

STORAGE NAME: h1111s1.cor

DATE: March 15, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CORRECTIONS
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 & PUNISHMENT
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

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 course materials for inclusion in the appropriate required officer training course specifically designed to explain and teach sexual assault identification, as well as prevention methods and techniques.
- These materials thereafter be materials used as a part of officer training curriculum.

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.

STORAGE NAME: h1111s1.cor

DATE: March 15, 2000

PAGE 2

According to the Department of Corrections, this bill will result in a financial impact upon the department of \$228,500.00 in FY 2000-2001 and annual reoccurring costs of \$206,500.00. There will also be an indeterminate financial impact upon municipal, county and privately run local detention facilities.

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:

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 nationwide, 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.

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 assaults 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. In a majority of cases, the perpetrators were other inmates. However, 18 percent of the respondents reported that prison staff had participated in the incident.

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

On June 6, 1994, the United States Supreme Court decided *Farmer v. Brennan* 511 U.S. 825 (1994); 114 S. Ct. 1970 (1994), 128 L.Ed.2 811 (1994) in which a prisoner brought a *Bivens* 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.

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 United States.² County and city jails hold around 60,000 women. They are awaiting trial or have been sentenced to relatively short terms of imprisonment. They constitute about 10 per cent of the jail population in the United States.³

For more than a decade, the rate of increase in the number of women incarcerated in jails and prisons in the United States has consistently exceeded the rate of increase in the number of men being incarcerated.⁴ 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 percent of female inmates are between the ages of 25 and 34 and between 48% and 80 percent may have suffered from sexual abuse or abusive intimate relationships.

Sexual Abuse

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, which includes 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.

Many women in prisons and jails in the United States outside of the federal prison system are also victims of sexual abuse by staff, which is defined to include sexually offensive language in addition to the abuses described above.

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).

⁴ "Not Part of My Sentence": Violations of the Human Rights of Women in Custody, *Amnesty International*, March 1999.

When an officer's conduct is such that it violates institutional rules, including acts of rape or sexual assault, the victim is often reluctant to complain because she may have reason to anticipate that her 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. The report provided the following information on Florida and on the Federal Bureau of Prisons, the following state and federal data were collected:

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."

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.⁵

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. Thirteen states do not have such laws.

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.

Florida's Sexual Misconduct Statutes

Section 944.35, F.S., provides that an employee 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.

⁵ Private Settlement Agreement, Lucas v White, Case number C96-02905 US District Court of Northern California.

Section 794.011, F.S., provides for the offense of sexual battery and certain specified conditions, such as age and consent. As used in the statute, 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. Additionally, the term "consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. The statute provides further that the term "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 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 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."

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

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

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 detention facilities, otherwise known as 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

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.

C. EFFECT OF PROPOSED CHANGES:

The bill originally required 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, and information on how to access sexual assault counseling. The original bill required 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.

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

Committee Substitute for House Bill 1111 required 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 would be required to 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 required 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.

Originally, the bill provided 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 required that jail staff shall be dismissed from employment and shall not be employed in the future in any correctional system capacity for engaging in sexual misconduct with a prisoner.

Committee Substitute for House Bill 1111 changed to the bill to provide for a technical change to the title of the bill and 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. The bill substitutes the term "wellness areas" for "recreation halls"; the term "correctional officer" for "guard"; and the term "inmate" for "prisoner".

The bill removes the provisions for the access to a toll-free number for reporting sexual misconduct and the provision for internal disciplinary process to allow for self-defense against a sexual assault as an exculpatory factor.

D. SECTION-BY-SECTION ANALYSIS:

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

Section 2. This section, as originally drafted, 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.

The bill as amended by the strike all amendment removes from the bill provisions for the access to a toll-free number for reporting sexual misconduct within the state facilities and the amendment to the strike all which was adopted removes from the bill provisions for the access to a toll-free number for reporting sexual misconduct within the municipal and county facilities.

The bill as amended by the strike all amendment also provides the penalties for sexual misconduct of an employee to include any employee of a state agency or private contractor. This amendment is to specifically include those employees of a private correctional facility.

Additionally, CS/HB 1111, as amended, 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.

Section 3. This section 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. This section, as originally drafted, 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.

The strike-all amendment provides for legislative findings that cross-gender treatment is inappropriate in certain situations. The amendment provides for a study on cross-gender treatment to be conducted and to be submitted to the Legislature.

Section 5. This section, as originally drafted, provides for an effective date of October 1, 2000.

However, the strike-all amendment 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. The amendment also removes the provision for internal disciplinary process to allow for self-defense against a sexual assault as an exculpatory factor.

Section 6. This section, as created in the strike-all amendment, provides for an effective date of October 1, 2000.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The department asserts that 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. 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. Additional costs would be sustained by local government.

However, CS/HB 1111, as amended removes the expenditure of funds 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 for an identical bill filed last year:

- **Faith-based counseling services: \$165,000.00 per fiscal year**

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: \$55,000.00 in start-up costs**

- **Additional copying cost of Classification handbook materials: \$2,500 in start up costs**

- **Training program for security staff to deliver orientation information: \$1,000 in start up costs**
- **Cost of establishing a single number access phone line for reporting sexual assault to the Office of inspector General: \$4,000.00 in start up costs**

(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 initial implementation or start up cost of **\$228,500.00**.

Annual recurring costs are projected 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

Projections from the county and municipal facilities were not provided and do not appear to be readily available.

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:

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.

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 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.

STORAGE NAME: h1111s1.cor

DATE: March 15, 2000

PAGE 13

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

VI. SIGNATURES:

COMMITTEE ON CORRECTIONS:

Prepared by:

Staff Director:

Johana P. Hatcher

Jo Ann Levin