

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 785 Crime Victim Assistance
SPONSOR(S): Judiciary Committee, Fitzenhagen
TIED BILLS: **IDEN./SIM. BILLS:** SB 1068

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Frost	Hall
2) Justice Appropriations Subcommittee	10 Y, 0 N	Jones	Gusky
3) Judiciary Committee	15 Y, 0 N, As CS	Frost	Poche

SUMMARY ANALYSIS

Under the Florida Crimes Compensation Act (Act), the Department of Legal Affairs must establish a Crime Victims' Services Office (CVSO) to provide aid, care, and support to victims of crimes. Funding for CVSO services comes from the Crimes Compensation Trust Fund (CCTF).

To designate offenses entitling a victim to assistance from the CVSO, the Act defines "crime" as:

- A felony or misdemeanor offense resulting in physical injury or death;
- A forcible felony directly resulting in psychiatric or psychological injury;
- Felony or misdemeanor child abuse resulting in mental injury to a person under 18 years old;
 - A mental injury must be verified by a specified medical professional.
- A criminal act committed in Florida but falling exclusively within federal jurisdiction;
- An act resulting in physical injury or death during the operation of a motor vehicle, boat, or aircraft;
- A violation relating to online sexual exploitation or child pornography;
- A felony or misdemeanor resulting in an emergency responder's death; and
- A criminal act committed outside of Florida, victimizing a resident of Florida, where similar victim assistance is unavailable.

Lewd and lascivious offenses are not currently included in the Act's definition of "crime."

One service the CVSO provides is compensation for mental health counseling services. However, due to the Act's definition of crime, compensation for counseling services is not available to a victim of lewd and lascivious touching. The only service available under the Act to a victim of a lewd and lascivious offense is payment for an initial forensic physical examination, which is also available to a victim of sexual battery.

Under the Act, the maximum amount the CVSO can pay for an initial forensic physical examination is \$500, and a medical provider must accept this amount as payment in full.

CS/HB 785 expands the Act's definition of "crime," allowing the CVSO to provide compensation for mental health counseling to a:

- Victim of a lewd and lascivious offense; and
- 16-or-17-year-old victim of lewd and lascivious touching, when the touching directly results in psychiatric or psychological injury.

The bill adds an osteopathic physician not licensed in Florida but certified to provide expert testimony in Florida to the list of medical professionals who may verify a mental injury to a minor victim of child abuse.

The bill increases the maximum payment to medical providers for initial forensic physical examinations from \$500 to \$1,000.

The bill may have a negative indeterminate impact on the CCTF. However, increased costs associated with the bill can be absorbed within existing CCTF funds.

The bill provides an effective date of July 1, 2019.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0785e.JDC

DATE: 4/3/2019

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Crime Victim Assistance

Recognizing the need for governmental assistance to crime victims, the Legislature enacted the Florida Crimes Compensation Act (Act)¹ directing the Department of Legal Affairs (DLA) to establish a Crime Victims' Services Office (CVSO) to provide aid, care, and support to crime victims.² Funding for CVSO services comes from the Crimes Compensation Trust Fund (CCTF) and consists of moneys appropriated for victim compensation, federal funds, and moneys otherwise recovered by the DLA through restitution payments, court costs, fines, and other sources.³ As of March 27, 2019, the CCTF contained \$4.4 million.⁴

The Act defines "victim" as a person:⁵

- Suffering personal physical injury or death directly resulting from a crime;
- Under 18 years of age suffering from a psychiatric or psychological injury as a result of witnessing a crime;
- Under 18 years of age victimized by felony or misdemeanor child abuse resulting in a mental injury;⁶
- Victimized by a forcible felony suffering from a psychiatric or psychological injury directly resulting from the crime; or
- Employed as an emergency responder killed while responding to a call for service in the line of duty.

The Act defines "crime" as:⁷

- A felony or misdemeanor offense resulting in physical injury or death;
- A forcible felony⁸ directly resulting in psychiatric or psychological injury;
- Felony or misdemeanor child abuse resulting in mental injury to a person under 18 years old;
 - The mental injury must be verified by a:
 - Psychologist licensed under chapter 490;
 - Physician or osteopathic physician licensed under chapter 458 or 459; or
 - Physician licensed in another state or Canada who is certified by the Department of Health to provide expert testimony in Florida.
- A criminal act committed in Florida but falling exclusively within federal jurisdiction;
- An act resulting in physical injury or death during the operation of a motor vehicle, boat, or aircraft;⁹

¹ Ss. 960.01–960.28, F.S.

² Ss. 960.02, 960.045, and 960.05, F.S.

³ S. 960.21(2), F.S.

⁴ Transparency Florida, *Reports – Trust Fund Daily Cash Balance: DLA: CCTF: FY 2018-19*, <http://www.transparencyflorida.gov/Reports/TrustFundDailyBalReport.aspx?FY=&RT=TF> (last visited Apr. 3, 2019).

⁵ Ss. 960.03(14)(a)–(e), F.S.

⁶ "Mental injury" means injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony. S. 827.03, F.S.

⁷ Ss. 960.03(3)(a)–(f), F.S.

⁸ Forcible felonies include: treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. S. 776.08, F.S.

- A violation relating to online sexual exploitation or child pornography;¹⁰
- A felony or misdemeanor resulting in an emergency responder's death; and
- A criminal act committed outside of Florida, victimizing a Florida resident, which would be compensable if it occurred within the state, and compensation is not available in that jurisdiction.

Some services available to a crime victim include funds for property loss, relocation services, reimbursement for mental health counseling, and initial forensic physical examinations.

Mental Health Counseling

Under the Act, the CVSO provides compensation for mental health counseling services to crime victims; however, the Act's definition of "crime" and "victim" limit the availability of this service for victims of sexual offenses. Sexual battery is covered by the Act, because it is a forcible felony; however, other unwanted touching of a sexual nature is not. As such, the CVSO provides mental health counseling compensation to a victim of a sexual battery, but not to a victim of a lewd and lascivious offense.

Sexual Battery

Section 794.011, F.S., criminalizes sexual battery, which is defined 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.¹¹

Commission of a non-penetrative sexual battery requires union specifically between the mouth, anus, or vagina of one person with a sexual organ of another person, while all other non-consensual sexual contact requires actual penetration of another person's anus or vagina to qualify as sexual battery.

Unlawful Sexual Activity with a Minor

Section 794.05, F.S., criminalizes sexual activity between a person who is 24 or older and a victim who is 16 or 17 years old. Sexual activity is defined 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 consent of a victim is not a defense to the crime of unlawful sexual activity with a minor. Unlawful sexual activity with a minor is not a forcible felony and is not otherwise included in the definition of crime under the Act.

Lewd and Lascivious Offenses

The Florida Supreme Court has held that the terms "lewd" and "lascivious" mean a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.¹²

For children under 16, the crime of lewd and lascivious molestation may cover sexualized contact that does not fit the definition of sexual battery. However, when non-penetrative sexual contact does not qualify as sexual battery or a lewd and lascivious offense, the only charge available is often simple battery.¹³ Simple battery is not included in the definition of crime under the Act.

⁹ Including leaving the scene of a crash involving death or personal injury (s. 316.027(2), F.S.); driving under the influence (s. 316.193, F.S.); fleeing or attempting to elude a law enforcement officer (s. 316.1935, F.S.); boating under the influence (s. 327.35(1), F.S.); first degree felony vehicular homicide (s. 782.071(1)(b), F.S.); and operating an aircraft under the influence (s. 860.13(1)(a), F.S.).

¹⁰ Including sexual performance by a child (s. 827.071, F.S.); child pornography, other prohibited computer usage, and traveling to meet a minor (s. 847.0135, F.S.); electronic transmission of child pornography (s. 847.0137, F.S.); and electronic transmission of harmful material to a minor (s. 847.0138, F.S.).

¹¹ S. 794.011(1)(h), F.S.

¹² *Chesebrough v. State*, 255 So. 2d 675, 677 (Fla. 1971).

¹³ S. 784.03(1), F.S.

Section 800.04, F.S., criminalizes the following lewd or lascivious offenses committed on or in the presence of a person less than 16 years of age:

- Lewd or lascivious battery;
- Lewd or lascivious molestation;
- Lewd or lascivious conduct; and
- Lewd or lascivious exhibition.

Lewd or Lascivious Battery

Sexual activity in s. 800.04, F.S., 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.¹⁴ A person commits lewd and lascivious battery by:

- Engaging in sexual activity with a person 12 years of age or older but younger than 16; or
- Encouraging, forcing, or enticing any person under 16 to engage in:
 - Sadomasochistic abuse;
 - Sexual bestiality;
 - Prostitution; or
 - Any other act involving sexual activity.¹⁵

Lewd or Lascivious Molestation

A person commits lewd or lascivious molestation by:

- Intentionally touching in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person under 16; or
- Forcing or enticing a person under 16 to so touch the perpetrator.¹⁶

Lewd or Lascivious Conduct

A person commits lewd or lascivious conduct by:

- Intentionally touching a person under 16 in a lewd or lascivious manner; or
- Soliciting a person under 16 to commit a lewd or lascivious act.¹⁷

Lewd or Lascivious Exhibition

A person commits lewd or lascivious exhibition by performing any of the following acts in the presence of a person under 16:

- Intentionally masturbating;
- Intentionally exposing the genitals in a lewd or lascivious manner;
- Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.¹⁸

Forensic Physical Examinations

Section 960.28, F.S., provides the only assistance available under the Act to a victim of a lewd and lascivious offense by requiring the CVSO to pay for an initial forensic physical examination of a victim of a lewd or lascivious act who is under 16 years of age. The Act requires that such payment must:

- Not exceed \$500; and
- Be accepted by the medical provider as payment in full.

¹⁴ S. 800.04(1)(a), F.S.

¹⁵ S. 800.04(4)(a), F.S.

¹⁶ S. 800.04(5)(a), F.S.

¹⁷ S. 800.04(6)(a), F.S.

¹⁸ S. 800.04(7), F.S.

Payment is available regardless of whether a victim is insured or cooperates with law enforcement or the criminal prosecution of a perpetrator.¹⁹

The maximum payment for initial forensic exams was last adjusted in 2007, when the maximum payment increased from \$250 to \$500.²⁰ The current maximum payment amount covers less than half of the average cost of an initial forensic exam, which is approximately \$1,150.²¹

Effect of Proposed Changes

CS/HB 785 expands the definition of “crime” contained in s. 960.03, F.S., to include:

- Lewd and lascivious offenses violating s. 800.04, F.S.; and
- Lewd and lascivious touching of a 16 or 17 year old victim, when the touching directly results in psychiatric or psychological injury.

Under the new definition, the CVSO may provide mental health counseling to victims of lewd and lascivious offenses.

The bill adds an osteopathic physician licensed in another state or Canada who is certified by the Department of Health to provide expert testimony in Florida to the list of medical professionals who may verify a mental injury to a minor victim of child abuse.

The bill also increases the maximum payment to a medical provider for an initial forensic physical examination of a sexual assault or lewd and lascivious offense victim from \$500 to \$1,000. This amount will more adequately compensate the provider for the cost of the exam. The funds in the CCTF are capable of absorbing the increased costs associated with the bill.²²

The bill provides an effective date of July 1, 2019.

B. SECTION DIRECTORY:

Section 1: Amends s. 960.03, F.S., relating to the definitions; ss. 960.01-960.28.

Section 2: Amends s. 960.28, F.S., relating to payment for victims’ initial forensic physical examinations.

Section 3: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative impact on the CCTF by increasing the amount payable for initial forensic physical exams and expanding who may be provided mental health counseling

¹⁹ S. 960.28(2), F.S.

²⁰ Ch. 2007-129, Laws of Fla.

²¹ Florida Counsel Against Sexual Violence, *Florida Statewide Sexual Assault Response Team SFY 2015-2016 Recommendations*, <https://www.fcasv.org/sites/default/files/Florida%20Statewide%20SART%20Advisory%20Committee%202015-16%20Final%20Recommendations.pdf> (last visited Apr. 3, 2019).

²² Florida Office of the Attorney General, Agency Analysis of 2019 House Bill 785, p. 1 (Feb. 25, 2019).

compensation through the CVSO. However, the Office of the Attorney General estimates increased costs associated with the bill can be absorbed by current funds in the CCTF.²³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill positively impacts individuals who will now qualify for victim assistance compensation due to changes made by the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 3, 2019, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added an osteopathic physician licensed in another state or Canada who is certified by the Department of Health to provide expert testimony in Florida to the list of medical professionals who may verify a mental injury to a minor victim of child abuse.

The analysis is drafted to the committee substitute as passed by the Judiciary Committee.

²³ *Id.*