

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 1530

INTRODUCER: Senator Book

SUBJECT: Victims of Sexual Offenses

DATE: March 22, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	

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**I. Summary:**

SB 1530 creates a new responsibility for the Attorney General (AG) who will, upon request by a sexual battery victim, review the state attorney or law enforcement investigation of the sexual battery case to determine if the case should be prosecuted. If the determination is made that the prosecution should go forward, the Office of the Attorney General (OAG) will prosecute the case.

The bill requires all county health departments, or a designee for the department, to establish a local Sexual Assault Response Team (SART) or enter into a collaborative agreement with another jurisdiction to establish a regional SART. Each SART must have specified membership and create written protocols to govern the SARTs response to sexual assault. The SARTs must meet at least quarterly. The Florida Council Against Sexual Violence (FCASV) will provide technical assistance relating to the development and implementation of the SARTs.

The bill requires a health insurer to establish alternative methods of delivery of the explanation of benefits that permit delivery to parties other than the victim for privacy purposes.

The bill requires the Criminal Justice Standards and Training Commission (CJSTC), in consultation with the FCASV, to establish minimum standards for basic and advanced career development training programs for law enforcement officers that include a culturally responsive trauma-informed response to sexual assault. The bill specifies 8 hours of curriculum and specifies the timing of the implementation of the training.

The bill may have a fiscal impact on the OAG, county health departments, and the Florida Department of Law Enforcement (FDLE). See Section V. Fiscal Impact Statement.

The bill becomes effective July 1, 2021.

## II. Present Situation:

### The Offenses of Sexual Battery and Cyberstalking

Sexual battery is defined in s. 794.011(1)(h), F.S., as 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; however, sexual battery does not include an act done for a bona fide medical purpose.

Generally, it is a second degree felony<sup>1</sup> for a person to commit one of the acts described in s. 794.011(1)(h), F.S., without the victim's consent, where:

- The perpetrator is 18 years of age or older;
- The victim is 18 years of age or older, and
- In the process the perpetrator does not use physical force and violence likely to cause serious personal injury.<sup>2</sup>

The penalties for committing a sexual battery increase as the circumstances of the criminal act change. For example, a person commits a first degree felony<sup>3</sup> when a person 18 years of age or older commits sexual battery upon:

- A person 12 years of age or older but younger than 18 years of age, without that person's consent, and
- In the process does not use physical force and violence likely to cause serious personal injury.<sup>4</sup>

A person commits cyberstalking when he or she engages in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose. A person also commits the offense of cyberstalking if he or she accesses, or attempts to access, the online accounts or Internet-connected home electronic systems of another person without that person's permission, which causes substantial emotional distress to that person and serves no legitimate purpose.<sup>5</sup>

### Sexual Battery Victim Services

The Florida Department of Health (DOH) requires that any licensed facility which provides emergency room services shall arrange for the rendering of appropriate medical attention and treatment of victims of sexual assault through:

- Gynecological, psychological, and medical services as are needed by the victim;

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<sup>1</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>2</sup> Section 775.011(5)(b), F.S.

<sup>3</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>4</sup> Section 794.011(5)(a), F.S.

<sup>5</sup> Section 784.048(1)(d), F.S. Depending on the particular circumstances, cyberstalking ranges from a first degree misdemeanor [see s. 784.048(2), F.S.], punishable by up to 1 year in the county jail and a \$1,000 fine, to a third degree felony [see s. 784.048(3), (4), (5), and (7), F.S.], punishable by up to 5 years imprisonment and a \$5,000 fine [see s. 784.048(3), (4), (5), and (7), F.S.]. Sections 775.082, and 775.083, F.S.

- The gathering of forensic medical evidence required for investigation and prosecution from a victim who has reported a sexual battery to a law enforcement agency or who requests that such evidence be gathered for a possible future report; and
- The training of medical support personnel competent to provide the medical services and treatment.<sup>6</sup>

The OAG reimburses medical providers up to \$1,000 for an initial forensic examination.<sup>7</sup> Additionally, relocation assistance for victims of sexual battery can be provided by the OAG up to \$1,500 on any one claim and a lifetime maximum of \$3,000.<sup>8</sup> It is conceivable that a sexual battery victim may have health insurance claims related to follow-up treatment over and above the forensic medical exam.<sup>9</sup>

Section 794.052, F.S., requires the law enforcement officer investigating the sexual battery to:

- Provide or arrange for transportation of a victim of sexual battery to an appropriate facility for medical treatment or forensic examination;
- Immediately notify sexual battery victims of their legal rights and remedies;
- Assist them in obtaining any necessary medical treatment resulting from the alleged incident, a forensic examination, and crisis-intervention services from a certified rape crisis center;
- Provide for a review of the officer's final report by a victim and an opportunity for a statement about the report by the victim; and
- Advise sexual battery victims that they can contact a certified rape crisis center about services,<sup>10</sup> including the presence of a victim advocate from a certified rape crisis center at any forensic medical examination.<sup>11</sup>

Services in the aftermath of a sexual battery are generally provided locally by certified Rape Crisis Centers and volunteers. A "Rape Crisis Center" is any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families.<sup>12</sup> The Florida Council Against Sexual Violence (FCASV) is a statewide nonprofit organization committed to victims and survivors of sexual violence and the sexual assault crisis programs that serve them. The FCASV certifies Rape Crisis Centers.<sup>13</sup>

### **Sexual Assault Response Teams**

A sexual assault response team (SART) is a community-based team that convenes regularly and coordinates the local response to sexual assault victims. SARTs are often comprised of sexual assault nurse examiners (SANEs), sexual assault victim advocates, law enforcement officials, and prosecutors. These teams work to develop a stronger understanding of victimization and the positive effects of trauma-informed training. SARTs support victims, provide expertise for

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<sup>6</sup> Section 395.1021, F.S.

<sup>7</sup> Section 960.28(2), F.S.

<sup>8</sup> Section 960.199(1), F.S.

<sup>9</sup> Part VI of ch. 627, F.S., governs health insurance policies.

<sup>10</sup> Section 794.052, F.S.

<sup>11</sup> See s. 960.001(1)(u), F.S.

<sup>12</sup> Section 90.5035(1)(a), F.S.

<sup>13</sup> FCASV, *About FCASV*, available at <https://www.fcasv.org/about-fcasv> (last visited March 16, 2021).

prosecution, and maintain a victim-centered, offender-focused approach to review sexual assault case files.<sup>14</sup> The FCASV currently coordinates the Statewide SART Advisory Committee.<sup>15</sup>

### **Law Enforcement Officer Training**

In compliance with s. 943.13, F.S., applicants must complete the 770-hour law enforcement basic recruit training program to meet the qualifications for becoming a certified law enforcement officer. In order to maintain their certification, law enforcement officers must satisfy continuing training and education requirements.<sup>16</sup>

Currently, s. 943.17295, F.S., requires the Criminal Justice Standards and Training Commission (CJSTC) to incorporate the subject of sexual abuse and assault investigations, with an emphasis on cases involving child victims or juvenile offenders, into the curriculum required for continuous employment or appointment as a law enforcement officer. The Florida Department of Law Enforcement developed an on-line course that satisfies this requirement and is available at no cost to law enforcement officers or the employing agencies.<sup>17</sup>

Additionally, the CJSTC has authorized an advanced training course related to sexual crime investigations since July 1985. In 2017, the CJSTC approved adult and child sex crimes investigations advanced training courses (#1170 and #1171, respectively). These courses include information produced by the FCASV. As of February 2021, 581 law enforcement officers have completed #1170 and 429 law enforcement officers have completed #1171.<sup>18</sup>

### **The Attorney General**

The Attorney General (AG) is the chief state legal officer and as such may exercise the power and authority as public interest may require.<sup>19</sup>

The AG exercises a general superintendence and direction over the state attorneys as to the manner of discharging their respective duties and whenever requested by state attorneys is required to give them her or his opinion on any question of law.<sup>20</sup>

### ***The Statewide Prosecutor***

The Office of the Statewide Prosecutor (SWP) resides in the OAG. The SWP has concurrent jurisdiction with the state attorneys to prosecute criminal law violations that have occurred in

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<sup>14</sup> Sexual Assault Kit Initiative and RTI International, *A Multidisciplinary Approach to Cold Case Sexual Assault: Guidance for Establishing an MDT or a SART*, available at <https://www.sakitta.org/toolkit/docs/A-Multidisciplinary-Approach-to-Cold-Case-Sexual-Assault-Guidance-for-Establishing-an-MDT-or-a-SART.pdf> (last visited March 16, 2021).

<sup>15</sup> The Statewide SART Advisory Committee is a statewide group coordinated by the FCASV and comprised of representatives from a broad range of disciplines whose work brings them into contact with rape survivors. The committee works to assess and improve Florida's response to survivors of sexual violence at the state and local level. FCASV, SART, available at <https://www.fcasv.org/new-statewide-sart-advisory-committee> (last visited March 16, 2021).

<sup>16</sup> Section 943.135, F.S. The Department of Law Enforcement (FDLE) Legislative Bill Analysis, SB 1530, February 26, 2021 (on file with the Senate Criminal Justice Committee).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Fla. Const. Art. IV, Section 4(b); *Ervin v. Collins*, 85 So.2d 852 (Fla. 1956).

<sup>20</sup> Section 16.08, F.S.; The Attorney General can "superintend and direct" state attorneys to bring certain prosecutions.

two or more judicial circuits as part of a related transaction, or when any such offense has affected two or more judicial circuits as provided by general law.<sup>21</sup> Section 16.56, F.S., provides the list of offenses that the SWP may investigate and prosecute as long as the jurisdictional requirement is met. The list includes:

- Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, home-invasion robbery, and patient brokering;
- Any crime involving narcotic or other dangerous drugs;
- Any violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act;
- Any violation of the Florida Anti-Fencing Act;
- Any violation of the Florida Antitrust Act of 1980, as amended;
- Any crime involving, or resulting in, fraud or deceit upon any person;
- Any violation of s. 847.0135, F.S., relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135, F.S., or any violation of ch. 827, F.S., where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;
- Any violation of ch. 815, F.S.;
- Any criminal violation of part I of ch. 499, F.S.;
- Any violation of the Florida Motor Fuel Tax Relief Act of 2004;
- Any criminal violation of s. 409.920, F.S., or s. 409.9201, F.S.;
- Any crime involving voter registration, voting, or candidate or issue petition activities;
- Any criminal violation of the Florida Money Laundering Act;
- Any criminal violation of the Florida Securities and Investor Protection Act; or
- Any violation of ch. 787, F.S., as well as any and all offenses related to a violation of ch. 787, F.S.; and
- Any of the listed crimes facilitated by or connected to the use of the Internet since any such crime is a crime occurring in every judicial circuit within the state.<sup>22</sup>

### State Attorneys

State Attorneys are constitutional officers. The Florida Constitution provides that “In each judicial circuit a state attorney shall be elected for a term of four years. Except as otherwise provided in this constitution, the state attorney shall be the prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law.”<sup>23</sup>

State attorneys are quasi-judicial officers<sup>24</sup> but the decision to prosecute is an executive function.<sup>25</sup> “Under Florida’s constitution, the decision to charge and prosecute [for a criminal

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<sup>21</sup> Fla. Const. Art. 4, Section 4; *See also State v. Cisneros*, 106 So.3d 42 (Fla. 2d DCA 2013).

<sup>22</sup> Section 16.56 (1)(a) and (b), F.S.

<sup>23</sup> Fla. Const. Art. V, Section 17.

<sup>24</sup> *See Office of the State Attorney, Fourth Judicial Circuit of Florida v. Parrotino*, 628 So.2d 1097 (Fla. 1993), discussing prosecutorial immunity, judicial immunity, and separation of powers.

<sup>25</sup> “A state attorney, while being a quasi-judicial officer, also shares some attributes of the executive. A judicial attempt to interfere with the decision whether and how to prosecute violates the executive component of the state attorney’s office. Immunity from suit, on the other hand, arises from the quasi-judicial nature of the office.” *Id.*, note 2.

offense] is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute.”<sup>26</sup>

State attorneys have subpoena powers to summon witnesses before him or her to testify about matters under investigation.<sup>27</sup> Whenever required by the grand jury, the state attorney must assist them for the purpose of examining witnesses in their presence, or of giving legal advice in any matter before them, and he or she shall prepare bills of indictment.<sup>28</sup>

### III. Effect of Proposed Changes:

#### The Attorney General

The bill creates new responsibilities for the AG. If a victim of a sexual battery or cyberstalking offense makes a written request, the AG must review the evidence in the investigation done in the case by the State Attorney or the law enforcement agency. The AG’s review is done for the purpose of determining whether a charge or charges should be filed.

If the AG determines that filing a charge or charges is appropriate, the AG must prosecute the case in the judicial circuit in which it occurred. The attorney assigned to prosecute the case must have the training and experience required to effectively prosecute the offense alleged in the case.

#### Sexual Assault Response Teams

The bill requires county health departments, or a designee for the department, to establish a local SART or enter into a collaborative agreement with another jurisdiction to establish a regional SART. The purpose of the SART is to ensure a coordinated multidisciplinary response to sexual violence. The FCASV must provide technical assistance relating to the development and implementation of the SARTs.

SART membership must consist of the following members or their designees:

- The state attorney;
- The director of the local sexual assault crisis center;
- The chief of police;
- The county sheriff;
- A forensic sexual assault nurse examiner or a designated health care provider who performs forensic medical examinations and collects evidence;
- A representative from hospital emergency room nursing or physician leadership;
- The director or administrator of the local county health department; and
- The director of the local victim or witness program.

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<sup>26</sup> *State v. Bloom*, 497 So.2d 2, 3 (Fla. 1986); However, “[i]t is not the duty of a State Attorney merely to secure convictions; the State Attorney is required to represent the State, it is his duty to present all of the material facts known to him to the jury; and it is as much his duty to present facts within his knowledge which would be favorable to the defendant as it is to present those facts which are favorable to the State; being an arm of the Court he is charged with the duty of assisting the Court to see that justice is done, and not to assume the role of *persecutor*.” *Smith v. State*, 95 So.2d 525, 527 (Fla. 1957).

<sup>27</sup> Section 27.04, F.S.

<sup>28</sup> Section 27.03, F.S.

The SART must develop a written protocol to govern the team's response to sexual assault that includes:

- The role and responsibilities of each team member;
- Procedural issues regarding the immediate crisis and health care and law enforcement responses and follow-up services provided to a victim;
- Procedures for the preservation, secure storage, and destruction of evidence from a sexual assault evidence kit, including length of storage, site of storage, and chain of custody; and
- Procedures for maintaining the confidentiality of the victim regarding the forensic medical examination.

Each SART must meet at least quarterly, or more often if necessary, to ensure a coordinated multidisciplinary response to sexual violence. The SART must also publish an annual report for the jurisdictions covered by the team that includes local statistics on the number of forensic medical examinations performed, the number of criminal sexual assaults reported to law enforcement, and the number of criminal sexual assaults prosecuted and the outcome of the prosecutions.

The bill requires each SART to promote the use of sexual assault forensic examiners who have received a minimum of 40 hours of specialized training in the provision of trauma-informed medical care and in the collection of evidence for sexual assault victims.

### **Health Insurance Payment of Claims**

The bill amends s. 627.6131, F.S., to add a provision about claims involving a sexual battery victim. The bill requires a health insurer to establish alternative methods of delivery of the explanation of benefits that permit delivery to parties other than the victim. The alternative method of delivery must be in compliance with 45 C.F.R. s. 164.522, related to privacy protection for protected health information.

### **Law Enforcement Training**

The bill requires the CJSTC, in consultation with the FCASV, to establish minimum standards for basic and advanced career development training programs for law enforcement officers that include a culturally responsive trauma-informed response to sexual assault. After January 1, 2022, every basic skills course required for law enforcement officers to obtain initial and continuing education certification must include training on culturally responsive trauma-informed interviewing and investigations of sexual assault victims.

The bill creates s. 943.1724, F.S., requiring the CJSTC to incorporate a culturally responsive trauma-informed response to sexual assault into the course curriculum required for a law enforcement officer to obtain initial certification. Additionally, within one year of employment, all certified officers must successfully complete eight hours of training on sexual violence and interviewing and investigations of sexual assault victims. Completion of the training may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer required under s. 943.135, F.S. The training must be completed by current law enforcement officers by July 1, 2024. If an officer fails to complete the required training, his

or her certification must be placed on inactive status until the employing agency notifies the commission that the officer has completed the training.

The bill is effective July 1, 2021.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, s. 18(a) of the State Constitution provides that: “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: ...the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature....”

Article VII, section 18(d) of the State Constitution, provides eight exemptions, which, if any single one is met, exempts the law from the limitations on mandates. If the bill does qualify as a mandate, and no exemption applies, in order to be binding on the counties, the bill must include a finding of important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature.

This bill requires county health departments, to establish a local SART or enter into a collaborative agreement with another jurisdiction to establish a regional SART which may cause counties to spend funds. However, the actual fiscal impact is indeterminate so it is uncertain if the mandate restrictions of Article VII, s. 18, of the State Constitution, apply.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.



**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The OAG estimates it could receive 800 cases per year as a result of the bill. The total fiscal impact of \$2,533,756 includes salaries and benefits for 20 Senior Assistant Statewide Prosecutors and 5 Support Staff (\$2,178,000), a Human Resources Assessment (\$8,256), and Expenses (\$347,500). The estimated fiscal impact does not include the possible need for the OAG to rent additional office space to house staff.<sup>29</sup>

The FDLE expects that the fiscal impact of the bill will total \$45,779 non-recurring funds. This includes developing instruction as required in the bill (\$8,779), and necessary modifications to the Automated Training Management System (\$37,000).<sup>30</sup>

County health departments will likely incur costs related to establishing a SART or entering into a collaborative agreement with another jurisdiction to establish a regional SART. These costs are indeterminate at this time and will likely vary by county.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The FDLE suggests an effective date of July 1, 2022, because due to the workshops and development required, in addition to required approval by the CJSTC, the incorporation of the new curriculum for Law Enforcement Basic Recruit Training on January 1, 2022, is not possible. All basic training is approved by the CJSTC with an effective date of July 1. Because of this, the basic training component<sup>31</sup> would not go into effect until July 1, 2022.<sup>32</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 16.01, 627.6131, and 943.17.

This bill creates the following sections of the Florida Statutes: 154.012 and 943.1724.

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<sup>29</sup> Note that although the fiscal addresses utilizing Senior Assistant Statewide Prosecutors, the OAG expects the fiscal to remain unchanged if Assistant Attorneys General are utilized. Email exchange with the OAG, March 15, 2021, on file with the Senate Criminal Justice Committee.

<sup>30</sup> The Florida Department of Law Enforcement (FDLE) Legislative Bill Analysis, SB 1530, February 26, 2021 (on file with the Senate Criminal Justice Committee).

<sup>31</sup> The post-basic training course can be approved and in place for all current officers to complete the training by July 1, 2024.

*Id.*

<sup>32</sup> *Id.*

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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