

By the Committee on Criminal Justice and Senators  
Dawson-White, Meek and Campbell

307-2196-99

1                                   A bill to be entitled  
2           An act relating to sexual violence in prisons;  
3           creating the "Protection Against Sexual  
4           Violence in Florida Jails and Prisons Act";  
5           amending ss. 944.35, 951.23, F.S.; requiring  
6           the Criminal Justice Standards and Training  
7           Commission to develop a course relating to  
8           sexual assault identification and prevention as  
9           part of the correctional officer training  
10          program; authorizing the department and county  
11          and municipal detention facilities to provide  
12          an orientation program and counseling; creating  
13          s. 951.221, F.S.; prohibiting sexual misconduct  
14          by employees of county or municipal detention  
15          facilities; providing for termination of  
16          employment under certain circumstances;  
17          providing penalties; providing an effective  
18          date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22           Section 1. This act may be cited as the "Protection  
23 Against Sexual Violence in Florida Jails and Prisons Act."

24           Section 2. Paragraph (b) of subsection (3) and  
25 subsection (4) of section 944.35, Florida Statutes, are  
26 amended, and subsection (5) is added to that section, to read:

27           944.35 Authorized use of force; malicious battery and  
28 sexual misconduct prohibited; reporting required; penalties.--

29           (3)

30           (b)1. As used in this paragraph, the term "sexual  
31 misconduct" means the oral, anal, or vaginal penetration by,

1 or union with, the sexual organ of another or the anal or  
2 vaginal penetration of another by any other object, but does  
3 not include an act done for a bona fide medical purpose or an  
4 internal search conducted in the lawful performance of the  
5 employee's duty.

6 2. Any employee of the department who engages in  
7 sexual misconduct with an inmate or an offender supervised by  
8 the department in the community, without committing the crime  
9 of sexual battery, commits a felony of the third degree,  
10 punishable as provided in s. 775.082, s. 775.083, or s.  
11 775.084.

12 3. The consent of the inmate or offender supervised by  
13 the department in the community to any act of sexual  
14 misconduct shall not be raised as a defense to a prosecution  
15 under this paragraph.

16 4. This paragraph does not apply to any employee of  
17 the department who is legally married to an inmate or an  
18 offender supervised by the department in the community, nor  
19 does it apply to any employee who has no knowledge, and would  
20 have no reason to believe, that the person with whom the  
21 employee has engaged in sexual misconduct is an inmate or an  
22 offender under community supervision of the department.

23 (4)(a) Any employee required to report pursuant to  
24 this section who knowingly or willfully fails to do so, or who  
25 knowingly or willfully prevents another person from doing so,  
26 commits a misdemeanor of the first degree, punishable as  
27 provided in s. 775.082 or s. 775.083.

28 (b) Any person who knowingly or willfully submits  
29 inaccurate, incomplete, or untruthful information with regard  
30 to reports required in this section commits a misdemeanor of  
31

1 the first degree, punishable as provided in s. 775.082 or s.  
2 775.083.

3 (c) Any person who knowingly or willfully coerces or  
4 threatens any other person with the intent to alter either  
5 testimony or a written report regarding an incident where  
6 force was used or an incident of sexual misconduct commits a  
7 felony of the third degree, punishable as provided in s.  
8 775.082, s. 775.083, or s. 775.084.

9  
10 As part of the correctional officer training program, the  
11 Criminal Justice Standards and Training Commission shall  
12 develop course materials for inclusion in the appropriate  
13 required course specifically designed to explain the  
14 parameters of this subsection and to teach sexual assault  
15 identification and prevention methods and techniques.

16 (5) State correctional institutions and private  
17 correctional facilities housing state inmates may, to the  
18 extent that funds are available:

19 (a) Provide an initial orientation program on sexual  
20 assault to all inmates within 48 hours after incarceration.  
21 The program shall provide at least the following information:

22 1. A realistic presentation on how to avoid sexual  
23 violence while incarcerated.

24 2. Information on how to prevent and reduce the risk  
25 of sexual violence.

26 3. Information on available sexual assault counseling.

27 4. The procedure for requesting sexual assault  
28 counseling.

29 (b) Provide sexual assault counseling to any inmate  
30 who has reported being victimized by a sexual assault and  
31 requests such counseling.

1           1. Sexual assault counseling may be provided by  
2 trained or experienced psychological specialists employed by  
3 the Department of Corrections, by a private correctional  
4 vendor under contract with the Correctional Privatization  
5 Commission, or by trained or experienced representatives of a  
6 faith-based organization, community outreach organization, or  
7 other appropriate organization that has been approved by the  
8 facility administrator to provide such programs.

9           2. Literature and tapes on rape and rape trauma  
10 syndrome developed or sponsored by community rape crisis  
11 centers or state or national nonprofit organizations with  
12 expertise in sexual assault issues shall not be barred from  
13 any state correctional institution unless the administrator  
14 determines that a particular item is unsuitable. Such  
15 literature provided to a state correctional institution shall  
16 be left out in areas where inmates can take it without calling  
17 attention to themselves, such as in the library, medical  
18 clinic, wellness areas, mental health offices, and educational  
19 areas.

20           Section 3. Section 951.221, Florida Statutes, is  
21 created to read:

22           951.221 Sexual activity between detention facility  
23 employees and inmates; penalties.--

24           (1) Any employee of a county or municipal detention  
25 facility or of a private detention facility under contract  
26 with a county commission who engages in sexual misconduct, as  
27 defined in s. 944.35(3)(b)1., with an inmate or an offender  
28 supervised by the facility without committing the crime of  
29 sexual battery commits a felony of the third degree,  
30 punishable as provided in s. 775.082, s. 775.083, or s.  
31 775.084. The consent of an inmate to any act of sexual

1 misconduct shall not be raised as a defense to prosecution  
2 under this section.

3 (2) Notwithstanding prosecution, any violation of the  
4 provisions of this section, as determined by the administrator  
5 of the facility, shall constitute sufficient cause for  
6 dismissal from employment, and such person shall not again be  
7 employed in any capacity in connection with the correctional  
8 system.

9 Section 4. Present subsection (10) of section 951.23,  
10 Florida Statutes, 1998 Supplement, is renumbered as subsection  
11 (11), and a new subsection (10) is added to that section, to  
12 read:

13 951.23 County and municipal detention facilities;  
14 definitions; administration; standards and requirements.--

15 (10) PROTECTION AGAINST SEXUAL VIOLENCE.--County  
16 detention facilities, municipal detention facilities, and  
17 private detention facilities under contract with a county  
18 commission may, to the extent funds are available:

19 (a) Provide information on sexual assault to all  
20 inmates within 48 hours after detention. The information  
21 should address:

22 1. Realistic methods and suggestions for how to avoid  
23 sexual violence while incarcerated.

24 2. Methods and suggestions for how to prevent and  
25 reduce the risk of sexual violence.

26 (b) If the detention facility provides or authorizes  
27 the provision of sexual assault counseling, inform inmates  
28 within 48 hours after detention on the availability of sexual  
29 assault counseling and the procedure for requesting sexual  
30 assault counseling provided by facility staff, vendors, or  
31 community based, not-for-profit organizations.

