

CHAPTER 2017-31

Committee Substitute for Committee Substitute for House Bill No. 1201

An act relating to the Department of Corrections; amending s. 943.04, F.S.; authorizing the Department of Law Enforcement to issue an investigative demand seeking the production of an inmate's protected health information, medical records, or mental health records under certain circumstances; specifying requirements for the investigative demand; amending s. 944.151, F.S.; revising legislative intent; revising membership requirements for the safety and security review committee appointed by the Department of Corrections; specifying the duties of the committee; requiring the department to direct appropriate staff to complete specified duties of the department; revising scheduling requirements for inspections of state and private correctional institutions and facilities; revising the list of institutions that must be given priority for inspection; revising the list of institutions that must be given priority for certain security audits; revising minimum audit and evaluation requirements; requiring the department to direct appropriate staff to review staffing policies and practices as needed; conforming provisions to changes made by the act; amending s. 944.17, F.S.; authorizing the department to receive specified documents electronically at its discretion; amending s. 944.275, F.S.; revising the conditions on which an inmate may be granted a one-time award of 60 additional days of incentive gain-time by the department; clarifying when gain-time may be earned; amending s. 944.597, F.S.; revising provisions relating to training of transport company's employees before transporting prisoners; amending s. 945.36, F.S.; exempting employees of a contracted community correctional center from certain health testing regulations for the limited purpose of administering urine screen drug tests on inmates and releasees; amending s. 958.11, F.S.; deleting a provision authorizing the department to assign 18-year-old youthful offenders to the 19-24 age group facility under certain circumstances; deleting a condition that all female youth offenders are allowed to continue to be housed together only until certain institutions are established or adapted for separation by age and custody classifications; authorizing inmates who are 17 years of age or under to be placed at an adult facility for specified purposes, subject to certain conditions; authorizing the department to retain certain youthful offenders until 25 years of age in a facility designated for 18- to 22-year-old youth offenders under certain circumstances; conforming provisions to changes made by the act; amending s. 921.002, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (6) is added to section 943.04, Florida Statutes, to read:

943.04 Criminal Justice Investigations and Forensic Science Program; creation; investigative, forensic, and related authority.—

(6)(a) In furtherance of the duties and responsibilities of the inspector general under s. 944.31, if the Department of Law Enforcement is conducting an investigation or assisting in the investigation of an injury to or death of an inmate which occurs while the inmate is under the custody or control of the Department of Corrections, the department is authorized to, before the initiation of a criminal proceeding relating to such injury or death, issue in writing and serve upon the Department of Corrections an investigative demand seeking the production of the inmate's protected health information, medical records, or mental health records as specified in s. 945.10(1)(a). The department shall use such records for the limited purpose of investigating or assisting in an investigation of an injury to or death of an inmate for which the records were requested. Any records disclosed pursuant to this subsection remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution in accordance with s. 945.10(2).

(b) The investigative demand must be specific and limited in scope to the extent reasonably practicable in light of the purpose for which the protected health information or records are sought and must include a certification that:

1. The protected health information or records sought are relevant and material to a legitimate law enforcement inquiry;
2. There is a clear connection between the investigated incident and the inmate whose protected health information and records are sought; and
3. De-identified information could not reasonably be used.

Section 2. Section 944.151, Florida Statutes, is amended to read:

944.151 Safe operation and security of correctional institutions and facilities.—It is the intent of the Legislature that the Department of Corrections shall be responsible for the safe operation and security of the correctional institutions and facilities. The safe operation and security of the state's correctional institutions and facilities are is critical to ensure public safety and the safety of department employees and offenders, and to contain violent and chronic offenders until offenders are otherwise released from the department's custody pursuant to law. The Secretary of Corrections shall, at a minimum:

- (1) Appoint appropriate department staff to a safety and security review committee that which shall evaluate new safety and security technology, review and discuss current issues impacting state and private correctional institutions and facilities, and review and discuss other issues as requested by department management., at a minimum, be composed of: the inspector general, the statewide security coordinator, the regional security

~~coordinators, and three wardens and one correctional officer. The security review committee shall:~~

~~(2)(a) Direct appropriate department staff to establish a periodic schedule for the physical inspection of buildings and structures of each state and private correctional institution and facility to determine safety and security deficiencies. In scheduling the inspections, priority shall be given to older institutions and facilities; institutions and facilities that house a large proportion of violent offenders; institutions and facilities that have experienced a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse; and institutions and facilities that have experienced a significant number of escapes or escape attempts in the past.~~

~~(3)(b) Direct appropriate department staff to conduct or cause to be conducted announced and unannounced comprehensive security audits of all state and private correctional institutions and facilities. Priority shall be given to those institutions and facilities that have experienced a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or sexual abuse. In conducting the security audits, priority shall be given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a history of escapes or escape attempts. At a minimum, the audit must shall include an evaluation of the physical plant, landscaping, fencing, security alarms and perimeter lighting, and confinement, arsenal, key and lock, and entrance and exit inmate classification and staffing policies. The evaluation of the physical plant policies must include the identification of blind spots or areas where staff or inmates may be isolated and the deployment of video monitoring systems and other appropriate monitoring technologies in such spots or areas. Each correctional institution and facility shall be audited at least annually. The secretary shall annually report the audit general survey findings annually to the Governor and the Legislature.~~

~~(c) Adopt and enforce minimum security standards and policies that include, but are not limited to:~~

- ~~1. Random monitoring of outgoing telephone calls by inmates.~~
- ~~2. Maintenance of current photographs of all inmates.~~
- ~~3. Daily inmate counts at varied intervals.~~
- ~~4. Use of canine units, where appropriate.~~
- ~~5. Use of escape alarms and perimeter lighting.~~
- ~~6. Florida Crime Information Center/National Crime Information Center capabilities.~~
- ~~7. Employment background investigations.~~

~~(d) Annually make written prioritized budget recommendations to the secretary that identify critical security deficiencies at major correctional institutions.~~

(4)(e) Direct appropriate department staff to investigate and evaluate the usefulness and dependability of existing safety and security technology at state and private correctional the institutions and facilities, investigate and evaluate new available safety and security technology, available and make periodic written recommendations to the secretary on the discontinuation or purchase of various safety and security devices.

(5)(f) Direct appropriate department staff to contract, if deemed necessary, with security personnel, consulting engineers, architects, or other safety and security experts the department committee deems necessary for safety and security audits and security consultant services.

(6)(g) Direct appropriate department staff, in conjunction with the regional offices, to establish a periodic schedule for conducting announced and unannounced escape simulation drills.

(7)(2) Direct appropriate department staff to maintain and produce quarterly reports with accurate escape statistics. For the purposes of these reports, the term “escape” includes all possible types of escape, regardless of prosecution by the state attorney, and includes including offenders who walk away from nonsecure community facilities.

(8)(3) Direct appropriate department staff to adopt, enforce, and annually evaluate the emergency escape response procedures, which must shall at a minimum include the immediate notification and inclusion of local and state law enforcement through a mutual aid agreement.

(9) Direct appropriate department staff to review staffing policies and practices as needed.

(10) Direct appropriate department staff to adopt and enforce minimum safety and security standards and policies that include, but are not limited to:

(a) Random monitoring of outgoing telephone calls by inmates.

(b) Maintenance of current photographs of all inmates.

(c) Daily inmate counts at varied intervals.

(d) Use of canine units, where appropriate.

(e) Use of escape alarms and perimeter lighting.

(f) Use of the Florida Crime Information Center and National Crime Information Center capabilities.

(g) Employment background investigations.

(11)(4) Direct appropriate department staff to submit in the annual legislative budget request a prioritized summary of critical safety and security deficiencies and repair and renovation security needs.

Section 3. Subsection (5) of section 944.17, Florida Statutes, is amended to read:

944.17 Commitments and classification; transfers.—

(5) The department shall also refuse to accept a person into the state correctional system unless the following documents are presented in a completed form by the sheriff or chief correctional officer, or a designated representative, to the officer in charge of the reception process. The department may, at its discretion, receive such documents electronically:

(a) The uniform commitment and judgment and sentence forms as described in subsection (4).

(b) The sheriff's certificate as described in s. 921.161.

(c) A certified copy of the indictment or information relating to the offense for which the person was convicted.

(d) A copy of the probable cause affidavit for each offense identified in the current indictment or information.

(e) A copy of the Criminal Punishment Code scoresheet and any attachments thereto prepared pursuant to Rule 3.701, Rule 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or any other rule pertaining to the preparation of felony sentencing scoresheets.

(f) A copy of the restitution order or the reasons by the court for not requiring restitution pursuant to s. 775.089(1).

(g) The name and address of any victim, if available.

(h) A printout of a current criminal history record as provided through an FCIC/NCIC printer.

(i) Any available health assessments including medical, mental health, and dental, including laboratory or test findings; custody classification; disciplinary and adjustment; and substance abuse assessment and treatment information which may have been developed during the period of incarceration ~~before~~ prior to the transfer of the person to the department's custody. Available information shall be transmitted on standard forms developed by the department.

In addition, the sheriff or other officer having such person in charge shall also deliver with the foregoing documents any available presentence investigation reports as described in s. 921.231 and any attached documents. After a prisoner is admitted into the state correctional system, the

department may request such additional records relating to the prisoner as it considers necessary from the clerk of the court, the Department of Children and Families, or any other state or county agency for the purpose of determining the prisoner's proper custody classification, gain-time eligibility, or eligibility for early release programs. An agency that receives such a request from the department must provide the information requested. The department may, at its discretion, receive such information electronically.

Section 4. Paragraphs (b) and (d) of subsection (4) of section 944.275, Florida Statutes, are amended, and paragraph (f) is added to that subsection, to read:

944.275 Gain-time.—

(4)

(b) For each month in which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities, the department may grant incentive gain-time in accordance with this paragraph. The rate of incentive gain-time in effect on the date the inmate committed the offense which resulted in his or her incarceration shall be the inmate's rate of eligibility to earn incentive gain-time throughout the period of incarceration and shall not be altered by a subsequent change in the severity level of the offense for which the inmate was sentenced.

1. For sentences imposed for offenses committed prior to January 1, 1994, up to 20 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

2. For sentences imposed for offenses committed on or after January 1, 1994, and before October 1, 1995:

a. For offenses ranked in offense severity levels 1 through 7, under former s. 921.0012 or former s. 921.0013, up to 25 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

b. For offenses ranked in offense severity levels 8, 9, and 10, under former s. 921.0012 or former s. 921.0013, up to 20 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

3. For sentences imposed for offenses committed on or after October 1, 1995, the department may grant up to 10 days per month of incentive gain-time, ~~except that no prisoner is eligible to earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85 percent of the sentence imposed. For purposes of this subparagraph, credits awarded by the court for time physically incarcerated shall be credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by this~~

~~section, a prisoner shall not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted pardon or clemency.~~

(d) Notwithstanding the monthly maximum awards of incentive gain-time under subparagraphs (b)1., and 2., and 3., the education program manager shall recommend, and the Department of Corrections may grant, a one-time award of 60 additional days of incentive gain-time to an inmate who is otherwise eligible and who successfully completes requirements for and is, or has been during the current commitment, awarded a high school equivalency diploma or vocational certificate. Under no circumstances may an inmate receive more than 60 days for educational attainment pursuant to this section.

(f) An inmate who is subject to subparagraph (b)3. is not eligible to earn or receive gain-time under paragraph (a), paragraph (b), paragraph (c), or paragraph (d) or any other type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85 percent of the sentence imposed. For purposes of this paragraph, credits awarded by the court for time physically incarcerated shall be credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by this section, a prisoner may not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted pardon or clemency.

Section 5. Subsection (2) of section 944.597, Florida Statutes, is amended to read:

944.597 Transportation and return of prisoners by private transport company.—

(2) The department shall include, but ~~is~~ shall not be limited to, the following requirements in any contract with any transport company:

(a) That the transport company shall maintain adequate liability coverage with respect to the transportation of prisoners.;

(b) That the transport company shall require its employees to complete at least 100 hours of training before transporting prisoners. The curriculum for such training must be approved by the department and include instruction in:

1. Use of restraints;
2. Searches of prisoners;

3. Use of force, including use of appropriate weapons and firearms;

4. Cardiopulmonary resuscitation;

5. Map reading; and

~~6. Defensive driving. personnel employed with the transport company who are based in the state shall meet the minimum standards in accordance with s. 943.13 and that personnel employed with the transport company based outside of Florida shall meet the minimum standards for a correctional officer or law enforcement officer in the state where the employee is based;~~

(c) That the transport company shall adhere to standards which provide for humane treatment of prisoners while in the custody of the transport company.;

(d) That the transport company shall submit reports to the department regarding incidents of escape, use of force, and accidents involving prisoners in the custody of the transport company.

Section 6. Section 945.36, Florida Statutes, is amended to read:

945.36 Exemption from health testing regulations for law enforcement personnel conducting drug tests on inmates and releasees.—

(1) Any law enforcement officer, state or county probation officer, ~~or~~ employee of the Department of Corrections, or employee of a contracted community correctional center who is certified by the Department of Corrections pursuant to subsection (2), is exempt from part I of chapter 483, for the limited purpose of administering a urine screen drug test to:

(a) Persons during incarceration;

(b) Persons released as a condition of probation for either a felony or misdemeanor;

(c) Persons released as a condition of community control;

(d) Persons released as a condition of conditional release;

(e) Persons released as a condition of parole;

(f) Persons released as a condition of provisional release;

(g) Persons released as a condition of pretrial release; or

(h) Persons released as a condition of control release.

(2) The Department of Corrections shall develop a procedure for certification of any law enforcement officer, state or county probation officer, ~~or~~ employee of the Department of Corrections, or employee of a contracted

community correctional center to perform a urine screen drug test on the persons specified in subsection (1).

Section 7. Section 958.11, Florida Statutes, is amended to read:

958.11 Designation of institutions and programs for youthful offenders; assignment from youthful offender institutions and programs.—

(1) The department shall by rule designate separate institutions and programs for youthful offenders and shall employ and utilize personnel specially qualified by training and experience to operate all such institutions and programs for youthful offenders. Youthful offenders who are at least 14 years of age but who have not yet reached the age of 18 ~~19~~ years at the time of reception shall be separated from youthful offenders who are 18 ~~19~~ years of age or older, ~~except that if the population of the facilities designated for 14-year-old to 18-year-old youthful offenders exceeds 100 percent of lawful capacity, the department may assign 18-year-old youthful offenders to the 19-24 age group facility.~~

(2) Youthful offender institutions and programs shall contain only those youthful offenders sentenced as such by a court or classified as such by the department, pursuant to the requirements of subsections ~~(7)~~ ~~(4)~~ and ~~(9)~~ ~~(6)~~, except that under special circumstances select adult offenders may be assigned to youthful offender institutions. All female youthful offenders of all ages may continue to be housed together at those institutions designated by department rule ~~until such time as institutions for female youthful offenders are established or adapted to allow for separation by age and to accommodate all custody classifications.~~

(3) The department may assign a youthful offender who is 18 years of age or older to a facility in the state correctional system which is not designated for the care, custody, control, and supervision of youthful offenders or an age group only in the following circumstances:

(a) If the youthful offender is convicted of a new crime that ~~which~~ is a felony under the laws of this state.

(b) If the youthful offender becomes such a serious management or disciplinary problem resulting from serious violations of the rules of the department that his or her original assignment would be detrimental to the interests of the program and to other inmates committed thereto.

(c) If the youthful offender needs medical treatment, health services, or other specialized treatment otherwise not available at the youthful offender facility.

(d) If the department determines that the youthful offender should be transferred outside of the state correctional system, as provided by law, for services not provided by the department.

(e) If bed space is not available in a designated community residential facility, the department may assign a youthful offender to a community residential facility, provided that the youthful offender is separated from other offenders insofar as is practical.

(4) The department may assign a youthful offender whose age does not exceed 17 years to an adult facility for medical or mental health reasons, for protective management, or for close management. The youthful offender shall be separated from offenders who are 18 years of age or older.

~~(5)(f) If the youthful offender was originally assigned to a facility designated for 14- to 17-year-old 14-year-old to 18-year-old youthful offenders, but subsequently reaches the age of 18 19 years, the department may retain the youthful offender in a the facility designated for 18- to 22-year-old youthful offenders if the department determines that it is in the best interest of the youthful offender and the department.~~

(6) If the youthful offender was originally assigned to a facility designated for 18- to 22-year-old youthful offenders, but subsequently reaches the age of 23 years, the department may retain the offender in the facility until the age of 25 if the department determines that it is in the best interest of the youthful offender and the department.

~~(g) If the department determines that a youthful offender originally assigned to a facility designated for the 19-24 age group is mentally or physically vulnerable by such placement, the department may reassign a youthful offender to a facility designated for the 14-18 age group if the department determines that a reassignment is necessary to protect the safety of the youthful offender or the institution.~~

~~(h) If the department determines that a youthful offender originally assigned to a facility designated for the 14-18 age group is disruptive, incorrigible, or uncontrollable, the department may reassign a youthful offender to a facility designated for the 19-24 age group if the department determines that a reassignment would best serve the interests of the youthful offender and the department.~~

~~(7)(4) The department shall continuously screen all institutions, facilities, and programs for any inmate who meets the eligibility requirements for youthful offender designation specified in s. 958.04(1)(a) and (c) whose age does not exceed 24 years and whose total length of sentence does not exceed 10 years, and the department may classify and assign as a youthful offender any inmate who meets the criteria of this subsection.~~

(8)(5) The department shall coordinate all youthful offender assignments or transfers and shall review and maintain access to full and complete documentation and substantiation of all such assignments or transfers of youthful offenders to or from facilities in the state correctional system which are not designated for their care, custody, and control, except assignments or transfers made pursuant to paragraph (3)(c).

(9)(6) The department may assign to a youthful offender facility any inmate, except a capital or life felon, whose age does not exceed 19 years but who does not otherwise meet the criteria of this section, if the department determines that such inmate’s mental or physical vulnerability would substantially or materially jeopardize his or her safety in a nonyouthful offender facility. Assignments made under this subsection shall be included in the department’s annual report.

Section 8. Paragraph (e) of subsection (1) of section 921.002, Florida Statutes, is amended to read:

921.002 The Criminal Punishment Code.—The Criminal Punishment Code shall apply to all felony offenses, except capital felonies, committed on or after October 1, 1998.

(1) The provision of criminal penalties and of limitations upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the Legislature. The Legislature, in the exercise of its authority and responsibility to establish sentencing criteria, to provide for the imposition of criminal penalties, and to make the best use of state prisons so that violent criminal offenders are appropriately incarcerated, has determined that it is in the best interest of the state to develop, implement, and revise a sentencing policy. The Criminal Punishment Code embodies the principles that:

(e) The sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law, and may not be shortened if the defendant would consequently serve less than 85 percent of his or her term of imprisonment as provided in s. ~~944.275(4)~~ 944.275(4)(b)3. The provisions of chapter 947, relating to parole, shall not apply to persons sentenced under the Criminal Punishment Code.

Section 9. This act shall take effect July 1, 2017.

Approved by the Governor May 23, 2017.

Filed in Office Secretary of State May 23, 2017.