

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

3 Section 2. Subsections (3) and (4) of section 944.35,
4 Florida Statutes, are amended, and subsections (5) and (6) are
5 added to said section, to read:

6 944.35 Authorized use of force; malicious battery and
7 sexual misconduct prohibited; reporting required; penalties.--

8 (3)(a)1. Any employee of a state agency or private
9 contractor ~~the department~~ who, with malicious intent, commits
10 a battery upon an inmate or an offender supervised by a state
11 agency or private contractor ~~the department~~ in the community,
12 commits a misdemeanor of the first degree, punishable as
13 provided in s. 775.082 or s. 775.083.

14 2. Any employee of a state agency or private
15 contractor ~~the department~~ who, with malicious intent, commits
16 a battery or inflicts cruel or inhuman treatment by neglect or
17 otherwise, and in so doing causes great bodily harm, permanent
18 disability, or permanent disfigurement to an inmate or an
19 offender supervised by a state agency or private contractor
20 ~~the department~~ in the community, commits a felony of the third
21 degree, punishable as provided in s. 775.082, s. 775.083, or
22 s. 775.084.

23 (b)1. As used in this paragraph, the term "sexual
24 misconduct" means the oral, anal, or vaginal penetration by,
25 or union with, the sexual organ of another or the anal or
26 vaginal penetration of another by any other object, but does
27 not include an act done for a bona fide medical purpose or an
28 internal search conducted in the lawful performance of the
29 employee's duty.

30 2. Any employee of the state correctional system
31 operated by the department or a private contractor with either

1 the department or the Correctional Privatization Commission
2 who engages in sexual misconduct with an inmate or an offender
3 supervised by a state agency or private contractor ~~the~~
4 ~~department~~ in the community, without committing the crime of
5 sexual battery, commits a felony of the third degree,
6 punishable as provided in s. 775.082, s. 775.083, or s.
7 775.084.

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

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

21 (c) Notwithstanding prosecution, any violation of the
22 provisions of this subsection, as determined by the Public
23 Employees Relations Commission, shall constitute sufficient
24 cause under s. 110.227 for dismissal from employment with the
25 state ~~department~~, and such person shall not again be employed
26 in any capacity in connection with the correctional system.

27 (d) Each employee who witnesses, or has reasonable
28 cause to suspect, that an inmate or an offender under the
29 supervision of a state agency or private contractor ~~the~~
30 ~~department~~ in the community has been unlawfully abused or is
31 the subject of sexual misconduct pursuant to this subsection

1 shall immediately prepare, date, and sign an independent
2 report specifically describing the nature of the force used or
3 the nature of the sexual misconduct, the location and time of
4 the incident, and the persons involved. The report shall be
5 delivered to the inspector general of the department with a
6 copy to be delivered to the warden ~~superintendent~~ of the
7 institution ~~or the regional administrator~~. The inspector
8 general shall immediately conduct an appropriate
9 investigation, and, if probable cause is determined that a
10 violation of this subsection has occurred, the respective
11 state attorney in the circuit in which the incident occurred
12 shall be notified.

13 (4)(a) Any employee required to report pursuant to
14 this section who knowingly or willfully fails to do so, or who
15 knowingly or willfully prevents another person from doing so,
16 commits a misdemeanor of the first degree, punishable as
17 provided in s. 775.082 or s. 775.083.

18 (b) Any person who knowingly or willfully submits
19 inaccurate, incomplete, or untruthful information with regard
20 to reports required in this section commits a misdemeanor of
21 the first degree, punishable as provided in s. 775.082 or s.
22 775.083.

23 (c) Any person who knowingly or willfully coerces or
24 threatens any other person with the intent to alter either
25 testimony or a written report regarding an incident where
26 force was used or an incident of sexual misconduct commits a
27 felony of the third degree, punishable as provided in s.
28 775.082, s. 775.083, or s. 775.084.

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30 As part of the correctional officer training program, the
31 Criminal Justice Standards and Training Commission shall

1 develop course materials for inclusion in the appropriate
2 required course specifically designed to explain the
3 parameters of this subsection and to teach sexual assault
4 identification and prevention methods and techniques.

5 (5) State correctional institutions and private
6 correctional facilities housing state inmates shall:

7 (a) Provide an initial orientation program on sexual
8 assault to all inmates within 48 hours after incarceration.

9 The program shall provide at least the following information:

10 1. A realistic presentation on how to avoid sexual
11 violence while incarcerated.

12 2. Information on how to prevent and reduce the risk
13 of sexual violence.

14 3. Information on available sexual assault counseling.

15 4. The procedure for requesting sexual assault
16 counseling.

17 (b) Provide sexual assault counseling to any inmate
18 who requests it.

19 1. Sexual assault counseling shall be provided by
20 trained or experienced psychological specialists employed by
21 the department or by a private correctional facility under
22 contract with the Correctional Privatization Commission, or by
23 trained or experienced representatives of a faith-based
24 organization, community outreach organization, or other
25 appropriate organization that has been approved by the
26 facility administrator to provide such programming.

27 2. Literature and tapes on rape and rape trauma
28 syndrome developed or sponsored by community rape crisis
29 centers or state or national nonprofit organizations with
30 expertise in sexual assault issues shall not be barred from
31 any state correctional institution unless the administrator

1 determines that a particular item is unsuitable. Such
2 literature provided to a state correctional institution shall
3 be left out in areas where inmates can take it without calling
4 attention to themselves, such as in the library, medical
5 clinic, wellness areas, mental health offices, and educational
6 areas.

7 (6) A correctional officer or other employee of a
8 state correctional institution or of a private correctional
9 facility who becomes aware of an actual or threatened sexual
10 assault, or a credible report of an actual or threatened
11 sexual assault, on an inmate in the custody of the institution
12 shall promptly report this situation to the inspector general
13 of the department, who shall respond as provided in paragraph
14 (3)(d).

15 Section 3. Section 951.221, Florida Statutes, is
16 created to read:

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

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

29 (2) Notwithstanding prosecution, any violation of the
30 provisions of this section, as determined by the administrator
31 of the facility, shall constitute sufficient cause for

1 dismissal from employment, and such person shall not again be
2 employed in any capacity in connection with the correctional
3 system.

4 Section 4. (1) The Legislature recognizes the need of
5 the Department of Corrections, the Correctional Privatization
6 Commission, and local county and municipal detention
7 facilities to achieve institutional and security interests and
8 provide equal employment opportunity for staff while
9 respecting the constitutional rights of inmates and prisoners
10 in correctional institutions and detention facilities.
11 However, the Legislature finds that, precluding legitimate
12 correctional policies and practices, it is generally
13 inappropriate for prisoners to be subject to cross-gender
14 treatment in situations where it would be expected that such
15 treatment should be performed by staff of the same gender as
16 the inmate or prisoner.

17 (2) For the purpose of providing information to the
18 Legislature on the general issue of cross-gender treatment of
19 inmates and prisoners, the Department of Corrections in
20 consultation with the Correctional Privatization Commission
21 shall conduct or cause to be conducted a study which describes
22 cross-gender treatment of inmates in the state and private
23 correctional system in terms of current policy and practices,
24 legal issues and concerns, and the extent to which other state
25 correctional systems achieve institutional and staff security
26 interests and provide equal employment opportunity for staff
27 while respecting the constitutional rights of inmates and
28 prisoners.

29 (3) The department shall submit a report with findings
30 and recommendations as part of the study performed pursuant to
31 subsection (2) to the President of the Senate and the Speaker

1 of the House of Representatives on or before December 31,
2 2000.

3 Section 5. Subsections (10) and (11) of section
4 951.23, Florida Statutes, are renumbered as subsections (12)
5 and (13), respectively, and new subsections (10) and (11) are
6 added to said section to 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 and municipal detention facilities and
11 private detention facilities under contract with a county
12 commission shall:

13 (a) Provide an initial orientation program on sexual
14 assault to all inmates within 48 hours after detention. The
15 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 prisoner
24 who requests it.

25 1. Sexual assault counseling shall be provided by
26 trained or experienced representatives of a faith-based
27 organization, community outreach organization, or other
28 appropriate organization that has been approved by the
29 facility administrator to provide such programming. County
30 detention facilities and municipal detention facilities may
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1 contract with faith-based or community outreach organizations
2 to provide these counseling services.

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 county detention facility or municipal detention facility
8 unless the administrator determines that a particular item is
9 unsuitable. Such literature provided to a detention center
10 shall be left out in areas where prisoners can take it without
11 calling attention to themselves, such as in the library,
12 medical clinic, recreation halls, mental health offices, and
13 educational areas.

14 (c) Develop and implement an employee training program
15 to identify and prevent sexual assault. The training program
16 shall provide at least 2 hours of training for each employee.

17 (11) A guard or other employee of the detention
18 facility who becomes aware of an actual or threatened sexual
19 assault, or a credible report of an actual or threatened
20 sexual assault, on a prisoner in the custody of the detention
21 facility shall promptly report this situation to the person
22 responsible for facility inspections and investigations,
23 internal affairs investigations, inmate grievances, and
24 management reviews who shall immediately conduct an
25 appropriate investigation, and, if probable cause is
26 determined that a violation of this subsection has occurred,
27 the respective state attorney in the circuit in which the
28 incident occurred shall be notified.

29 Section 6. This act shall take effect October 1, 2000.
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