

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
FINAL ANALYSIS**

BILL #: HB 285 (Passed as SB 226)
RELATING TO: Sexual Violence in Florida Jails and Prisons
SPONSOR(S): Representative(s) Wilson and Others
TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 8 NAYS 0
- (2) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
- (3) CRIMINAL JUSTICE APPROPRIATIONS YEAS 11 NAYS 0
- (4) COUNCIL FOR HEALTHY COMMUNITIES (W/D)
- (5)

I. SUMMARY:

HB 285 creates the "Protection Against Sexual Violence in Florida Jails and Prisons Act." The bill requires correctional officers to be provided special training through the Criminal Justice Standards and Training Commission regarding sexual assault identification, prevention, and reporting requirements. The bill creates a third-degree felony offense for employees of a local detention facility, whether publicly or privately operated, if such employees engage in sexual misconduct, as defined in s. 944.35, F.S.

HB 285 may have a nominal fiscal impact. The bill has an effective date of October 1, 2001.

The Committee on Crime Prevention, Corrections, and Safety adopted three amendments. The amendments, which are discussed in Section VI of this analysis, made substantial changes to the original bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Florida's Sexual Misconduct Statutes

Section 944.35, F.S., prohibits employees of the Department of Corrections from engaging in sexual misconduct with an inmate or any other person supervised by the department in the community. Such conduct is a third-degree felony. "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. It 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. The consent of the inmate is not a defense to violations of the sexual misconduct statute. Florida's law also requires correctional employees to report their knowledge or reasonable suspicions of sexual misconduct. The failure to report, or reporting inaccurately, is a first-degree misdemeanor. Any attempt to coerce a person required to report is a third-degree felony.

Currently, Florida does not have a law against sexual misconduct in county or municipal detention facilities.

Procedures of the Department of Corrections

Department procedures are currently in place for an inmate to report a sexual assault and request counseling. Counseling is available through health services and the prison chaplains. In those instances where an inmate reports a sexual assault immediately after it occurs, steps are taken to preserve evidence, and an incident report is written immediately and forwarded to the Inspector General's Office where the case is assigned to an inspector for investigation. If it is determined that a crime has been committed, the case is turned over to the State Attorney's Office for prosecution.

Criminal Justice Standards and Training Commission

The Criminal Justice Standards and Training Commission (CJSTC) within the Florida Department of Law Enforcement administers the officer standards and training provisions of Chapter 943, F.S. The CJSTC oversees officers in the disciplines of law enforcement, corrections, and correctional probation. The primary goals and responsibilities of the Commission are to certify and revoke the certification of officers, to improve the delivery of quality training, to establish and monitor compliance with uniform employment and training standards, and to increase the professionalism of law enforcement and correctional officers throughout the state.

C. EFFECT OF PROPOSED CHANGES:

Creating an Offense for Sexual Misconduct by Jail Employees

HB 285 creates a new statutory section that would establish a third-degree felony offense for employees of a local detention facility, whether publicly or privately operated, if such employees engage in sexual misconduct with an inmate or an offender supervised by the facility. Sexual misconduct is defined in s. 944.35(3)(b)1., F.S. In cases of sexual misconduct, the consent of the inmate "may not" be used as a defense to criminal charges of sexual misconduct against a jail employee.

The bill also provides that such actions by an employee of a local detention facility constitutes grounds for dismissal by the facility administrator and a permanent bar from future employment in any capacity in a correctional facility.

Criminal Justice Standards and Training Commission

HB 285 requires correctional officers to be provided special training through the Criminal Justice Standards and Training Commission regarding sexual assault identification and prevention, and reporting requirements concerning the use of force, battery on an inmate, and sexual misconduct.

D. SECTION-BY-SECTION ANALYSIS:

Please see above section, "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Florida Department of Law Enforcement has reported that it would experience a nominal fiscal impact as a result of the bill's mandate that the Criminal Justice Standards and Training Commission develop course materials for correctional officer training.

The Criminal Justice Impact Conference has determined that the provisions of the bill related to criminal penalties will not result in the need for additional prison beds.¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹ Criminal Justice Impact Conference held March 14, 2001.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties 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.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime Prevention, Corrections, & Safety adopted three amendments on March 20, 2001. Together, the amendments made several substantial changes to the original bill.

The first amendment made a technical change to the bill.

The second amendment struck a portion of section 2 of the bill, authorizing the Department of Corrections and vendors of private correctional facilities to provide orientation programs on sexual assault to all inmates within 48 hours of incarceration. The amendment also struck language allowing sexual assault counseling to be provided by organizations outside of the Department of Corrections. Finally, the amendment struck language relating to inmate accessibility to literature and other information regarding rape.

The third amendment struck all of sections 4 and 5 from the bill. Section 4 dealt with employee training and inmate orientation regarding sexual assault at county and municipal detention facilities. Section 5 dealt with the exchange of unauthorized gifts between inmates and guards at local detention facilities.

As a result of the three amendments, HB 285 now makes only two changes to current law. First, the bill requires correctional officers to be provided special training through the Criminal Justice Standards and Training Commission regarding sexual assault identification, prevention, and reporting requirements. Second, the bill makes it a third-degree felony for employees of a local detention facility, whether publicly or privately operated, to engage in sexual misconduct, as defined in s. 944.35, F.S.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS AND PUBLIC SAFETY:

Prepared by:

Staff Director:

Melinda A. Smith

David De La Paz

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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L. Michael Billmeier

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AS FURTHER REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

Prepared by:

Staff Director:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

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