida Statutes, is amended to read:

945.6037 Nonemergency health care; inmate copayments.—

(1)(a) ~~Effective October 1, 1997,~~ For each nonemergency visit by an inmate to a health care provider which ~~visit~~ is initiated by the inmate, the inmate must make a copayment of ~~\$5~~ \$4. A copayment may not be charged for the required initial medical history and physical examination of the inmate.

Section 7. Section 945.604, Florida Statutes, is created to read:

945.604 Medical claims.—

(1) DEFINITION OF “CLAIM.”—As used in this section, for a noninstitutional health care provider the term “claim” means a paper or electronic billing instrument submitted to the department which consists of the HCFA 1500 data set, or its successor, and has all mandatory entries for a physician licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 463 or a psychologist licensed under chapter 490, or any appropriate billing instrument that has all mandatory entries for any other noninstitutional health care provider. For an institutional health care provider, the term “claim” means a paper or electronic billing instrument submitted to the department which consists of the UB-92 data set, or its successor, with entries stated as mandatory by the National Uniform Billing Committee.

(2) SUBMISSION DATE.—Claims for payment or underpayment are considered submitted on the date the claim for payment is mailed or electronically transferred to the department by the health care provider. Claims for overpayment are considered submitted on the date the claim for overpayment is mailed or electronically transferred to the health care provider by the department.

(3) CLAIMS FOR PAYMENT OR UNDERPAYMENT.—

(a) Claims for payment or underpayment must be submitted to the department within 6 months after the following have occurred:

1. The discharge of the inmate for inpatient services rendered to the inmate or the date of service for outpatient services rendered to the inmate; and

2. The health care provider has been furnished with the correct name and address of the department.

(b) Claims for payment or underpayment must not duplicate a claim previously submitted unless it is determined the original claim was not received or is otherwise lost.

(c) The department is not obligated to pay claims for payment or underpayment which were not submitted in accordance with paragraph (a).

(4) CLAIMS FOR OVERPAYMENT.—

(a) If the department determines that it has made an overpayment to a health care provider for services rendered to an inmate, it must make a

claim for such overpayment to the provider's designated location. The department shall provide a written or electronic statement specifying the basis for overpayment. The department must identify the claim or claims, or overpayment claim portion thereof, for which a claim for overpayment is submitted.

(b) The department must submit a claim for overpayment to a health care provider within 30 months after the department's payment of the claim, except that claims for overpayment may be submitted beyond that time from providers convicted of fraud pursuant to s. 817.234.

(c) Health care providers are not obligated to pay claims for overpayment which were not submitted in accordance with paragraph (b).

(d) A health care provider must pay, deny, or contest the department's claim for overpayment within 40 days after the receipt of the claim for overpayment.

(e) A health care provider that denies or contests the department's claim for overpayment or any portion of a claim shall notify the department, in writing, within 40 days after the provider receives the claim. The notice that the claim for overpayment is denied or contested must identify the contested portion of the claim and the specific reason for contesting or denying the claim and, if contested, must include a request for additional information.

(f) All contested claims for overpayment must be paid or denied within 120 days after receipt of the claim. Failure to pay or deny the claim for overpayment within 140 days after receipt creates an uncontestable obligation to pay the claim.

(g) The department may not reduce payment to the health care provider for other services unless the provider agrees to the reduction or fails to respond to the department's claim for overpayment as required by this subsection.

(5) NONWAIVER OF PROVISIONS.—The provisions of this section may not be waived, voided, or nullified by contract.

Section 8. Section 945.6041, Florida Statutes, is created to read:

945.6041 Inmate medical services.—

(1) As used in this section, the term:

(a) "Emergency medical transportation services" includes, but is not limited to, services rendered by ambulances, emergency medical services vehicles, and air ambulances as those terms are defined in s. 401.23.

(b) "Health care provider" has the same meaning as provided in s. 766.105.

(2) Compensation to a health care provider to provide inmate medical services may not exceed 110 percent of the Medicare allowable rate if the health care provider does not have a contract to provide services with the

department or the private correctional facility, as defined in s. 944.710, which houses the inmate. However, compensation to a health care provider may not exceed 125 percent of the Medicare allowable rate if:

(a) The health care provider does not have a contract to provide services with the department or the private correctional facility, as defined in s. 944.710, which houses the inmate; and

(b) The health care provider reported a negative operating margin for the previous year to the Agency for Health Care Administration through hospital-audited financial data.

(3) Compensation to an entity to provide emergency medical transportation services for inmates may not exceed 110 percent of the Medicare allowable rate if the entity does not have a contract with the department or a private correctional facility, as defined in s. 944.710, to provide the services.

(4) This section does not apply to charges for medical services provided at a hospital operated by the department.

Section 9. Paragraph (b) of subsection (7) of section 947.1405, Florida Statutes, is amended to read:

947.1405 Conditional release program.—

(7)

(b) For a releasee whose crime was committed on or after October 1, 1997, in violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, and who is subject to conditional release supervision, in addition to any other provision of this subsection, the commission shall impose the following additional conditions of conditional release supervision:

1. As part of a treatment program, participation in a minimum of one annual polygraph examination to obtain information necessary for risk management and treatment and to reduce the sex offender's denial mechanisms. The polygraph examination must be conducted by a polygrapher trained specifically in the use of the polygraph for the monitoring of sex offenders, where available, and at the expense of the sex offender. The results of the ~~polygraph~~ examination may ~~shall~~ not be used as evidence in a hearing to prove that a violation of supervision has occurred.

2. Maintenance of a driving log and a prohibition against driving a motor vehicle alone without the prior approval of the supervising officer.

3. A prohibition against obtaining or using a post office box without the prior approval of the supervising officer.

4. If there was sexual contact, a submission to, at the probationer's or community controllee's expense, an HIV test with the results to be released to the victim or the victim's parent or guardian.

5. Electronic monitoring of any form when ordered by the commission. Any person who has been placed under supervision and is electronically

monitored by the department must pay the department for the cost of the electronic monitoring service at a rate that may not exceed the full cost of the monitoring service. Funds collected under this subparagraph shall be deposited into the General Revenue Fund. The department may exempt a person from the payment of all or any part of the electronic monitoring service cost if the department finds that any of the factors listed in s. 948.09(3) exist.

Section 10. Subsection (1) of section 948.01, Florida Statutes, is amended to read:

948.01 When court may place defendant on probation or into community control.—

(1) Any ~~state court of the state~~ having original jurisdiction of criminal actions may at a time to be determined by the court, either with or without an adjudication of the guilt of the defendant, hear and determine the question of the probation of a defendant in a criminal case, except for an offense punishable by death, who has been found guilty by the verdict of a jury, has entered a plea of guilty or a plea of nolo contendere, or has been found guilty by the court trying the case without a jury.

(a) If the court places the defendant on probation or into community control for a felony, the department shall provide immediate supervision by an officer employed in compliance with the minimum qualifications for officers as provided in s. 943.13. ~~In no circumstances shall~~ A private entity may not provide probationary or supervision services to felony or misdemeanor offenders sentenced or placed on probation or other supervision by the circuit court.

(b) The department, in consultation with the Office of the State Courts Administrator, shall develop and disseminate to the courts uniform order of supervision forms by July 1 of each year or as necessary. The courts shall use the uniform order of supervision forms provided by the department for all persons placed on community supervision.

Section 11. Subsection (2) of section 948.09, Florida Statutes, is amended to read:

948.09 Payment for cost of supervision and rehabilitation.—

(2) Any person being electronically monitored by the department as a result of being placed placement on supervision community control shall be ~~required to pay the department for electronic monitoring services at a rate as a surcharge an amount~~ that may not exceed the full cost of the monitoring service in addition to the cost of supervision ~~fee~~ as directed by the sentencing court. The funds collected under this subsection surcharge shall be deposited in the General Revenue Fund. The department may exempt a person from paying all or any part of the costs of the electronic monitoring service if it finds that any of the factors listed in subsection (3) exist.

Section 12. Subsections (5) and (6) of section 948.11, Florida Statutes, are amended to read:

948.11 Electronic monitoring devices.—

(5) Any person being electronically monitored by the department as a result of being placed placement on supervision community control shall ~~be required to pay the department for the electronic monitoring services a surcharge~~ as provided in s. 948.09(2).

(6) For probationers, community controllees, or conditional releasees who have current or prior convictions for violent or sexual offenses, the department, in carrying out a court or commission order to electronically monitor an offender, must use a system that actively monitors and identifies the offender's location and timely reports or records the offender's presence near or within a crime scene or in a prohibited area or the offender's departure from specified geographic limitations. Procurement of electronic monitoring services under this subsection shall be by competitive procurement in accordance with invitation to bid as defined in s. 287.057.

Section 13. Section 957.09, Florida Statutes, is amended to read:

957.09 Applicability of chapter to other provisions of law.—

(1)(a) Any offense that if committed at a state correctional facility would be a crime ~~is shall be~~ a crime if committed by or with regard to inmates at private correctional facilities operated pursuant to a contract entered into under this chapter.

(b) All laws relating to commutation of sentences, release and parole eligibility, and the award of sentence credits shall apply to inmates incarcerated in a private correctional facility operated pursuant to a contract entered into under this chapter.

(2) The provisions of this chapter are supplemental to the provisions of ss. 944.105 and 944.710-944.719. However, in any conflict between a provision of this chapter and a provision of such other sections, the provision of this chapter shall prevail.

(3) The provisions of law governing the participation of minority business enterprises are applicable to this chapter.

(4) The provisions of this chapter do not apply to contracts between the department and county and municipal entities, other states, political subdivisions of another state, or correctional management service vendors in another state for the transfer and confinement of state inmates.

Section 14. Paragraph (c) of subsection (5) of section 958.045, Florida Statutes, is amended to read:

958.045 Youthful offender basic training program.—

(5)

(c) The portion of the sentence served before prior to placement in the basic training program may not be counted toward program completion. The department shall submit a report to the court at least 30 days before the

youthful offender is scheduled to complete the basic training program. The report must describe the offender's performance in the basic training program. If the youthful offender's performance is satisfactory, the court shall issue an order modifying the sentence imposed and place the offender on probation subject to the offender successfully completing the remainder of the basic training program. Upon the offender's completion of the basic training program, the department shall submit a report to the court that describes the offender's performance. If the offender's performance has been satisfactory, the court shall issue an order modifying the sentence imposed and placing the offender on probation. The term of probation may include placement in a community residential program. If the offender violates the conditions of probation, the court may revoke probation and impose any sentence that it might have originally imposed.

Section 15. Subsection (2) of section 960.292, Florida Statutes, is amended to read:

960.292 Enforcement of the civil restitution lien through civil restitution lien order.—The civil restitution lien shall be made enforceable by means of a civil restitution lien order.

(2) Upon motion by the state, upon petition of the local subdivision, crime victim, or aggrieved party, or on its own motion, the court in which the convicted offender is convicted shall enter civil restitution lien orders in favor of crime victims, the state, its local subdivisions, and other aggrieved parties. The court shall retain continuing jurisdiction over the convicted offender for the sole purpose of entering civil restitution lien orders for the duration of the sentence and up to 5 years from release from incarceration or supervision, whichever occurs later.

Section 16. Paragraph (b) of subsection (2) of section 960.293, Florida Statutes, is amended to read:

960.293 Determination of damages and losses.—

(2) Upon conviction, a convicted offender is liable to the state and its local subdivisions for damages and losses for incarceration costs and other correctional costs.

(b) If the conviction is for an offense other than a capital or life felony, a liquidated damage amount of \$50 per day of the convicted offender's sentence shall be assessed against the convicted offender and in favor of the state or its local subdivisions. Damages shall be based upon the length of the sentence imposed by the court at the time of sentencing.

Section 17. Section 960.297, Florida Statutes, is amended to read:

960.297 Authorization for governmental right of restitution for costs of incarceration.—

(1) The state and its local subdivisions, in a separate civil action or as counterclaim in any civil action, may seek recovery of the damages and losses set forth in s. 960.293.

(2) For those convicted offenders convicted before July 1, 1994, the state and its local subdivisions, in a separate civil action or as a counterclaim in any civil action, may seek recovery of the damages and losses set forth in s. 960.293, for the convicted offender's remaining sentence after July 1, 1994.

(3) Civil actions authorized by this section may be commenced at any time during the offender's incarceration and up to 5 years after the date of the offender's release from incarceration or supervision, whichever occurs later.

Section 18. This act shall take effect July 1, 2009.

Approved by the Governor May 27, 2009.

Filed in Office Secretary of State May 27, 2009.