

Fla. Stat. § 944.35. Authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties**(1)**

(a) An employee of the department is authorized to apply physical force upon an inmate only when and to the extent that it reasonably appears necessary:

1. To defend himself or herself or another against such other imminent use of unlawful force;
2. To prevent a person from escaping from a state correctional institution when the officer reasonably believes that person is lawfully detained in such institution;
3. To prevent damage to property;
4. To quell a disturbance;
5. To overcome physical resistance to a lawful command; or
6. To administer medical treatment only by or under the supervision of a physician or his or her designee and only:
 - a. When treatment is necessary to protect the health of other persons, as in the case of contagious or venereal diseases; or
 - b. When treatment is offered in satisfaction of a duty to protect the inmate against self-inflicted injury or death.

As part of the correctional officer training program, the Criminal Justice Standards and Training Commission shall develop a course specifically designed to explain the parameters of this subsection and to teach the proper methods and techniques in applying authorized physical force upon an inmate.

(b) Following any use of force, a qualified health care provider shall examine any person physically involved to determine the extent of injury, if any, and shall prepare a report which shall include, but not be limited to, a statement of whether further examination by a physician is necessary. Any noticeable physical injury shall be examined by a physician, and the physician shall prepare a report documenting the extent and probable cause of the injury and the treatment prescribed. Such report shall be completed within 5 working days of the incident and shall be submitted to the warden for appropriate investigation.

(2) Each employee of the department who either applies physical force or was responsible for making the decision to apply physical force upon an inmate or an offender supervised by the department in the community pursuant to this subsection shall prepare, date, and sign an independent report within 1 working day of the incident. The report shall be delivered to the warden or the circuit administrator, who shall forward the report with all appropriate documentation to the office of the inspector general. The inspector general shall conduct a review and make recommendations regarding the appropriateness or inappropriateness of the use of force. If the inspector general finds that the use of force was appropriate, the employee's report, together with the inspector general's written determination of the appropriateness of the force used and the reasons therefor, shall be forwarded to the circuit administrator or warden upon

completion of the review. If the inspector general finds that the use of force was inappropriate, the inspector general shall conduct a complete investigation into the incident and forward the findings of fact to the appropriate regional director for further action. Copies of the employee's report and the inspector general's review shall be kept in the files of the inmate or the offender supervised by the department in the community. A notation of each incident involving use of force and the outcome based on the inspector general's evaluation shall be kept in the employee's file.

(3)

(a)

1. Any employee of the department who, with malicious intent, commits a battery upon an inmate or an offender supervised by the department in the community, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
2. Any employee of the department who, with malicious intent, commits a battery or inflicts cruel or inhuman treatment by neglect or otherwise, and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to an inmate or an offender supervised by the department in the community, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b)

1. As used in this paragraph, the term “sexual misconduct” means 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, but 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.
2. Any employee of the department or a private correctional facility as defined in s. 944.710 who engages in sexual misconduct with an inmate or an offender supervised by the department in the community, without committing the crime of sexual battery, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
3. The consent of the inmate or offender supervised by the department in the community to any act of sexual misconduct may not be raised as a defense to a prosecution under this paragraph.
4. This paragraph does not apply to any employee of the department or any employee of a private correctional facility who is legally married to an inmate or an offender supervised by the department in the community, nor does it apply to any employee who has no knowledge, and would have no reason to believe, that the person with whom the employee has engaged in sexual misconduct is an inmate or an offender under community supervision of the department.

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

(d) Each employee who witnesses, or has reasonable cause to suspect, that an inmate or an offender under the supervision of the department in the community has been unlawfully abused or is the subject

of sexual misconduct pursuant to this subsection shall immediately prepare, date, and sign an independent report specifically describing the nature of the force used or the nature of the sexual misconduct, the location and time of the incident, and the persons involved. The report shall be delivered to the inspector general of the department with a copy to be delivered to the warden of the institution or the regional administrator. The inspector general shall immediately conduct an appropriate investigation, and, if probable cause is determined that a violation of this subsection has occurred, the respective state attorney in the circuit in which the incident occurred shall be notified.

(4)

(a) Any employee required to report pursuant to this section 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 regard to reports required in 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 either testimony or a written report regarding an incident where force was used or 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.

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