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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CORRECTIONS
ANALYSIS**

BILL #: HB 1967

RELATING TO: Sexual Violence in Prisons

SPONSOR(S): Representative Roberts & Others

COMPANION BILL(S): SB 1788

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CORRECTIONS YEAS 6 NAYS 0
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
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 - (5)
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I. SUMMARY:

HB 1967 creates the Protection Against Sexual Violence in Florida Jails and Prisons Act. Provisions include:

- requiring the Criminal Justice Standards and Training Commission to develop course materials for inclusion in the appropriate required course specifically designed to explain and teach sexual assault identification and prevention methods and techniques.
- requiring the state and private correctional facilities to provide an initial orientation program on sexual assault within 48 hours of incarceration; requires development of a course relating to sexual assault identification and prevention methods as part of the officer training curriculum;
- prohibiting sexual activity between detention facility employees and prisoners;
- providing penalties and termination of employment in certain circumstances;
- requiring county and municipal detention facilities to provide an initial orientation program on sexual assault within 48 hours of incarceration; requires development of a course relating to sexual assault identification and prevention methods as part of the officer training curriculum; and
- requiring the reporting of sexual assault by employees of correctional and detention facilities.

According to the Department of Corrections, this bill will result in a financial impact of \$228,500 in FY 1999-2000 and annual reoccurring costs of \$206,500. There will also be an indeterminate financial impact upon county detention facilities.

On April 5, the Corrections Committee favorably adopted a strike everything amendment which will travel with the bill. The amendment removed provision for the toll-free telephone access in reporting incidents of sexual assault. Technical changes were made to the language. The capability of psychological specialists to provide counseling in public and private correctional facilities was provided through the amendment.

This bill provides for an effective date of October 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. 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.

While prison officials privately concede the existence of this widespread pattern of abuse, prisoner and inmate victims are ignored in national rape statistics and estimates. A primary reason is that the rape of men has long been a taboo subject, frightening victims away from even acknowledging that they have been attacked and asking for help.

The experience of sexual violence usually extends beyond a single incident, often becoming a daily assault. Psychologists and rape counselors believe that the pent-up rage caused by these assaults may cause victims, especially if they do not receive psychological treatment, to exhibit violent behavior once they return to their communities. Some may become rapists, seeking to "regain their manhood" through the same violent means by which they believe it was lost.

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.¹ A major finding from the study is that 20% of the prisoners surveyed reported that they had been pressured or forced into sexual contact against their will. The sexual coercion rates were 22% for men and 7% for women. When asked how often this occurred, 27% said once, 29% said 2-5 times, 23% said 6-10 times, 10% said 11-50 times, and 4% said 51 -100 times. About 52% said they were pressured or forced to engage in anal or vaginal intercourse, 8% had participated in oral sex, and 15% had their genitals touched. About 10% of the respondents said that perpetrators used only pressure tactics against them such as verbal persuasion, bribery, or blackmail. Over 76% 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% were assaulted by two to five perpetrators. In a majority of cases, the perpetrators were other inmates. However, 18% of the respondents reported that prison staff had participated in the incident.

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

On June 6, 1994, the U.S. Supreme Court decided a case [Farmer v. Brennan, Warden - No. 92-7247] in which a prisoner sued Federal prison officials for failing to prevent his rape. 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

¹ A Survey of the Dynamics and Emotional Consequences of Prisoner Sexual Assault by Cindy Struckman-Johnson, et al - May 1995.

history of inmate assaults and that Farmer, because of his unique circumstances, 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.

Rape Trauma Syndrome in Male Prisoners

Rape Trauma Syndrome or RTS is a form of post-traumatic stress disorder (PTSD, familiar to many military combat veterans) which has been recognized and described only in the past two decades. According to Stephen Donaldson, President of Stop Prisoner Rape, Inc., RTS in some form and degree affects virtually all victims of sexual assault, including inmates who avoided a completed rape. Verbal sexual aggression without physical coercion, a common experience for prisoners, may leave the target of such abuse psychologically damaged. For male survivors of an actual rape the disorder is likely to be severe and even life-threatening. Suicidal impulses are common among males who have experienced their first or second rape.

A component of RTS is the total loss of control over one's own body, resulting in feelings of vulnerability and powerlessness. This makes control and power key psychological issues for rape survivors. In the case of men, who are brought up to expect internal inviolability, they are expected to be able to defend themselves against attack, and are socialized to consider total helplessness incompatible with masculinity and thus intolerable. RTS may be further heightened if the sexual assault occurred in a prison or jail environment.

Another component of RTS for males is the perception that the victim's sexual identity as a male has been compromised. All but homosexuals who identify themselves as feminine tend to be affected by this perception. It results from very widespread attitudes relating to sexual penetration and defeat in personal combat (sexuality and aggression being the two primary remaining sources of male identity to most prisoners), and it is exacerbated by the daily behavior of other prisoners who are aware of the victimization and lose no opportunity to remind the survivor of his supposed "loss of manhood."

A third component of RTS, for heterosexual survivors of sexual assault, is related to an inmate's sense of their own manhood. This results from peers who spread the unfounded belief that the victim's sexual orientation is compromised or even transformed by his involuntary experience.

The Rapidly Growing Number of Incarcerated Women

About 78,000 women, who have generally been sentenced to imprisonment for more than a year, are in federal and state government prisons. They make up 6.4 per cent of the prison population of the USA.²

County and city jails hold around 60,000 women. They are mainly awaiting trial or have been sentenced to relatively short terms of imprisonment. They constitute about 10 per cent of the jail population in the USA.³

The number of women incarcerated in prisons and jails in the USA is approximately 10 times more than the number of women incarcerated in Western European countries, whose combined female population is about the same size as that of the USA.

For more than a decade, the rate of increase in the number of women incarcerated in jails and prisons in the USA has consistently exceeded the rate of increase in the number of men being incarcerated. Between 1985 and 1996:

- the female prison population increased by an average of 11.2 percent per year compared with 7.9 percent for men; and
- the female jail population grew by an average of 9.9 percent each year, and that of men by 6.4 percent.

About 75% of female inmates are between the ages of 25 and 34 and between 48% and 80% may have suffered from sexual abuse or abusive intimate relationships.

In a Washington Post article, *Abuse of Female Prisoners Seen on Rise*, (March 4, 1999) women inmates in the nation's prisons and jails are routinely subjected to sexual abuse by male guards, including such activities as groping during body searches, male guards touching prisoner's breasts and genitals during daily pat-down and strip searches, watching women as they shower and dress, and consensual and forceful rape.

Sexual Abuse

Rape of male inmates by other prisoners may be widespread. A 1994 survey of Nebraska prisoners found 10 percent of male inmates reporting being "pressured or forced to have sexual contact" with other inmates.

Many women in prisons and jails in the USA are victims of sexual abuse by staff, including sexually offensive language; male staff touching inmates' breasts and genitals when conducting searches; male staff watching inmates while they are naked; and rape.

When an officer's conduct is such that it violates institutional rules, such as prohibiting any staff-inmate sexual contact and even criminal laws, such as rape and sexual assault, the victim is often reluctant to complain because she may have reason to anticipate that her

² "Not Part of My Sentence": Violations of the Human Rights of Women in Custody, *Amnesty International*, March 1999

³ There are smaller numbers held for other reasons e.g. sentenced women awaiting transfer to prison or who are held in jails because there is no room in state prisons ; women detained pending the determination of an application for asylum. ("Not Part of My Sentence": Violations of the Human Rights of Women in Custody, *Amnesty International*, March 1999).

accusation is less likely to persuade investigators than the denial of an officer. She may also fear retaliation by the perpetrator or other correctional staff.

According to a March 1999 report by Amnesty International, incidents of sexual abuse/assaults occur to women in many state correctional systems. According to the report, the following state and federal data were collected:

Alabama - The U.S. Justice Department's investigation of Julia Tutwiler Prison in 1994 found credible reports of sexual relations between inmates and some staff. According to the reports, staff members rewarded inmates with food, cosmetics and money for their participation. While the investigation found no allegations of "physically forced rape," the investigation found that the sexual relationships were neither appropriate nor truly 'voluntary' given the institutional relationship between inmates and staff.⁴

Arizona - In 1997, a U.S. Justice Department investigation into state women's prisons concluded that prison authorities failed to protect women from sexual misconduct by correctional officers and other staff. The misconduct included rape, sexual relationships, sexual touching and fondling, and "without good reason, frequent, prolonged, close-up and prurient viewing during dressing, showering and use of toilet facilities."⁵ The Justice Department reported that since 1992, more than 60 people who worked with female inmates in Arizona's prisons system have either been dismissed, have resigned, or have been disciplined as a result of sexual misconduct.⁶

California - During 1997-98, reports were documented from prisoners and other sources that inmates were the victims of sexual abuse by some staff at Valley State Prison for Women. The prison had recently installed "drop boxes" for inmate complaints which would only be seen by investigative staff who are not staff on housing units. Prisoners reportedly were afraid to place complaints in drop boxes because other prisoners might think that they were informing the authorities about prisoner misconduct.

Florida - In March 1998, a former prison guard, was convicted of raping a female inmate at the Florida Correctional Institution in Lowell. Sentencing the man to serve nine years in prison, the judge said: "It's clear from the evidence that you abused the trust that was put in you as a corrections officer."

Idaho - In January 1999, a former guard at Jefferson County jail pled guilty to a charge of sexual contact with a female inmate, a serious crime in the state.⁷

Illinois - In April 1998, a guard at the Will County Jail, was dismissed when an internal inquiry found that he had "used his position as a correctional officer for his own personal gain and sexual gratification." Earlier in the year, the guard was also charged with violating a new criminal law that prohibits prison and jail guards from sexual conduct with inmates. It is alleged that he had sexual relations with five female inmates.

⁴ Findings of US Justice Department investigation of Julia Tutwiler Prison for Women, March 27, 1995

⁵ CIV97-476, US District of Arizona.

⁶ US Memorandum in Opposition to Defendant's Motion for Summary Judgement, US v Arizona et al, Civil Action No.97-746-PHX-ROS, filed November 1998.

⁷ Information provided to Amnesty International by Office of Prosecuting Attorney, Jefferson County.

Maryland - In January 1998, a former guard was convicted of sexually assaulting an inmate at the Women's Detention Center in Towson. He was sentenced to serve 90 days in prison.

Massachusetts - On December 12, 1997, the Department of Corrections settled a lawsuit which alleged that the manner in which strip searches of female prisoners at Framingham prison were carried out during a training exercise in September 1995 violated the prisoners' constitutional rights. Women inmates and pre-trial detainees were roused from their beds by masked guards screaming and shouting abuse. Sixteen women were strip searched in front of male and female staff and ordered to provide urine samples. In the settlement agreement, the Corrections Department agreed, among other things, that it would carry out future strip searches and urine tests "in relative privacy with as much dignity as possible" and that such searches and tests would not be conducted if men were present, unless in cases of an emergency.

Michigan - A U.S. Department of Justice investigation of women's prisons in 1994-95 reported evidence of widespread sexual abuse, including rapes.⁸ Reports of sexual abuse were provided not only by inmates. A prison correctional officer advised U.S. Justice Department investigators that there was frequent sexual activity between guards and inmates. There was also evidence that a number of officers had been charged with sexual assault and that pregnancies had resulted from inmates' sexual involvement with guards. In addition to sexual assaults, the Justice Department reported that:

- officers abused women during pat-down searches by "routinely touching all parts of the woman's body, including fondling and squeezing their breasts, buttocks, and genital areas in ways not justified by legitimate security needs"; and
- officers stood outside prisoners' cells and watched them dress or undress, and stood in shower areas to observe women showering and using toilet facilities. The Justice Department concluded that "the degree and kind of surveillance employed by many guards at these facilities goes well beyond legitimate security needs."

Michigan disputes the findings of the Justice Department investigation that there is persistent and systematic sexual abuse that is not being dealt with effectively. According to the Michigan Department of Corrections, sexual misconduct is "aggressively investigated," as indicated by the following data. In 1996 there were 13 allegations of sexual misconduct at Michigan's two prisons for women; all were investigated and two were sustained and resulted in disciplinary action. In 1997 there were 19 allegations of sexual misconduct of which five were sustained. In 1998, through November 20th, there were 24 allegations of sexual misconduct of which five were sustained and resulted in disciplinary action and nine were pending.

New Hampshire - In October 1998, a correctional officer was convicted of sexually assaulting an inmate at the New Hampshire State Prison for Women in Goffstown. An Assistant Attorney General informed Amnesty International that, following the officer's arrest and subsequent convictions, meetings were held between staff and inmates at the prison in order :

- to create an environment where it is appropriate for correctional officers to report any behavior of peers which causes them concern;

⁸ Findings of US Justice Department investigation into women's prisons in Michigan, 1995. Letter from US Department of Justice to Honorable John Engler, Governor of Michigan, March 27, 1995.

- to make it safer for inmates to report inappropriate behavior; and
- to give inmates access to levels of authority in the institution other than the correctional officers themselves.

The Department of Corrections has also enacted "harsher discipline" for sexual abuse by staff and intends to appoint as the head of the Department's Internal Affairs section a person who has experience of conducting investigations into allegations of sexual abuse.

New York - In October 1997, a corrections officer employed at Taconic Correctional Facility for Women pleaded guilty to a charge involving sexual activity with an inmate.⁹

Ohio - In October 1996, a former prison guard at the Correctional Medical Center pled guilty to sexual misconduct with inmates and was sentenced to two years in prison. In May 1997, another former guard was placed on probation for three years after pleading guilty to sexual misconduct with two female inmates at the same facility.

Texas - In November 1998, a correctional officer pled guilty to sexual misconduct with female inmates at Plane State Jail.¹⁰

Virginia - In January 1998, a former guard at Rappahannock Regional Jail pled guilty to sexually assaulting a female inmate and was sentenced to six months in jail.

Washington - In November 1998, the state of Washington agreed to pay a former prisoner \$110,000 to settle a lawsuit she initiated after she was raped and made pregnant by a guard at the Washington Corrections Center for Women in 1993. Similar cases are pending, including one case in which an inmate who had been imprisoned since 1985 gave birth to a child in December 1997. In the latter case, the woman alleged that she was raped but prosecution authorities declined to charge the officer identified as the father because they considered they could not prove the officer had used force or the threat of force. The state has no law prohibiting consensual sex between inmates and staff. In February 1998, it is reported that the Department of Corrections introduced a written policy prohibiting sex between prison employees and inmates and was reportedly preparing policies to investigate allegations of sexual abuse and to protect the health and safety of inmates who report that they have been raped. In January 1999, Amnesty International was informed that legislators were proposing to introduce legislation to prohibit sex between staff and inmates.

Washington DC - In 1994, a court found that despite the correctional authority's policies and procedures designed to address sexual misconduct by staff, female prisoners in three facilities were subjected to many incidents including violent sexual assaults, invasions of privacy and inappropriate remarks. The correctional authority conceded that it had failed to protect the women from sexual abuse. The court ordered that the authority should implement a number of remedial measures. In 1998, female prisoners returned to court complaining that the authority had failed to comply with the court's order and as a

⁹ The charge was described in a press release issued by the District Attorney of Westchester County, April 24, 1997; in January 1999, an officer of Bedford Court informed Amnesty International of the outcome.

¹⁰ Texas Department of Criminal Justice, letter dated January 7, 1999 to Amnesty International.

consequence, female prisoners continued to be sexually assaulted and harassed.¹¹ As of January 1999, the matter had not been resolved.

West Virginia - In October 1997, the former sheriff of Grant County was sentenced to seven years imprisonment in a case in which female inmates at Grant County Jail were forced to engage in sex acts with law enforcement officials. In the same case, a former police officer of the Petersburg Police department, also in Grant County, was sentenced to five years imprisonment for raping a female inmate four times. The former police officer acknowledged that the sex acts had occurred but argued they were consensual, according to a police investigator. The victims have initiated legal action against the county for compensation.

Federal Bureau of Prisons - In March 1998, the Federal Bureau of Prisons agreed to pay three women a total of \$500,000 to settle a lawsuit in which they reported that guards had committed, orchestrated and facilitated sexual abuse against them and against other women at the Federal Detention Center in Pleasanton, California. The women reported, among other things, that guards had taken money from male inmates in exchange for allowing the male inmates to enter the women's cells so that they could sexually abuse them.¹²

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. Additionally, laws exist which recognize the potential for abusive relationships between female inmates and correctional officers. Such laws have criminalized custodial sexual contact. In addition, 36 states, the District of Columbia and the federal government have laws specifically prohibiting sexual relations between jail and prison staff and inmates.¹³ Thirteen states do not have such laws.¹⁴

The laws vary in scope and nature. For example, in 13 states and the District of Columbia, a correctional employee commits an offence 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, proposed legislation was introduced in the U.S. Congress to encourage states to criminalize sexual conduct between correctional staff and prisoners by financially

¹¹ Women Prisoners of the District of Columbia v District of Columbia, 899 F. Supp 659 (D.D.C. 1995); Women Prisoners of the District of Columbia v District of Columbia, F.3d 910 (D.C. Cir. 1996); Women Prisoners of the District of Columbia v District of Columbia, Plaintiff's Memorandum in Support of Motion for Contempt and to Enforce the Court's Order for Injunctive Relief, 22 June 1998.

¹² Private Settlement Agreement, Lucas v White, Case number C96-02905 US District Court of Northern California.

¹³ Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas and Wyoming. See B. Smith, Fifty-State Survey of Criminal laws Prohibiting Sexual Abuse of Prisoners, National Women's Law Center, Washington DC, 1998.

¹⁴ Alabama, Kentucky, Massachusetts, Minnesota, Montana, Nebraska, Oregon, Utah, Vermont, Virginia, Washington, West Virginia and Wisconsin (this state has a law prohibiting "abuse" of people in penal institutions). Massachusetts, prison staff rules prohibit sexual relations between staff and inmates.

penalizing states that do not have such laws.¹⁵ 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/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., provides that an employees of the Department of Corrections who engages in sexual misconduct with an inmate or any other person supervised by the department in the community commits a third degree felony. Section 944.35 (3)(b)1, F. S., prohibits the act of sexual misconduct by employees of state correctional facilities. As used in the statute, the term "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, but 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.

Additionally, Florida law requires correctional employees to report their knowledge or reasonable suspicions of sexual misconduct, and provides that the failure to report, or reporting inaccurately, is a first degree misdemeanor while any attempt to coerce the person required to report is a third degree felony.

Faith Based Correctional Programming

Numerous religious groups operate faith-based rehabilitation programs within existing state prisons and also operate faith-based private correctional facilities. Such programs tend to be for inmates nearing release from prison and who voluntarily choose to participate in the program. The 1997 Legislature created s. 944.803, F.S. to, in part, read:

"The Legislature finds . . . that faith-based programs . . . have the potential to facilitate inmate institutional adjustment, help inmates assume personal responsibility, and reduce recidivism."

Advocates of faith-based programs believe that religious groups may be as capable as other groups in affecting behavioral and social change since most faith-based programs tend to target antisocial values, emphasize accountability and responsibility, and provide social support through interaction with faith-based communities.¹⁶

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 programs.

¹⁵ Violence Against Women Act of 1998, introduced in the House of Representatives.

¹⁶ Johnson, Byron, "Religious Programs, Institutional Adjustment, and Recidivism among Former Inmates in Prison Fellowship Programs." Justice Quarterly, Volume 14, No.1, March 1997.

Florida is currently not operating residential religious rehabilitation programs within the prison system.¹⁷ 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 has stated 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, and "... to assist offenders in discovering their religious faith or in developing their personal faith and by working 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.

Florida Inmate's Telephone Use

In the correctional phone system, each institution provides inmates access to a number of telephones on which calls may be made to pre-approved numbers outside the institution. There is a total of 1,224 telephones for inmate use statewide. This allows for an average of one telephone for every 48 inmates, although institutions range from providing one for every 19 inmates, to one for every 158 inmates.

Inmates may not receive incoming telephone calls, and all outgoing calls must be made collect. Superintendents are authorized to use their discretion to award telephones privileges in excess of those provided for by the rules of the department. The specific procedures for making telephone calls are for the most part determined by individual superintendents. Typically, inmates have access to the phones during their off duty hours, often from 5:00 P.M. - 10:00 P.M. on weekdays, and from 8:00 A.M. - 10:00 P.M. on weekends and holidays.

Inmates Must Develop Approved Calling Lists

Currently, in the interest of public safety and internal security, Florida's inmates may only call numbers that are on the inmate's approved calling list. When inmates arrive at a permanent institution, they may submit a list of up to ten names and numbers that they would like to be able to telephone. The list is compiled by institutional staff and may be updated at six month intervals throughout incarceration. According to the department, allowing inmates to call only approved numbers minimizes the extent to which inmates can engage in telephone scams or make other types of unwanted calls.

Criminal Justice Standards and Training Commission

The Criminal Justice Standards and Training Commission within the Florida Department of Law Enforcement administers the provisions of Chapter 943, F.S. The primary goals of the Commission are to improve the delivery of quality training, ensure job relatedness in

¹⁷ Such programs have been used in Florida jails, however, such as the Good News Mission program in the Orange County jails.

employment and training standards, and increase the professionalism of law enforcement and correctional officers throughout the state.

Basic recruit training programs have been developed for the purpose of providing the minimum employment skills necessary for certification of criminal justice officers in this state. Pursuant to provisions of Chapter 943, Florida Statutes, the Criminal Justice Standards and Training Commission is responsible for ensuring that proper training is provided and certifying officers in the disciplines of law enforcement, corrections, and correctional probation.

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 Bureau of State Investigations within the department's Office of Inspector General is responsible for conducting criminal, administrative, and internal affairs investigations. 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, 2,776 were completed, and 250 were forwarded to the SAO for criminal prosecution.

The Bureau of Inmate Grievance Appeals is responsible for providing inmates with a channel for the administrative settlement of legitimate complaints. The grievance process assists the department by providing a means for the internal resolution of problems and improving the lines of communication. Additionally, the grievance procedure provides a written record in the event of subsequent judicial or administrative review.

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.

As of June 1998, there were 105 adult county detention facilities, otherwise known as county "jails," throughout Florida's 67 counties.¹⁸

During 1981, there were approximately 12,000 persons held in Florida's adult county jails.¹⁹ In December 1994, the average was approximately 38,000 persons, and in December 1995, the average was 39,790 persons held in Florida's jails.²⁰

¹⁸ Florida Corrections Commission, *1998 Annual Report*, November 1, 1998.

¹⁹ Florida Corrections Commission, *1998 Annual Report*, November 1, 1998.

²⁰ Florida Corrections Commission, *1998 Annual Report*, November 1, 1998.

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. Nineteen facilities did not report to the DOC in December 1996, and anywhere from three to twelve facilities did not report during 1997. Excluding four facilities (Jackson County Jail, Manatee County Jail/Central, Sumter County Jail, and Wakulla County Jail), the average county jail population statewide was approximately 49,495 persons during June 1998, representing an increase of over 312 percent since 1981, and a 30 percent increase since December 1994.

Chapter 951, Florida Statutes (1997), provides the general regulatory authority over county and municipal prisoners and places the specific statutory responsibility for operation of the jails with the boards of county commissioners. Section 951.061, F.S. (1997), provides that upon adoption of an ordinance by a majority of the county commission, the sheriff may be designated the chief correctional officer of the county correctional system. The statute further provides that where they are the designated chief correctional officers, the sheriffs should include the maintenance and operation of the jail in their proposed budget of expenditures before the boards of county commissioners (see s. 30.49, F.S. [1997]).

Prior to 1996, the DOC had statutory responsibility for inspection of all county and municipal detention facilities. The department performed biannual inspections of all jails for the purpose of determining compliance with minimum standards adopted through administrative rule (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.

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), F.A.C. (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.

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.

During the 1996 Legislative Session, s. 951.23, F.S., was substantially amended to remove the DOC's regulatory authority over the jails but to allow 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. (1997), is specifically repealed "effective October 1, 1999," unless re-enacted by the Legislature.

DOC Inmate Orientation Program

The department reports that inmates are given an orientation upon admission to the prison system where they are advised of the option to be placed in special housing if the inmate feels the need of 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 will then be notified. An inmate may be placed in administrative confinement or transferred to another correctional institution.

B. EFFECT OF PROPOSED CHANGES:

The bill requires the department, operators of private correctional facilities, and county and municipal detention facilities to develop and implement an orientation program on sexual assault for all new inmates and prisoners including how to avoid, prevent, and reduce the risk of sexual assault, information on how to access sexual assault counseling. The bill requires the establishment of a toll-free telephone number for inmates and prisoners to report sexual assaults to the DOC Inspector General and jail inspectors respectively. (Please refer to the Amendment section of this analysis.)

The bill requires the department, operators of private correctional facilities, county and municipal detention facilities to provide sexual assault counseling to any inmate who requests it. Counseling may be contracted with rape crisis centers and faith-based organizations. The department, operators of private correctional facilities, county and municipal detention facilities shall permit reading materials and tapes on rape and rape trauma in the facilities. Staff at the department, private correctional facilities, county and municipal detention facilities are required by the bill to promptly report actual or threatened sexual assaults to the DOC Inspector General or jail inspector respectively. The bill requires that a state correctional institution or county jail allow an inmate or prisoner respectively charged with fighting to plead the need for self-defense against a sexual assault as an exculpatory factor in any prison or jail disciplinary process.

The bill provides for a felony of the third degree for any employee of a county or municipal detention facility or of a private detention facility under a contract who engages in sexual misconduct, with an inmate or an offender under the supervision of the facility. And finally, the bill requires that jail staff shall be dismissed from employment and shall not be employed in any correctional system capacity for engaging in sexual misconduct with a prisoner.

The bill takes effect on October 1, 1999.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, the bill would require the department, operators of private correctional facilities, county and municipal detention facilities to develop and implement an orientation program on sexual assault for all new inmates.

The bill also requires the department, operators of private correctional facilities, county and municipal detention facilities to provide sexual assault counseling to any inmate who requests it.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

ss. 944.35, 951.221, 951.23, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates the "Protection Against Sexual Violence in Florida Jails and Prisons Act."

Section 2. Amends subsection (4) of s. 944.35, F.S., and creates subsections (5), (6), and (7) in the same section; requires the Criminal Justice Standards and Training Commission to incorporate training content on the identification, prevention, and treatment of sexual assault in training programs; requires DOC to provide an initial orientation program on sexual assault within 48 hours of incarceration; requires the provision of sexual assault counseling to inmates; requires the development and provision of resource material on sexual assault prevention and treatment; requires a toll-free telephone number for inmates to report

sexual assault; requires the reporting of sexual assault by employees of any detention facility.

Section 3. Creates s. 951.221, F.S.; prohibits sexual activity between county jail and detention facility employees and inmates; provides for penalties and termination of employment in certain circumstances.

Section 4. Creates subsection (10), (11), and (12) in s. 951.23, F.S.; requires county and municipal detention facilities to provide the same services and programs as described in Section 2 of the bill, such as providing an initial orientation program on sexual assault within 48 hours of incarceration and requiring the reporting of sexual assault by employees of a county detention facility.

Section 5. Provides for an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Fiscal Comments.

2. Direct Private Sector Benefits:

See Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See Fiscal Comments.

D. FISCAL COMMENTS:

According to the department, HB 1967 could have a financial impact due to specific provisions. The bill requires DOC, county and municipal facilities to bear the expense of developing and implementing an orientation program for all new inmates. Additional expenditures would occur with the requirement to develop and modify the present inmate phone system to allow access to a specific 1-800 telephone number for inmates to contact the Office of the Inspector General.

The department supplied the following cost estimates:

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

Based on current contractual hourly rate for counseling services for \$12.50 per hour for substance abuse counseling in licensed programs. The department projects a need for 20 hours per month counseling at 55 institutions: $\$3,000 \times 55 = \$165,000$.

- **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.**

- **Cost of establishing a single number access phone line for reporting sexual assault to the Office of inspector General @ \$4,000.**

(The two current contract vendors would require modifications to existing long distance equipment and authorization procedure for an inmate to initiate a call.)

The department projects a total implementation cost of **\$228,500** with the additional cost of phone maintenance.

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

Maintenance cost for telephone access lines @ \$ unknown

Projected recurring annual costs: \$206,500

It should be noted that the bill, also, requires DOC to contract with rape crisis centers to provide counseling to inmates.

Projections from the county and municipal facilities were not provided. Private contractors to both county, municipal and state correctional facilities projections are not available.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

A provision of this bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law. However, other provisions of this bill may require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that courts and municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

HB 1967 could provide an environment for offenders to feel more comfortable in reporting incidents of sexual violence as well as taking steps to prevent sexual violence in institutions.

In addition to the financial costs associated with this bill, there may be compromises in security. The department also expressed concern with regards to confidentiality of inmate records.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

An amendment may be needed to address the penalties for sexual misconduct of an employee of a correctional facility to include those of private facilities.

An amendment may be necessary to include sexual harassment training in addition to sexual assault training for state and county correctional officers.

On April 5, 1999, Representative Roberts offered a strike everything amendment which passed favorably in the Corrections Committee. The amendment, which will travel with the bill made the following changes to the bill:

- provides a technical change to the title of the bill;

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- removes from the bill provisions for the access to a toll-free number for reporting sexual misconduct;
- provides for psychological specialists employed by the DOC or a private corrections company in addition to the trained experienced faith-based organizations or community outreach organizations to provide programming;
- substitutes the term “wellness areas” for “recreation halls”;
- substitutes the term “correctional officer” for “guard”;
- substitutes the term “inmate” for “prisoner”; and
- removes the provision for internal disciplinary process to allow for self-defense against a sexual assault as an exculpatory factor.

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

Prepared by:

Staff Director:

Johana P. Hatcher

Ken Winker