

Bill No. CS for SB 734

Amendment No. ____

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Dawson-White moved the following amendment:

Senate Amendment (with title amendment)

On page 4, between lines 11 and 12,

insert:

Section 2. This act may be cited as the "Protection Against Sexual Violence in Florida Jails and Prisons Act."

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

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

(3)

(b)1. As used in this paragraph, the term "sexual misconduct" means 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, 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.

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

7 3. The consent of the inmate or offender supervised by
8 the department in the community to any act of sexual
9 misconduct shall not be raised as a defense to a prosecution
10 under this paragraph.

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

18 (4)(a) Any employee required to report pursuant to
19 this section who knowingly or willfully fails to do so, or who
20 knowingly or willfully prevents another person from doing so,
21 commits a misdemeanor of the first degree, punishable as
22 provided in s. 775.082 or s. 775.083.

23 (b) Any person who knowingly or willfully submits
24 inaccurate, incomplete, or untruthful information with regard
25 to reports required in this section commits a misdemeanor of
26 the first degree, punishable as provided in s. 775.082 or s.
27 775.083.

28 (c) Any person who knowingly or willfully coerces or
29 threatens any other person with the intent to alter either
30 testimony or a written report regarding an incident where
31 force was used or an incident of sexual misconduct commits a

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1 felony of the third degree, punishable as provided in s.
2 775.082, s. 775.083, or s. 775.084.

3
4 As part of the correctional officer training program, the
5 Criminal Justice Standards and Training Commission shall
6 develop course materials for inclusion in the appropriate
7 required course specifically designed to explain the
8 parameters of this subsection and to teach sexual assault
9 identification and prevention methods and techniques.

10 (5) State correctional institutions and private
11 correctional facilities housing state inmates may, to the
12 extent that funds are available:

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

16 1. A realistic presentation on how to avoid sexual
17 violence while incarcerated.

18 2. Information on how to prevent and reduce the risk
19 of sexual violence.

20 3. Information on available sexual assault counseling.

21 4. The procedure for requesting sexual assault
22 counseling.

23 (b) Provide sexual assault counseling to any inmate
24 who has reported being victimized by a sexual assault and
25 requests such counseling.

26 1. Sexual assault counseling may be provided by
27 trained or experienced psychological specialists employed by
28 the Department of Corrections, by a private correctional
29 vendor under contract with the Correctional Privatization
30 Commission, or by trained or experienced representatives of a
31 faith-based organization, community outreach organization, or

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1 other appropriate organization that has been approved by the
2 facility administrator to provide such programs.

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

14 Section 4. Section 951.221, Florida Statutes, is
15 created to read:

16 951.221 Sexual activity between detention facility
17 employees and inmates; penalties.--

18 (1) Any employee of a county or municipal detention
19 facility or of a private detention facility under contract
20 with a county commission who engages in sexual misconduct, as
21 defined in s. 944.35(3)(b)1., with an inmate or an offender
22 supervised by the facility without committing the crime of
23 sexual battery commits a felony of the third degree,
24 punishable as provided in s. 775.082, s. 775.083, or s.
25 775.084. The consent of an inmate to any act of sexual
26 misconduct shall not be raised as a defense to prosecution
27 under this section.

28 (2) Notwithstanding prosecution, any violation of the
29 provisions of this section, as determined by the administrator
30 of the facility, shall constitute sufficient cause for
31 dismissal from employment, and such person shall not again be

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1 employed in any capacity in connection with the correctional
 2 system.

3 Section 5. Present subsection (10) of section 951.23,
 4 Florida Statutes, 1998 Supplement, is renumbered as subsection
 5 (11), and a new subsection (10) is added to that section, to
 6 read:

7 951.23 County and municipal detention facilities;
 8 definitions; administration; standards and requirements.--

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

13 (a) Provide information on sexual assault to all
 14 inmates within 48 hours after detention. The information
 15 should address:

16 1. Realistic methods and suggestions for how to avoid
 17 sexual violence while incarcerated.

18 2. Methods and suggestions for how to prevent and
 19 reduce the risk of sexual violence.

20 (b) If the detention facility provides or authorizes
 21 the provision of sexual assault counseling, inform inmates
 22 within 48 hours after detention on the availability of sexual
 23 assault counseling and the procedure for requesting sexual
 24 assault counseling provided by facility staff, vendors, or
 25 community based, not-for-profit organizations.

26 (c) Provide to employees while in training information
 27 about methods and suggestions for identifying and preventing
 28 sexual assault. If a county, municipality, or private vendor
 29 that operates a detention facility offers such training, the
 30 program should provide at least 2 hours of training for each
 31 employee.

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(Redesignate subsequent sections.)

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

On page 1, line 16, after the semicolon

insert:

creating the "Protection Against Sexual
Violence in Florida Jails and Prisons Act";
amending ss. 944.35, 951.23, F.S.; requiring
the Criminal Justice Standards and Training
Commission to develop a course relating to
sexual assault identification and prevention as
part of the correctional officer training
program; authorizing the department and county
and municipal detention facilities to provide
an orientation program and counseling; creating
s. 951.221, F.S.; prohibiting sexual misconduct
by employees of county or municipal detention
facilities; providing for termination of
employment under certain circumstances;
providing penalties;