

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1788

SPONSOR: Criminal Justice Committee and Senators Dawson-White, Meek, and Campbell

SUBJECT: Sexual Violence in Prisons

DATE: April 20, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barrow</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Senate Bill 1788 would create the “Protection Against Sexual Violence in Florida Jails and Prisons Act.”

The CS would require correctional officers to be provided special training through the Criminal Justice Standards and Training Commission regarding sexual assault identification and prevention methods and techniques.

The Department of Corrections (DOC), private corrections vendors operating prisons or jails, or counties with jails would be authorized to provide specified information and programming to inmates within the first 48 hours of being incarcerated if resources are available to do so. To the extent funds are available, sexual assault counseling should be provided to any inmate that reports being victimized by a sexual assault and asks for such counseling.

The CS would create a third-degree felony for employees of a local detention facility, whether publicly or privately operated, if such employees engage in sexual misconduct.

The provisions of this CS would take effect October 1, 1999.

This CS substantially amends sections 944.35 and 951.23, and creates section 951.221 of the Florida Statutes.

## II. Present Situation:

### Rape in Prisons and Jails

The exact number of sexually assaulted prisoners is unknown, but a conservative estimate, based on extrapolations of two decades of surveys, is that more than 290,000 males are sexually assaulted behind bars every year. By comparison, the Bureau of Justice Statistics estimates that

there are 135,000 rapes of women inmates a year nationwide, though many groups believe the number is higher.

Although few studies exist of the prevalence of sexual assaults in prisons and jails, a 1995 study surveying inmates in the Nebraska correctional system provides an indication of the extent and nature of sexual assault in prison. *See, C. Struckman-Johnson, et al., A Survey of the Dynamics and Emotional Consequences of Prisoner Sexual Assault (May 1995).* The study found that 20 percent of the prisoners surveyed reported that they had been pressured or forced into sexual contact against their will. The sexual coercion rates were 22 percent for men and 7 percent for women.

When the respondents in the survey were asked how often the sexual coercion occurred, 27 percent reported “once,” 29 percent reported “2 to 5 times,” 23 percent stated “6 to 10 times,” 10 percent stated “11 to 50 times,” and 4 percent stated “51 to 100 times.” About 52 percent stated they were pressured or forced to engage in anal or vaginal intercourse, 8 percent had participated in oral sex, and 15 percent had their genitals touched. About 10 percent of the respondents said that perpetrators used only pressure tactics against them such as verbal persuasion, bribery, or blackmail. Over 76 percent of the respondents said that perpetrators used force tactics such as intimidation by size and strength, threats of harm, physical restraint, and use of a weapon. Half of the respondents were assaulted by a single perpetrator and 40 percent were assaulted by two to five perpetrators. In a majority of cases, the perpetrators were other inmates. However, 18 percent of the respondents reported that prison staff had participated in the incident.

The study reported that about 90 percent of the respondents experienced significant negative emotional consequences from the incident. Nearly 50 percent of the respondents did not tell anyone about the incidents. Only 29 percent of the respondents reported the incident to prison staff or administrators and only 17 percent confided in counselors and clergy.

On June 6, 1994, the U.S. Supreme Court decided a case in which a prisoner sued Federal prison officials for failing to prevent his rape. *See, Farmer v. Brennan, 511 U.S. 825 (1994).* Inmate Farmer sought damages and an injunction alleging that the federal prison warden had acted with “deliberate indifference” to Farmer’s safety in violation of the 8th Amendment. Farmer alleged that prison officials knew that the prison had a violent environment and a history of inmate assaults and that Farmer, because of his unique circumstances as a transsexual with feminine characteristics, would have been particularly vulnerable to sexual attack. A District Court ruled that failure to prevent inmate assaults violates the 8th Amendment only if prison officials were “reckless in a criminal sense” or had actual knowledge of a potential danger and that the officials lacked such knowledge in this particular case because Farmer never expressed any safety concerns to them. On appeal, the U.S. Supreme Court ruled that the District Court may have erred in placing such weight on the respondent’s failure to notify respondents. The Court also reiterated that prison officials may violate the 8th Amendment by acting with “deliberate indifference” to inmate health and safety only if the official knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to prevent it.

## **Statutes on Custodial Sexual Conduct**

Under federal and state laws of the U.S., rape and other forms of coerced sexual contact are prohibited by general criminal laws that apply to all persons regardless of the setting in which the coerced sexual contact occurs. In addition, however, laws exist that recognize the potential for abusive relationships in ostensibly consensual relationships between female inmates and correctional officers and criminalize custodial sexual contact. Thirty-six states, including the District of Columbia and the federal government, have laws specifically prohibiting sexual relations between jail and prison staff and inmates. Florida is one of the states that criminalizes sexual contact between correctional employees of the Department of Corrections and persons under the department's custody.

Nationwide, the custodial sexual contact laws vary in scope and nature. For example, in 13 states and the District of Columbia, including Florida, it is a criminal offense even if the inmate consented to the sexual activity. Three states, Arizona, Delaware, and Nevada, make it a crime for an inmate as well as a correctional employee to engage in sexual activity with each other.

In 1998, federal legislation was introduced in Congress to encourage states to criminalize sexual conduct between correctional staff and prisoners by financially penalizing states that do not have such laws. It was called the "Violence Against Women Act of 1998" and was introduced in the House of Representatives. The proposed legislation also required that the Department of Justice establish a national, toll-free telephone "hotline" for prisoners to report sexual contact with correctional staff. Callers were to be provided with counseling and referred for assistance. Under the proposed legislation, the Attorney General would be required to provide an annual report on the number and status of sexual assaults or abuse complaints in prisons and jails. The proposed legislation was not considered before the Congressional term ended.

## **Florida's Sexual Misconduct Statutes**

Section 944.35, F.S., prohibits employees of the Department of Corrections from engaging in sexual misconduct with an inmate or any other person supervised by the department in the community. Such conduct is a third-degree felony. "Sexual misconduct" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. It does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee's duty. Florida's law is one that can be characterized as "strict liability." Other than the two express exceptions, the intent of an officer or employee and the consent of an inmate or person being supervised are irrelevant to a charge of sexual misconduct.

Florida's law also requires correctional employees to report their knowledge or reasonable suspicions of sexual misconduct. The failure to report, or reporting inaccurately, is a first-degree misdemeanor. Any attempt to coerce a person required to report is a third-degree felony.

## **Faith-Based Correctional Programming**

Numerous religious groups operate faith-based rehabilitation programs within state prisons and private correctional facilities. These programs involve inmates who voluntarily choose to

participate in the program and often times tend to be for inmates nearing release from prison. In 1997, the Legislature created s. 944.803, F.S., to read, in part: “The Legislature finds . . . that faith-based programs . . . have the potential to facilitate inmate institutional adjustment, help inmates assume personal responsibility, and reduce recidivism.”

According to a 1993 report by the United States Department of Justice, faith-based activities attract more participation than any other type of personal enhancement program currently offered in prisons. In fact, nearly one in every three inmates nationwide are involved in some form of faith-based correctional program.

Florida is currently not operating residential religious rehabilitation programs within the prison system. However, a number of non-residential programs are currently functioning and implemented through the Chaplaincy Services Office within the Department of Corrections.

### **Chaplaincy Services in Florida**

The Office of Chaplaincy Services within the Department of Corrections provides pastoral care to inmates, staff, and families of all faiths. The office presents that the role of chaplains within the prisons is to assist the offender in responding to the realities of their actions prior to, during, and after incarceration. The office states it’s goal is “to assist offenders in discovering their religious faith or in developing their personal faith” and to work “in partnership with the community to accomplish mutually beneficial results.”

Currently there are 105 ministers who are responsible for addressing the religious and spiritual needs of more than 65,000 inmates and correctional staff who live and work in Florida’s correctional institutions.

### **Criminal Justice Standards and Training Commission**

The Criminal Justice Standards and Training Commission within the Florida Department of Law Enforcement administers the officer standards and training provisions of chapter 943, F.S. The Criminal Justice Standards and Training Commission oversees officers in the disciplines of law enforcement, corrections, and correctional probation. The primary goals and responsibilities of the Commission are to certify and revoke the certification of officers, to improve the delivery of quality training, to establish and monitor compliance with uniform employment and training standards, and to increase the professionalism of law enforcement and correctional officers throughout the state.

According to the Department of Corrections, training on the issue of sexual assaults is currently addressed in the objectives for the “assault by another inmate” component of Officer Basic Recruit Training under the “interpersonal-skills orientation and crisis intervention” section of the training curriculum. Officers receive additional instruction on “sex crimes” during the “institution criminalities” portion of basic officer training. Post-basic officer training provides officers with additional specialized training entitled “sex crimes investigation.”

## **Inspector General of the Department of Corrections**

The Office of the Inspector General (IG) of the Department of Corrections is responsible for conducting criminal, administrative, and internal affairs investigations that involve employees of the department and persons who are under the custody of the department. Criminal investigations are referred to the appropriate State Attorney's Office (SAO) for prosecution. Administrative and internal affairs investigations are referred to DOC management for appropriate follow-up action.

In FY 1997-98, there were 13,655 incidents reported to the Office of the Inspector General. Of these incidents, 2,807 official investigations were assigned for further investigation, 2,776 investigations were completed, and 250 cases were forwarded to the SAO for criminal prosecution.

The department's IG has responsibility for the Bureau of Inmate Grievance Appeals. It is responsible for providing inmates with a channel for the administrative settlement of legitimate complaints. The grievance process provides a means for the internal resolution of conflicts or issues involving inmates. Additionally, the grievance procedure provides a written record of inmate allegations in the event of subsequent judicial or administrative review.

## **Oversight of Florida's Jails**

Between 1976 and 1996, the Florida Department of Corrections (DOC) was required by statute to inspect all county and municipal jails for compliance with minimum safety and health care standards, which were authorized by statute and specified by administrative rules. Prior to 1996, the department performed biannual inspections of all jails for the purpose of determining compliance with minimum standards adopted through administrative rule. *See*, Chapter 33-8, *Florida Administrative Code* (1993).

During the 1995 Legislative Session, funding for the inspection program within the DOC was substantially reduced, with the elimination of four inspector positions. However, the statutory requirement for the DOC to conduct annual inspections was not eliminated and inspections continued during 1995. In response to a reduction of four jail inspector positions in 1995, the DOC abolished the rule requirement in 1995 for jail administrators to report incidents within the facilities to the DOC for investigation.

Prior to the funding reduction in 1995 of four inspector positions, the DOC required that certain incidents occurring within a county jail be reported to the DOC for investigation. However, the requirement was not by statute, but rather by administrative rule. Chapter 33-8.002(9), *Florida Administrative Code* (1993), provided that the officer-in-charge shall immediately notify the appropriate inspector or the office of the chief inspector of all incidents concerning:

- (a) inmate deaths;
- (b) serious injuries to inmates or employees;
- (c) escapes involving three or more inmates;
- (d) escapes involving anyone sentenced to death or awaiting trial for a capital offense;
- (e) escapes or attempted escapes, regardless of number, where violence was involved, hostages taken, guns or other weapons used;

- (f) strikes involving seven or more inmates;
- (g) riots; and
- (h) any other serious or unusual circumstances that occur.

During calendar year 1994, the DOC conducted a total of 586 investigations within the county jails. Of this total, 6 were for allegations of sexual battery.

During the 1996 Legislative Session, s. 951.23, F.S., was substantially amended to remove the DOC's regulatory authority over the jails but allowed the DOC to enter into agreements with individual counties to conduct consultatory inspections. The authority of the DOC to conduct consultatory inspections provided for in s. 951.23 (10), F.S., contains a "sunset provision" and is specifically repealed "effective October 1, 1999" unless re-enacted by the Legislature.

### **The Population of Florida's Jails**

According to the *1998 Annual Report of Florida County Detention Facilities' Average Inmate Population*, which is prepared by the DOC, there were 105 adult county detention facilities, or "jails," throughout Florida's 67 counties. Of the 105 county jails, 81 of the facilities are operated by the sheriff as the chief correctional officer, 20 are operated by the boards of county commissioners, and 4 facilities are operated in three counties by contract between the boards of county commissioners and Corrections Corporation of America.

According to the Florida Corrections Commission's 1998 Annual Report, beginning in 1996, some counties stopped reporting to the DOC on adult county jail populations. With lapses in the provision of information by jails, it is impossible to compile complete and accurate information about the jail population in Florida. Despite some jails missing information for various months, the *1998 Annual Report of Florida County Detention Facilities' Average Inmate Population* reports that the average daily population in Florida's jails was 49,212, which is up 7 percent from 1997. The average daily population is representative of 88.5 percent males and 11.5 percent females, which is a gender percentage-ratio that has remained constant over the past several years.

### **The DOC's Inmate Orientation Program**

The Department of Corrections reports that all inmates are given an orientation upon admission to the prison system. During this orientation, inmates are advised of the option to be placed in special housing if the inmate feels the need for protection from another inmate. Special housing consists of administrative confinement, protective management, close management, and disciplinary confinement. In accordance with the department's policy (PPD 1.04.05), inmates are instructed at orientation that if protection from a staff member or any other person other than an inmate is desired, another staff member is to be notified. The inspector's general office must then be notified. An inmate may be placed in administrative confinement or transferred to another correctional institution to provide necessary protection.

### **III. Effect of Proposed Changes:**

#### **Title of Act**

Committee Substitute for Senate Bill 1788 would create the “Protection Against Sexual Violence in Florida Jails and Prisons Act.”

#### **Specialized Training of Correctional Officers at the State and Local Levels**

The CS would require correctional officers to be provided special training through the Criminal Justice Standards and Training Commission regarding sexual assault identification and prevention methods and techniques. The CS would require that the Commission include in its courses an explanation of the offense of sexual misconduct by employees of the Department of Corrections. The CS would also require all local detention facilities to develop and implement an employee training program to identify and prevent sexual assault that would provide at least 2 hours of training to each employee of local detention facilities.

#### **Specialized Inmate Orientation at the State and Local Level**

The Department of Corrections, private corrections vendors operating prisons or jails, or counties with jails would be allowed to provide specified information and programming to inmates within the first 48 hours of being incarcerated. If the state, local governments, or private vendors choose to implement the specialized inmate orientation, the CS mandates that the initial orientation program include the following:

- ▶ A realistic presentation on how to avoid sexual violence while incarcerated.
- ▶ Information on how to prevent and reduce the risk of sexual violence.
- ▶ Information on available sexual assault counseling.
- ▶ The procedure for requesting sexual assault counseling.

#### **Permission to Provide Sexual Assault Counseling**

The CS would authorize counseling on sexual assault to any prisoner who reports he or she was victimized by a sexual assault and requests it in a local jail or a prison regardless of whether it is publicly or privately operated. It would allow sexual assault counseling to be provided by faith-based organizations or community outreach organizations that have been approved by the Department of Corrections. The department, counties, cities, and private corrections vendors would also be authorized to employ trained or experienced sexual assault counselors to provide counseling that would be authorized by this CS.

#### **Sexual Assault Information to be Provided to Inmates**

The CS specifies that literature and tapes on rape and rape trauma syndrome that are developed or sponsored by community rape crisis centers or state or national nonprofit organizations with expertise in sexual assault issues must not be barred from any prison or local detention facility. However, the CS authorizes an administrator of a correctional facility to bar an item if he or she determines that the item is “unsuitable.” The CS would require sexual assault literature to be

maintained in specified areas. The CS requires that the literature be “left out” in areas where prisoners “can take it without calling attention to themselves.” Examples of such places are provided, which are libraries, medical clinics, recreation halls, mental health offices, and educational areas.

### **Creating an Offense for Sexual Misconduct By Jail Employees**

A new statutory section would create a third-degree felony for employees of a local detention facility, whether publicly or privately operated, if such employees engage in sexual misconduct with an inmate or an offender supervised by the facility without committing the crime of sexual battery. Sexual misconduct is defined in s. 944.35 (3) (b) 1., F.S. That statutory section defines it as the oral, anal, or vaginal penetration by, or union with, the sexual organ of another, or the anal or vaginal penetration of another by any other object. The definition of sexual misconduct would not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee’s duty. In cases of sexual misconduct, the consent of the inmate would not be a defense to criminal charges of sexual misconduct against a jail employee.

The CS would also provide that such actions by an employee of a local jail would constitute grounds for dismissal by the facility administrator and a permanent bar from future employment in any capacity in a correctional facility.

### **Effective Date**

The provisions of this CS would take effect October 1, 1999.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

## **V. Economic Impact and Fiscal Note:**

### **A. Tax/Fee Issues:**

None.



**B. Private Sector Impact:**

Rape and sexual assault counselors and educators would experience a positive fiscal impact if the Department of Corrections and county jails become motivated to hire such counselors and educators as a result of the permissive language in this CS. The positive fiscal impact upon such counselors and educators is indeterminate.

All employee training, inmate programming, and inmate information is optional. Therefore, there would be no fiscal impact upon private corrections vendors.

**C. Government Sector Impact:**

The Department of Law Enforcement has reported that it would experience an insignificant negative fiscal impact as a result of the CS’s mandate that the Criminal Justice Standards and Training Commission develop course materials for correctional officer training. The materials would have to explain the criminal ramifications of not reporting an offense of sexual misconduct and to teach sexual assault identification and prevention methods and techniques.

There is no requirement that the Department of Corrections and county jails hire rape and sexual assault counselors and educators, thus, there is no fiscal impact. Additionally, it is permissive language couched in terms of “to the extent funding is available” that prisons and jails provide various information and programming for inmates related to sexual assaults. Because of the permissive and conditional context in which the dissemination of information and provision of programming to inmates is presented in the CS, there would be no fiscal impact upon the state, counties, municipalities, or private vendors.

If the Department of Corrections chose to implement the provisions in the CS, the following partial cost estimates reflect the expenditures the department would make:

- **Faith-based counseling services @ \$165,000**

One-time or limited costs would be as follows:

- **Videos and literature @ \$55,000**
- **Additional copying cost of Classification handbook materials @ \$2,500.**
- **Training program for security staff to deliver orientation information @ \$1,000.**

Annual projections costs are as follows:

Annual renewal of faith-based services contract	@ \$165,000
Brochures, workbooks, etc.	@ \$ 27,500
Update videos and books	@ \$ 13,750
<b>PARTIAL Projected recurring annual costs:</b>	<b>\$ 206,250</b>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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