

STORAGE NAME: h1111s1.cj

DATE: April 14, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: CS/HB 1111

RELATING TO: Sexual Violence in Florida Jails and Prisons

SPONSOR(S): Committee on Corrections and Representative Roberts

TIED BILL(S): SB 1432

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

- (1) CORRECTIONS YEAS 8 NAYS 0
 - (2) CRIME AND PUNISHMENT YEAS 4 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
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SUMMARY:

Committee Substitute for House Bill 1111 creates the Protection Against Sexual Violence in Florida Jails and Prisons Act.

Provisions require:

- the Criminal Justice Standards and Training Commission to develop, for inclusion in the appropriate required officer training course, educational materials specifically designed to explain and teach sexual assault identification, as well as prevention methods and techniques.

Additional provisions relating to state correctional institutions and private facilities require:

- the state and private correctional facilities housing state inmates to provide the inmates with an initial orientation program on sexual assault within 48 hours of incarceration;
- sexual assault counseling and materials to be available to offenders;
- require reporting of actual or threatened sexual assault by employees of state correctional institutions;

Provisions which relate to county, municipal or privately operated detention facilities:

- prohibit sexual misconduct between detention facility employees and prisoners;
- provide criminal penalties and termination of employment in certain circumstances;
- require these facilities to provide an initial orientation program for inmates on sexual assault and the procedure for requesting sexual assault counseling within 48 hours of incarceration; require sexual assault counseling and development of training relating to sexual assault identification and prevention methods as part of the officer training curriculum; and
- require reporting of actual or threatened sexual assault by employees of correctional and detention facilities.

According to the Department of Corrections CS/HB 1111 will have a fiscal impact due to provisions which require the department to bear the expense of developing and implementing an orientation program for all new inmates.

I. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

The bill would require the department, operators of private state correctional facilities, county, municipal, and privately operated local 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 and privately operated local detention facilities to provide sexual assault counseling to any inmate who requests it.

The bill imposes sanctions for sexual assault committed on inmates by facility employees.

B. PRESENT SITUATION:

Sexual Abuse of Inmates in Prisons and Jails

Few studies exist which examine the prevalence of sexual assaults against inmates in prisons and jails. The Department of Corrections does not regularly collect or maintain statistical information regarding the number of complaints, disciplinary actions, prosecutions or employment dismissals relating to, or resulting from, staff on inmate sexual misconduct. Among the recommendations included in the 1999 Annual Report of the Florida Corrections Commission was for state correctional facilities to “track incidents of sexual misconduct.”¹

“Deliberate indifference” to inmate health and safety by prison officials may violate the Eighth Amendment to the United States Constitution. In *Farmer v. Brennan* 511 U.S. 825 (1994); 114 S. Ct. 1970 (1994), 128 L.Ed.2 811 (1994) in which a prisoner brought suit against Federal prison officials for failing to prevent rape, the Court held 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.

Incarceration Rate Growth

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"Nationally, since 1990, the annual rate of growth for female offenders has averaged an increase of 8.5% as compared to 6.6% for males of the same period."² Florida's female inmate population is one of the largest in the nation. Since 1988, Florida's female population has increased a total of 89% versus 97% for the male population.³

Florida's Sexual Misconduct and Sexual Battery Statutes

Under section 944.35(3), F.S., it is a **third degree felony** for an employee of the Department of Corrections to engage in *sexual misconduct* with an inmate or any other person supervised by the department in the community. 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. In a prosecution for this offense, the **consent** of the inmate, or offender supervised by the department in the community, **can not be raised as a defense** to the charge. [s. 944.35(b)3.]

Section 794.011, F.S., provides for the offense of *sexual battery*. The term "sexual battery" 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; however, sexual battery does not include an act done for a bona fide medical purpose. Section 794.011(4), F.S., provides in pertinent part:

(4) A person who commits sexual battery upon a person 12 years of age or older **without that person's consent**, under any of the following circumstances, commits a **felony of the first degree**, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115:

...

© When the offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.

...

(g) When the offender is a law enforcement officer, correctional officer, or correctional probation officer as defined by s. 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under the provisions of s. 943.1395 or is an elected official exempt from such certification by virtue of s. 943.253, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

For purposes of the sexual battery offense described above in (g) part-time and auxiliary law enforcement officers and correctional officers are included. [s.943.10(6)-(9),F.S.]. Also, under s. 943.10(2), F.S., "*Correctional Officer* means any person who is appointed or

² Florida Corrections Commission 1999 Annual Report citing a U.S. Department of Justice source - See page 127, Note 1 of the annual report.

³ Florida Corrections Commission 1999 Annual Report.

employed full time by the state **or any political subdivision thereof, or by any private entity** which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel."

Consent, in the context of sexual battery under s.794.011, "means intelligent, knowing, and voluntary consent and does not include coerced submission." Further, the statute provides that "[consent]" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.

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. Any attempt to coerce the person required to report is a third degree felony. [943.35(4), F.S.] In addition, the inspector general must immediately conduct an appropriate investigation into allegations of inmate abuse or sexual misconduct, and if probable cause is determined, the inspector general must notify the state attorney. [s. 943.35(3)(d)].

Allegations of Sexual Misconduct in Florida Correctional Facilities

According to the Department of Corrections, in calendar year 1999 there were 16 complaints alleging staff on inmate sexual misconduct. Of these 16 complaints, 3 were forwarded to the State Attorney for review.⁴ In March 1998, a former prison guard was convicted of sexual battery of a female inmate at the Florida Correctional Institution in Lowell and sentenced to nine years imprisonment.⁵

Faith Based Correctional Programming

Numerous religious groups operate faith-based rehabilitation programs in state and private facilities. 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.⁶ 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."

⁴ This information provided by Chief Inspector Ed Sobach, of the Office of the Inspector General - Department of Corrections.

⁵ March 1999 report by Amnesty International.

⁶ Johnson, Byron, "Religious Programs, Institutional Adjustment, and Recidivism among Former Inmates in Prison Fellowship Programs." Justice Quarterly, Volume 14, No.1, March 1997.

Faith based counseling may be an effective method for dealing with the issue of sexual misconduct in Florida.

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 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."

Florida's Jails

As of June 1998, there were 105 adult county jails throughout Florida's 67 counties.⁷ 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.

Chapter 951, Florida Statutes, provides the general regulatory authority concerning 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., 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.).

DOC Inmate Orientation Program

⁷ Florida Corrections Commission, *1998 Annual Report*, November 1, 1998.

The Department of Corrections currently provides inmates 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.

C. EFFECT OF PROPOSED CHANGES:

CS/HB 1111 specifically expands the application of the third degree felony offense of *sexual misconduct* under s. 944.35, F.S., to include "any employee of a state agency or private contractor." Also, the bill makes the same change with respect the third degree felony offense of *battery or cruel or inhumane treatment causing great bodily harm*, and to the first degree misdemeanor offense of *battery*. Currently, these provisions expressly apply to employees of the Department of Corrections.

In addition, CS/HB 1111 creates a new section of statute to provide the same *sexual misconduct* offense to employees of county or municipal detention facilities, and to employees of private detention facilities on contract with a county commission. Like s. 944.35, F.S., this new section also prohibits the use of inmate "consent" as a defense to the charge.

See Section by Section Analysis for further explanation of the bill's provisions.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. This section creates the "Protection Against Sexual Violence in Florida Jails and Prisons Act."

Section 2. This section 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; amends the section's provisions relating to the crimes of *battery, cruel or inhumane treatment, and sexual misconduct*, to include "any employee of a state agency or private contractor" for purposes of prosecution; requires DOC to provide an initial orientation program on sexual assault within 48 hours of incarceration; requires that sexual assault counseling be provided to inmates; requires the development and provision of resource material on sexual assault prevention and treatment; requires the reporting of sexual assault by employees of any detention facility; 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; and makes other technical changes to the section.

Section 3. This section creates s. 951.221, F.S., which makes a third degree felony for sexual misconduct between and inmate and an employee of a county jail or detention facility; provides that sexual misconduct, as determined by the facility

administrator shall be sufficient grounds for termination of employment, notwithstanding criminal prosecution.

Section 4. This section corrects a cross reference; 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; provides for legislative findings that cross-gender treatment is inappropriate in certain situations; and provides for a study on cross-gender treatment to be conducted and submitted to the Legislature.

Section 5. This section corrects a cross reference; 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 6. This section provides an effective date of October 1, 2000.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None..

2. Expenditures:

The Department of Corrections reports a recurring impact of \$206,250 and a non-recurring impact of \$22,000. In addition, there will be workload on the Criminal Justice Standards and Training Commission associated with the requirement to develop course materials on sexual assault.

The bill creates a third degree felony for county or municipal detention facility employees that engage in sexual misconduct. This provision has not been reviewed by the Criminal Justice Impact Conference to determine the impact on the inmate population. The impact, however, would probably be insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The requirement that sexual assault counseling be provided to any inmate who requests it could have an impact on county and municipal detention facilities. Similarly, there could be costs associated with employee and inmate training and the requirement that there be a toll-free telephone number available to inmates to report sexual assault. The impact of these provisions is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Those portions of this bill proscribing criminal conduct are exempt from the requirements of Article VII, Section 18 of the Florida Constitution as enactments of criminal law. Other sections which require municipal or county expenditures may only be excepted from the super-majority vote if the mandate is found to apply "to all persons similarly situated" and if the Legislature asserts an important state interest. Consequently, an amendment to the bill which would find an important state interest fostered by the bill might better sustain a determination that the law does not require a super-majority vote.

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.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Committee on Corrections Comments

Single Subject Rule

The bill purports to effect local governmental entities which operate county or municipal detention facilities, as well as the Department of Corrections. Splitting this single bill into one relating to the department and one relating to local governments could avoid any possible single-subject question which might arise as a result of the bill treating both state

agencies and local governments. Additionally, the mandate provision would not apply to a bill which solely concerned the department; thus, were any super-majority required, it would only relate to the bill on local governments.

Committee on Crime and Punishment Comments

Single Subject Rule

One alternative to alleviate the potential single subject issue raised above would be to amend the relating to clause in the title of the bill from "An act relating to sexual violence in prisons" to "An act relating to sexual misconduct."

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Please see the discussion of the mandates provision above. Consideration should be given to an amendment making the required findings.

The department expressed concerns regarding compromises in security, and confidentiality of inmate records.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 15, 2000, Representative Roberts offered a strike everything amendment which passed favorably in the Corrections Committee. The amendment made the following changes to the original bill:

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

The Committee on Corrections also favorably adopted an amendment to the amendment which was offered by Representative Trovillion. This amendment created parity in language by removing the provision relating to county, municipal or privately operated detention

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facilities regarding the internal disciplinary process permitting self-defense against a sexual assault as an exculpatory factor.

VI. SIGNATURES:

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