

## CHAPTER 97-215

### Committee Substitute for House Bill No. 787

An act relating to criminal and juvenile justice; amending s. 39.024, F.S.; changing the membership of the Department of Juvenile Justice Standards and Training Commission to include contract providers and a representative of the business community; creating s. 39.086, F.S.; defining the terms “sexual misconduct” and “employee”; providing that it is a second degree felony for an employee to engage in sexual misconduct with a juvenile offender detained or supervised by the department; providing penalties; providing certain exceptions; prohibiting certain employment, or providing for dismissal from departmental employment, of a person who has engaged in sexual misconduct with a juvenile offender; requiring an employee who witnesses sexual misconduct, or who has reasonable cause to suspect that sexual misconduct has been committed, to report such incident; providing for notification to the inspector general, facility superintendent, and district juvenile justice manager; providing that it is a first degree misdemeanor to knowingly and willfully fail to make a report as required, or to prevent another from doing so, or to submit inaccurate or untruthful information; providing penalties; providing that it is a third degree felony to coerce or threaten another person to alter testimony or a report with respect to an incident of sexual misconduct; providing penalties; creating s. 39.087, F.S.; prohibiting the introduction, removal, or possession of, and other specified acts with respect to, contraband articles on the grounds of a juvenile detention facility or other commitment program; specifying articles that are contraband; providing penalties; providing exceptions; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 39.024, Florida Statutes, is amended to read:

39.024 Juvenile justice training academies established; Juvenile Justice Standards and Training Commission created; Juvenile Justice Training Trust Fund created.—

(2) JUVENILE JUSTICE STANDARDS AND TRAINING COMMISSION.—

(a) There is created under the Department of Juvenile Justice the Juvenile Justice Standards and Training Commission, hereinafter referred to as the commission. The 17-member commission shall consist of the Attorney General or designee, the Commissioner of Education or designee, a member of the juvenile court judiciary to be appointed by the Chief Justice of the Supreme Court, and 14 members to be appointed by the Secretary of Juvenile Justice as follows:

1. ~~Seven~~ Eight members shall be juvenile justice ~~professionals~~ program staff: a superintendent ~~or and~~ a direct care staff member from ~~an~~ a state-owned and state-operated institution; ~~a superintendent, a director, or a direct care staff member~~ from both a contracted ~~and a state-operated~~ community-based program; a superintendent and a direct care staff member from a regional detention center or facility; ~~an intake supervisor, intake counselor, or case manager; and a community control and furlough supervisor or counselor;~~ and a director of a day treatment or aftercare program. No fewer than three of these members shall be contract providers.

2. Two members shall be representatives of local law enforcement agencies.

3. One member shall be an educator from the state's university and community college program of criminology, criminal justice administration, social work, psychology, sociology, or other field of study pertinent to the training of juvenile justice program staff.

4. One member shall be a member of the public.

5. One member shall be a state attorney, or assistant attorney, who has juvenile court experience.

6. One member shall be a public defender, or assistant public defender, who has juvenile court experience.

7. One member shall be a representative of the business community.

All appointed members shall be appointed to serve terms of 2 years.

Section 2. Section 39.086, Florida Statutes, is created to read:

39.086 Sexual misconduct prohibited; reporting required; penalties.—

(1)(a)1. As used in this subsection, the term:

a. "Sexual misconduct" means fondling the genital area, groin, inner thighs, buttocks, or breasts of a person; 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 term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee of the department or an employee of a provider under contract with the department.

b. "Employee" includes paid staff members, volunteers, and interns who work in a department program or a program operated by a provider under a contract.

2. An employee who engages in sexual misconduct with a juvenile offender detained or supervised by, or committed to the custody of, the department commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. An employee may be found guilty of violating this subsection without having committed the crime of sexual battery.

3. The consent of the juvenile offender to any act of sexual misconduct is not a defense to prosecution under this subsection.

4. This subsection does not apply to an employee of the department, or an employee of a provider under contract with the department, who:

a. Is legally married to a juvenile offender who is detained or supervised by, or committed to the custody of, the department.

b. Has no reason to believe that the person with whom the employee engaged in sexual misconduct is a juvenile offender detained or supervised by, or committed to the custody of, the department.

(b) Notwithstanding prosecution, any violation of this subsection, as determined by the Public Employees Relations Commission, constitutes sufficient cause under s. 110.227 for dismissal from employment with the department, and such person may not again be employed in any capacity in connection with the juvenile justice system.

(2) An employee of the department, or an employee of a provider under contract with the department, who witnesses sexual misconduct committed against a juvenile offender, or who has reasonable cause to suspect that sexual misconduct has been committed against a juvenile offender, shall immediately report the incident to the department's incident hotline, and prepare, date, and sign an independent report that specifically describes the nature of the sexual misconduct, the location and time of the incident, and the persons involved. The employee shall deliver the report to the supervisor or program director, who is responsible for providing copies to the department's inspector general and the district juvenile justice manager. The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that a violation of subsection (1) has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.

(3)(a) Any person who is required to prepare a report under this section and who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with respect to a report required under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Any person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report regarding an incident of sexual misconduct commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Section 39.087, Florida Statutes, is created to read:

39.087 Introduction, removal, or possession of certain articles unlawful; penalty.—

(1)(a) Except as authorized through program policy or operating procedure or as authorized by the facility superintendent, program director, or manager, a person may not introduce into or upon the grounds of a juvenile detention facility or commitment program, or take or send, or attempt to take or send, from a juvenile detention facility or commitment program, any of the following articles, which are declared to be contraband under this section:

1. Any unauthorized article of food or clothing.
2. Any intoxicating beverage or any beverage that causes or may cause an intoxicating effect.
3. Any controlled substance, as defined in s. 893.02(4), or any prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.
4. Any firearm or weapon of any kind or any explosive substance.

(b) A person may not transmit contraband to, cause contraband to be transmitted to or received by, attempt to transmit contraband to, or attempt to cause contraband to be transmitted to or received by, a juvenile offender into or upon the grounds of a juvenile detention facility or commitment program, except as authorized through program policy or operating procedures or as authorized by the facility superintendent, program director, or manager.

(c) A juvenile offender or any person, while upon the grounds of a juvenile detention facility or commitment program, may not be in actual or constructive possession of any article or thing declared to be contraband under this section, except as authorized through program policy or operating procedures or as authorized by the facility superintendent, program director, or manager.

(2) Any person who violates this section as it pertains to an article of contraband described in subparagraph (1)(a)1. commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In all other cases, a person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. This act shall take effect October 1, 1997.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.