

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 540
 SPONSOR: Senator Burt
 SUBJECT: White-Collar-Crime Victim Protection
 DATE: March 7, 2001 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|-----------|
| 1. | Erickson | Cannon | CJ | Favorable |
| 2. | _____ | _____ | APJ | _____ |
| 3. | _____ | _____ | AP | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

I. Summary:

Senate Bill 540 provides for restitution orders governing a broader range of victims of white collar crimes than provided under current law, increases penalties for committing white collar crime schemes that victimize multiple victims or the State of Florida, and facilitates prosecution of Internet-related crimes. The Task Force on Privacy and Technology recommended legislation that is the substance of this bill.

This bill creates a new and as-yet-unnumbered section of the Florida Statutes and amends s. 910.15, F.S.

II. Present Situation:

Florida law presently provides that for a court to order that a criminal defendant pay restitution, the victim receiving it must be alleged in the charging document. *See Perez v. State*, 596 So.2d 487 (Fla. 5th DCA 1992) and *Stewart v. State*, 629 So.2d 982 (Fla. 5th DCA 1993). Alleging each and every victim of the criminal offense can be problematic for prosecutors. It adds multiple witnesses to the discovery list and thereby extends the pretrial phase of the criminal trial. Present procedural rule [Fla.R.Crim.P. 3.220 (h)] allows defendants to seek depositions from almost every witness disclosed by the prosecution. Further, the existence of multiple victims adds to the cost and length of criminal trials. Particularly in large schemes, many victims are located out of state, increasing the cost of producing them for trial. To avoid the unpleasant and costly choice between a lengthy trial and leaving some or most of the victims out of the charging document, prosecutors may feel compelled to negotiate with white collar criminals, lessening their prison sentences in return for their agreements to pay restitution to all victims.

In Florida, separate white collar crime offenses have been historically punished with relatively minor sentences (often a non-state prison sanction) because of the lack of physical injuries and the generally low offense-level ranking traditionally given to many property offenses.

Presently, Florida law provides that when a person commits a fraud using communications systems, the crime may be prosecuted where a misleading representation originated, where it was made, or where the last act necessary to consummate the crime occurred. s. 910.15, F.S.

On January 11, 2001, the Task Force on Privacy and Technology submitted its recommendations. *Executive Summary of Policy Recommendations*, Task Force on Privacy and Technology (January 11, 2001). Among its recommendations, the Task Force recommended expanding restitution eligibility for victims of identity theft:

Under existing law, some victims of identity theft are ineligible for restitution if they are not expressly identified in charging documents filed against a defendant. To increase eligibility for restitution, the Task Force recommends that the Legislature consider adopting the White Collar Crime Victims' Protection Act, proposed by the Office of Statewide Prosecution . . . [Staff Note: *The Task Force attached as Tab 2 the suggested language, which is the substance of SB 540*]. In addition, judges and prosecutors should include a greater range of victim "costs" in their calculations of the amount of restitution due and in the assessment of the crime committed. Such victim costs should include all reasonable costs associated with identity restoration (e.g., travel, mailing, and telephone costs, fingerprinting and replacement identification fees, legal and private investigator fees, lost time and other costs associated with adverse credit actions arising from the incidence of identity theft).

Id. at page 5.

III. Effect of Proposed Changes:

Senate Bill 540, which may be cited as the "White-Collar-Crime Victim Protection Act," creates a new and as-yet-unnumbered section of the Florida Statutes that does the following:

1. Defines a "white collar crime" as including violations of the following laws:
 - ▶ Ch. 560, F.S., relating to the Money Transmitters' Code.
 - ▶ Ch. 812, F.S., relating to theft, robbery, and related crimes.
 - ▶ Ch. 815, F.S., relating to computer-related crimes.
 - ▶ Ch. 817, F.S., relating to fraudulent practices.
 - ▶ Ch. 825, F.S., relating to abuse, neglect, and exploitation of elderly persons and disabled adults.
 - ▶ Ch. 831, F.S., relating to forgery and counterfeiting.
 - ▶ Ch. 832, F.S., relating to the issuance of worthless checks and drafts.
 - ▶ Ch. 838, F.S., relating to bribery and misuse of public office.
 - ▶ Ch. 839, F.S., relating to offenses by public officers and employees.
 - ▶ Ch. 895, F.S., relating to offenses concerning racketeering and illegal debts.
 - ▶ Ch. 896, F.S., relating to financial transactions.

- ▶ A felony offense that is committed with intent to defraud or that involves a conspiracy to defraud.
 - ▶ A felony offense that is committed with intent to temporarily or permanently deprive a person of his or her property or that involves a conspiracy to temporarily or permanently deprive a person of his or her property.
 - ▶ A felony offense that involves or results in the commission of fraud or deceit upon a person or that involves a conspiracy to commit fraud or deceit upon a person.
2. Provides that a person commits an “aggravated white-collar crime” if the person, in committing a white collar crime, obtains or attempts to obtain \$100,000 or more and victimizes:
 - ▶ Ten or more elderly persons, as defined in s. 825.101, F.S.;
 - ▶ Twenty or more persons; or
 - ▶ Any state agency or political subdivision of the state.
 3. Provides that, notwithstanding the ranking of the offenses (previously described) at particular offense sentencing levels within the Criminal Punishment Code, any other provision of ch. 21, F.S, or any other law, a felony that is an aggravated white collar crime shall be ranked: in level 7, if a third degree felony; in level 8, if a second degree felony; and in level 9, if a first degree felony.
 4. Provides that, in addition to a sentence otherwise authorized by law, a person convicted of an aggravated white-collar crime shall pay a fine of \$500,000 or double the value of the pecuniary gain or loss, whichever is greater.
 5. Makes the person convicted of an aggravated white-collar crime liable for all court costs and requires the person to pay restitution to each victim of the crime, regardless of whether the victim is named in the information or indictment.
 6. Defines “victim” to include those persons directly or proximately harmed by the crime and requires that the court hold a hearing to determine the identity of qualifying victims and order restitution based on the defendant’s ability to pay.
 7. Requires the court to make payment of restitution a condition of any probation granted and authorizes the court to order continued probation for up to 10 years or until full restitution is made to the victim(s), whichever occurs earlier.
 8. Provides that the court retains jurisdiction to enforce its orders to pay fines or restitution and authorizes the court to initiate proceedings against the person for a violation of probation or for contempt of court if the person willfully fails to comply with a lawful order of the court.

Senate Bill 540 also amends s. 910.15, F.S., relating to theft and fraudulent practices concerning communication systems, to provide that a person charged with committing a fraudulent practice in a manner in which it can be reasonably assumed that a communication made to facilitate the fraudulent practice could or would be disseminated across jurisdictional lines, may be tried in the county in which the dissemination was made or in which any act necessary to consummate the

offense occurred. The bill further provides that, if a communication is made by or made available through use of the Internet, the communication was made in every county within the state.

It appears that the main effects of the bill are that it provides for restitution orders governing a broader range of victims of white collar crimes than provided under current law, increases penalties for committing white collar crime schemes that victimize multiple victims or the State of Florida, and facilitates prosecution of Internet-related crimes.

It appears that the bill does not affect defendants' rights to confront victims by allowing the state to prove uncharged victims' damages after the defendant's conviction in the separate restitution hearing already provided in the current law. According to staff of the Office of Statewide Prosecution, the approach proposed in the bill for the treatment of victims of white collar crime mirrors the treatment of crime victims in federal criminal trials.

The sentencing provisions outlined in the bill raise the offense level rankings for the offenses enumerated in the bill, subject to other criteria being met. The ranking increase does not affect the ability of courts to mitigate sentences in appropriate circumstances. Thus, in the exceptional case, where a sentencing court can point to something concrete to excuse a defendant's actions in victimizing multiple persons, the court may be able to mitigate the sentence to a non-state prison sanction.

The proposed changes to s. 910.15, F.S., appear to be aimed at the pervasiveness of the Internet and the use of the Internet for criminal purposes. According to staff of the Office of Statewide Prosecution, where ten years ago, a fraud involving the use of newspaper publishing, or television or radio broadcasting, was cutting edge, these days criminal fraud has gone digital. A website set up anywhere in the world can be accessed in any of Florida's 67 counties.

The bill takes effect on July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Estimating Conference estimates that SB 540 will have an insignificant impact. According to staff of the Office of Statewide Prosecution, the bill would cut down on litigation costs by minimizing the number of victims that would need to be alleged and produced at a criminal trial.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
