

By Senator Dawson

30-126A-00

1 A bill to be entitled
2 An act relating to prisons; creating the
3 "Protection Against Sexual Violence in Florida
4 Jails and Prisons Act"; amending ss. 944.35,
5 951.23, F.S.; requiring the Criminal Justice
6 Standards and Training Commission to develop a
7 course relating to sexual assault
8 identification and prevention as part of the
9 correctional-officer training program;
10 authorizing the department and county and
11 municipal detention facilities to provide an
12 orientation program and counseling; creating s.
13 951.221, F.S.; prohibiting sexual misconduct by
14 employees of county or municipal detention
15 facilities; providing for termination of
16 employment under certain circumstances;
17 providing penalties; creating s. 951.223, F.S.;
18 prohibiting an officer or employee of a county
19 or municipal detention facility from receiving
20 any gift or other compensation from a prisoner
21 or making any gift or present to a prisoner
22 without the permission of the administrator of
23 the facility; providing penalties; providing an
24 effective date.

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26 Be It Enacted by the Legislature of the State of Florida:

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28 Section 1. Sections 2 through 4 of this act may be
29 cited as the "Protection Against Sexual Violence in Florida
30 Jails and Prisons Act."

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1 Section 2. Paragraph (b) of subsection (3) and
2 subsection (4) of section 944.35, Florida Statutes, are
3 amended, and subsection (5) is added to that section, to read:

4 944.35 Authorized use of force; malicious battery and
5 sexual misconduct prohibited; reporting required; penalties.--

6 (3)

7 (b)1. As used in this paragraph, the term "sexual
8 misconduct" means the oral, anal, or vaginal penetration by,
9 or union with, the sexual organ of another or the anal or
10 vaginal penetration of another by any other object, but does
11 not include an act done for a bona fide medical purpose or an
12 internal search conducted in the lawful performance of the
13 employee's duty.

14 2. Any employee of the department who engages in
15 sexual misconduct with an inmate or an offender supervised by
16 the department in the community, without committing the crime
17 of sexual battery, commits a felony of the third degree,
18 punishable as provided in s. 775.082, s. 775.083, or s.
19 775.084.

20 3. The consent of the inmate or offender supervised by
21 the department in the community to any act of sexual
22 misconduct may ~~shall~~ not be raised as a defense to a
23 prosecution under this paragraph.

24 4. This paragraph does not apply to any employee of
25 the department who is legally married to an inmate or an
26 offender supervised by the department in the community, nor
27 does it apply to any employee who has no knowledge, and would
28 have no reason to believe, that the person with whom the
29 employee has engaged in sexual misconduct is an inmate or an
30 offender under community supervision of the department.

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

6 (b) Any person who knowingly or willfully submits
7 inaccurate, incomplete, or untruthful information with regard
8 to reports required in this section commits a misdemeanor of
9 the first degree, punishable as provided in s. 775.082 or s.
10 775.083.

11 (c) Any person who knowingly or willfully coerces or
12 threatens any other person with the intent to alter either
13 testimony or a written report regarding an incident where
14 force was used or an incident of sexual misconduct commits a
15 felony of the third degree, punishable as provided in s.
16 775.082, s. 775.083, or s. 775.084.

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18 As part of the correctional-officer training program, the
19 Criminal Justice Standards and Training Commission shall
20 develop course materials for inclusion in the appropriate
21 required course specifically designed to explain the
22 parameters of this subsection and to teach sexual assault
23 identification and prevention methods and techniques.

24 (5) State correctional institutions and private
25 correctional facilities housing state inmates may, to the
26 extent that funds are available:

27 (a) Provide an initial orientation program on sexual
28 assault to all inmates within 48 hours after incarceration,
29 which program must provide at a minimum:

30 1. A realistic presentation on how to avoid sexual
31 violence while incarcerated.

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

3 3. Information on available sexual assault counseling.

4 4. Instruction on the procedure for requesting sexual
5 assault counseling.

6 (b) Provide sexual assault counseling to any inmate
7 who has reported being victimized by a sexual assault and
8 requests such counseling.

9 1. Sexual assault counseling may be provided by
10 trained or experienced psychological specialists employed by
11 the Department of Corrections; by a private correctional
12 vendor under contract with the Correctional Privatization
13 Commission; or by trained or experienced representatives of a
14 faith-based organization, community outreach organization, or
15 other appropriate organization that has been approved by the
16 facility administrator to provide such programs.

17 2. Literature and tapes on rape and rape trauma
18 syndrome developed or sponsored by community rape crisis
19 centers or state or national nonprofit organizations with
20 expertise in sexual assault issues may not be barred from any
21 state correctional institution unless the administrator
22 determines that a particular item is unsuitable. Such
23 literature provided to a state correctional institution shall
24 be left out in areas where inmates can take it without calling
25 attention to themselves, such as in the library, medical
26 clinic, wellness areas, mental health offices, and educational
27 areas.

28 Section 3. Section 951.221, Florida Statutes, is
29 created to read:

30 951.221 Sexual activity between detention facility
31 employees and inmates; penalties.--

1 (1) Any employee of a county or municipal detention
2 facility or of a private detention facility under contract
3 with a county commission who engages in sexual misconduct, as
4 defined in s. 944.35(3)(b)1., with an inmate or an offender
5 supervised by the facility without committing the crime of
6 sexual battery commits a felony of the third degree,
7 punishable as provided in s. 775.082, s. 775.083, or s.
8 775.084. The consent of an inmate to any act of sexual
9 misconduct may not be raised as a defense to prosecution under
10 this section.

11 (2) Notwithstanding prosecution, any violation of this
12 section, as determined by the administrator of the facility,
13 constitutes sufficient cause for dismissal of the violator
14 from employment, and such person may not again be employed in
15 any capacity in connection with the correctional system.

16 Section 4. Present subsection (11) of section 951.23,
17 Florida Statutes, is renumbered as subsection (12), and a new
18 subsection (11) is added to that section, to read:

19 951.23 County and municipal detention facilities;
20 definitions; administration; standards and requirements.--

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

25 (a) Provide information on sexual assault to all
26 inmates within 48 hours after detention. The information
27 should address:

28 1. Realistic methods and suggestions for how to avoid
29 sexual violence while incarcerated.

30 2. Methods and suggestions for how to prevent and
31 reduce the risk of sexual violence.

1 (b) If the detention facility provides or authorizes
2 the provision of sexual assault counseling, inform inmates
3 within 48 hours after detention concerning the availability of
4 sexual assault counseling and the procedure for requesting
5 sexual assault counseling provided by facility staff, vendors,
6 or community-based, not-for-profit organizations.

7 (c) Provide to employees while in training information
8 about methods and suggestions for identifying and preventing
9 sexual assault. If a county, municipality, or private vendor
10 that operates a detention facility offers such training, the
11 program should provide at least 2 hours of training for each
12 employee.

13 Section 5. Section 951.223, Florida Statutes, is
14 created to read:

15 951.223 Acceptance of unauthorized compensation
16 prohibited; barter or dealings with prisoners prohibited;
17 penalties.--

18 (1) An officer or employee of a county or municipal
19 detention facility may not:

20 (a) Receive, directly or indirectly, from a prisoner
21 or from anyone on behalf of a prisoner, any gift, reward, or
22 other compensation for his or her services or supplies, other
23 than that prescribed or authorized by law or by the
24 administrator of the detention facility.

25 (b) Make any gift or present to a prisoner or have any
26 barter or dealings with a prisoner without the permission of
27 the administrator of the facility.

28 (2) Any person who violates this section commits a
29 misdemeanor of the first degree, punishable as provided in s.
30 775.082 or s. 775.083, and shall be discharged from his or her
31 employment with the county or municipal detention facility.

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

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SENATE SUMMARY

Creates the "Protection Against Sexual Violence in Florida Jails and Prisons Act." Contingent upon the availability of funds, requires that the Department of Corrections, private correctional facilities, and county and municipal detention facilities provide an orientation program concerning sexual assault and provide inmate counseling. Requires development of a course relating to sexual assault identification and prevention as part of the correctional-officer training program. Prohibits sexual misconduct by employees of county or municipal detention facilities or private detention facilities. Provides for termination of employment under certain circumstances. Provides that it is a first-degree misdemeanor for an employee of a county or municipal detention facility to give to a prisoner, or receive from a prisoner, any gift or other compensation without the permission of the administrator of the facility. Provides for a person who violates such prohibition to be discharged from employment with the detention facility.