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DATE: April 12, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 285
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 9 NAYS 0
 - (2) JUDICIAL OVERSIGHT
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4) COUNCIL FOR HEALTHY COMMUNITIES
 - (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 also creates a first-degree misdemeanor offense for officers or employees of county or municipal detention facilities who accept gifts or compensation from inmates. The bill further forbids such employees from bartering with inmates or providing any compensation or gifts to inmates.

The Department of Corrections, private corrections vendors, and county and municipal detention facilities would be authorized under the bill to provide sexual assault information and programs to inmates within the first 48 hours of being incarcerated if resources are available to do so. To the extent funds are available, sexual assault counseling should be provided to any inmate who reports being victimized by a sexual assault and asks for such counseling.

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, make substantial changes to the 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

The Department of Corrections reports that all inmates are given an orientation upon admission to the prison system. During this orientation, inmates are advised of the option to be placed in special housing if the inmate feels the need for protection from another inmate. Special housing consists of administrative confinement, protective management, close management, and disciplinary confinement. In accordance with department policy, inmates are instructed at orientation that if protection from a staff member or any person other than an inmate is desired, another staff member is to be notified. The inspector's general office must then be notified. An inmate may be placed in administrative confinement or transferred to another correctional institution to provide necessary protection.

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.

Permission to Provide Specialized Inmate Orientation at State and Local Levels

HB 285 would allow the Department of Corrections, private corrections vendors operating prisons or jails, and county and municipal detention facilities to provide specified information and programming concerning sexual assault to inmates within the first 48 hours of being incarcerated. If the state or local governments, or private vendors, choose to implement the specialized orientation, HB 285 requires the orientation to include the following: a presentation on how to avoid sexual violence while incarcerated, information on how to prevent and reduce the risk of sexual violence, information on available sexual assault counseling, and the procedure for requesting sexual assault counseling.

Permission to Provide Assault Counseling

HB 285 allows sexual assault counseling to be provided upon request to inmates in state, local, or private facilities. The counseling may be provided by trained or experienced psychological specialists, private vendors under contract with the Correctional Privatization Commission, trained representatives of faith-based or community out-reach programs, or by representatives of other appropriate organizations that have been approved by the department or facility administrator.

Materials on Sexual Assault to be Provided to State Inmates

HB 285 specifies that literature and tapes on rape and rape trauma syndrome may not be barred from any state correctional institution unless the administrator determines that a particular item is unsuitable. The bill requires the material to be made available to inmates in such a way that the inmates won't call attention to themselves when taking the material.

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. The bill would also require local detention facilities that already provide specialized sexual assault training to make such training 2 hours in length.

Creating an Offense for Acceptance of Unauthorized Compensation or Bartering with Prisoners

HB 285 creates a new statutory section that would make it a first-degree misdemeanor for an officer or employee of a county or municipal detention facility to receive, directly or indirectly, from a prisoner or from anyone on behalf of a prisoner, any gift, reward, or compensation for services or supplies other than those authorized by law or the administrator of the facility. The same section makes it a first-degree misdemeanor to present a gift to a prisoner or do any bartering or dealings with a prisoner without the permission of the facility's administrator. The proscribed behaviors, under the bill, would require discharge from employment.

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 language of the bill is permissive with regard to providing inmates with orientations, programming, information, and counseling. The bill allows correctional facilities (whether public or private) to provide such things "to the extent funding is available." Therefore, there should be no fiscal impact upon the state because of such permissive provisions.

The only area where the state might be financially impacted is in the area of prison bed costs. Because the bill creates a third-degree felony offense for detention facility employees who engage in sexual misconduct with inmates, there may be some individuals who will be convicted of such a crime and receive a prison sentence. However, the Criminal Justice Impact Conference has determined there should be no significant prison bed impact and therefore no significant fiscal impact.¹

¹ Criminal Justice Impact Conference held March 14, 2001.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The language of the bill is permissive with regard to providing inmates with orientations, programming, information and counseling. The bill allows local correctional facilities (both public and private) to provide such things "to the extent funding is available." Therefore, there should be no fiscal impact upon local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Rape and sexual assault counselors may experience a positive fiscal impact if the Department of Corrections or county or municipal detention facilities decide to hire such counselors as a result of the permissive language of the bill. Such fiscal impact is indeterminate.

All inmate programming and information is optional and therefore should have no negative fiscal impact upon private corrections vendors.

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 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. The adoption of the three amendments makes HB 285 identical to its companion bill in the Senate.

VII. SIGNATURES:

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