

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 226
 SPONSOR: Senator Dawson
 SUBJECT: Sexual Violence/Jails and Prisons
 DATE: January 10, 2001 REVISED: 03/06/01 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gardner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/3 amendments</u>
2.	_____	_____	<u>APJ</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 226 would create the "Protection Against Sexual Violence in Florida Jails and Prisons Act."

The bill would require correctional officers to be provided special training through the Criminal Justice Standards and Training Commission regarding sexual assault identification and prevention methods and techniques.

The Department of Corrections (department), private corrections vendors operating prisons or jails, or counties with jails would be authorized to provide specified information and programming 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.

The bill would create a third-degree felony 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.

The bill creates a first-degree misdemeanor where an officer or employee of a county or municipal detention facility receives remuneration from a prisoner, or gives a prisoner a gift without authorization from the facility administrator.

The provisions of this bill would take effect October 1, 2001.

This bill substantially amends or creates the following sections of the Florida Statutes: 944.35, 951.23, 951.221, and 951.223.

II. Present Situation:

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 that apply to all persons regardless of the setting in which the coerced sexual contact occurs. In addition, however, laws exist that recognize the potential for abusive relationships in ostensibly consensual relationships between female inmates and correctional officers and criminalizes custodial sexual contact. Thirty-six states, including the District of Columbia and the federal government, have laws specifically prohibiting sexual relations between jail and prison staff and inmates. Florida is one of the states that criminalizes sexual contact between correctional employees of the Department of Corrections and persons under the department's custody.

Nationwide, the custodial sexual contact laws vary in scope and nature. For example, in 13 states and the District of Columbia, including Florida, it is a criminal offense 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., 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. Florida's law is one that can be characterized as "strict liability." Other than the two express exceptions, the intent of an officer or employee and the consent of an inmate or person being supervised are irrelevant to a charge of sexual misconduct.

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.

Criminal Justice Standards and Training Commission

The Criminal Justice Standards and Training Commission within the Florida Department of Law Enforcement administers the officer standards and training provisions of ch. 943, F.S. The Criminal Justice Standards and Training Commission 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.

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 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."

The Department of Correction's Inmate Orientation Program

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 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 must then be notified. An inmate may be placed in administrative confinement or transferred to another correctional institution to provide necessary protection.

The Department reports it is in the process of developing standards for an inmate orientation program at the five reception centers that would include components on preventing and reducing the risk of sexual violence. According to the department, the target date for developing these standards is March 15, 2001. According to the 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, an incident report is written immediately and forwarded electronically 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.

III. Effect of Proposed Changes:

Specialized Training of Correctional Officers at the State and Local Levels

The bill would require correctional officers to be provided special training through the Criminal Justice Standards and Training Commission regarding sexual assault identification and prevention methods and techniques. The bill would require that the commission include in its courses an explanation of the offense of sexual misconduct by employees of the Department of Corrections. The bill would also require all local detention facilities to develop and implement a component of a pre-existing employee training program to identify and prevent sexual assault that would provide at least 2 hours of training to each employee of local detention facilities.

Specialized Inmate Orientation at the State and Local Level

The Department of Corrections, private corrections vendors operating prisons or jails, or counties with jails would be allowed to provide specified information and programming to inmates within the first 48 hours of being incarcerated. If the state, local governments, or private vendors choose

to implement the specialized inmate orientation, the bill mandates that the initial orientation program 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 Sexual Assault Counseling

The bill would authorize counseling on sexual assault to any prisoner who reports he or she was victimized by a sexual assault and requests it in a local jail or a prison regardless of whether it is publicly or privately operated. It would allow sexual assault counseling to be provided by faith-based organizations or community outreach organizations that have been approved by the Department of Corrections. The department, counties, cities, and private corrections vendors would also be authorized to employ trained or experienced sexual assault counselors to provide counseling that would be authorized by this bill.

Sexual Assault Information to be Provided to Inmates

The bill specifies that literature and tapes on rape and rape trauma syndrome that are developed or sponsored by community rape crisis centers or state or national nonprofit organizations with expertise in sexual assault issues must not be barred from any prison or local detention facility. However, the bill authorizes an administrator of a correctional facility to bar an item if he or she determines that the item is "unsuitable." The bill would require sexual assault literature to be maintained in specified areas. The bill requires that the literature be "left out" in areas where prisoners "can take it without calling attention to themselves." Examples of such places are provided, which are libraries, medical clinics, recreation halls, mental health offices, and educational areas.

Creating an Offense for Sexual Misconduct by Jail Employees

A new statutory section would create a third-degree felony 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 without committing the crime of sexual battery. Sexual misconduct is defined in s. 944.35(3)(b)1., F.S. That statutory section defines it as the 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. The definition of sexual misconduct would 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. In cases of sexual misconduct, the consent of the inmate would not be a defense to criminal charges of sexual misconduct against a jail employee.

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

Creating an Offense for Acceptance of Unauthorized Compensation, Barter or Dealings with Prisoners

The bill creates a new statutory section which 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 have any barter or dealings with a prisoner without the permission of the facility's administrator. The proscribed behaviors, under the bill, would require discharge from employment.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. None. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Rape and sexual assault counselors and educators would experience a positive fiscal impact if the Department of Corrections and county jails become motivated to hire such counselors and educators as a result of the permissive language in this bill. The positive fiscal impact upon such counselors and educators is indeterminate.

All employee training, inmate programming, and inmate information is optional. Therefore, there would be no fiscal impact upon private corrections vendors.

C. Government Sector Impact:

The Department of Law Enforcement has reported that it would experience an insignificant negative 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 materials would have to explain the criminal ramifications of not reporting an offense of sexual misconduct and to teach sexual assault identification and prevention methods and techniques.

There is no requirement that the Department of Corrections and county jails hire rape and sexual assault counselors and educators, thus, there is no fiscal impact. Additionally, it is permissive language couched in terms of "to the extent funding is available" that suggests that prisons and jails provide various information and programming for inmates related to sexual assaults. Because of the permissive and conditional context in which the dissemination of information and provision of programming to inmates is presented in the bill, there would be no fiscal impact upon the state, counties, municipalities, or private vendors.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:

Conforms language of the bill with action taken on two subsequent amendments.

#2 by Criminal Justice:

Deletes language that would have authorized DOC to provide incoming inmates with orientation on sexual assault prevention and provides literature, tapes and counseling to the extent that funds are available. (WITH TITLE AMENDMENT)

#3 by Criminal Justice:

Deletes language that would have authorized local jails to provide the inmate services that are mentioned above. In addition, the amendment deletes the section of the bill that would have made it a misdemeanor for employees and inmates of local jails to exchange gifts or have other dealings with one another. (WITH TITLE AMENDMENT)