

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 3B Statewide Prosecutor  
**SPONSOR(S):** Fernandez-Barquin  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 4-B

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Judiciary Committee	17 Y, 7 N	Hall	Kramer

### SUMMARY ANALYSIS

Section 16.56(1), F.S., creates the Office of Statewide Prosecution (OSP) within the Department of Legal Affairs. The OSP is authorized to prosecute specified offenses, including a crime involving voter registration, voting, or candidate or issue petition activities, only when such offense:

- Is occurring, or has occurred, in two or more judicial circuits as part of a related transaction;
- When any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits; or
- Is facilitated by or connected to the use of the Internet.

The statutory authorization in s. 16.56(1)(a), F.S., is more restrictive than that which OSP is granted by the Florida Constitution. Section 16.56(1)(a), F.S., only grants jurisdiction to OSP when a crime is connected with an organized criminal conspiracy affecting two or more judicial circuits, whereas the Florida Constitution broadly authorizes OSP to prosecute specified criminal offenses that affect two or more judicial circuits.

On August 18, 2022, the Florida Department of Law Enforcement arrested 20 individuals for violating election laws and charges were filed by OSP. To date, three cases have been dismissed on the grounds that OSP lacked jurisdiction to prosecute such cases because the act of making a false affirmation on a voter registration form and voting while ineligible occurred in a single county, not in multiple judicial circuits or connected with an organized criminal conspiracy affecting two or more judicial circuits as required by s. 16.56(1), F.S.

HB 3B amends s. 16.56, F.S., to authorize OSP, under specified circumstances, to investigate and prosecute any crime, including any attempt, solicitation, or conspiracy to commit any crime, involving:

- Voting in an election in which a candidate for a federal or state office is on the ballot;
- Voting in an election in which a referendum, an initiative, or an issue is on the ballot;
- The petition activities of a candidate for a federal or state office;
- The petition activities for a referendum, an initiative, or an issue; or
- Voter registration.

The bill authorizes OSP to investigate and prosecute the specified crimes relating to voting, petition activities, and voter registration only when such a crime is:

- Occurring, or has occurred, in two or more judicial circuits as part of a related transaction;
- Affecting, or has affected, two or more judicial circuits; or
- Facilitated by or connected to the use of the Internet.

As such, for crimes involving voting, petition activities, or voter registration, the bill modifies OSP's jurisdiction by deleting the current statutory requirement that such a crime be connected with an organized criminal conspiracy that affects two or more judicial circuits, and simply requires the crime to have affected two or more judicial circuits. This conforms the statutory authority of OSP to investigate and prosecute election-related offenses with the jurisdictional limits provided under the Florida Constitution.

OSP may require additional resources to investigate and prosecute the voting or elections crimes specified in the bill. However, OSP is already investigating and prosecuting such crimes, so any increase in workload would likely be absorbed within current resources. Authorizing OSP to prosecute voting and elections crimes specified in the bill may increase prosecutions for such crimes and, to the extent a person convicted of committing such a crime is sentenced to prison, may have a positive indeterminate impact on prison beds.

The bill provides an effective date of upon becoming a law.

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

**STORAGE NAME:** h0003Ba.JDC

**DATE:** 2/8/2023

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### *Office of Statewide Prosecution*

Article IV, section 4(b) of the Florida Constitution creates the position of Statewide Prosecutor in the Office of the Attorney General to have concurrent jurisdiction with state attorneys to prosecute violations of criminal laws:

- Occurring or having occurred in two or more judicial circuits as part of a related transaction; or
- When any criminal offense is affecting or has affected two or more judicial circuits as provided by general law.

To implement article IV, section 4(b) of the Florida Constitution, the Legislature enacted s. 16.56(1), F.S., to create the Office of Statewide Prosecution (OSP) within the Department of Legal Affairs. The OSP is authorized to prosecute specified offenses only when such an offense:

- Is occurring, or has occurred, in two or more judicial circuits as part of a related transaction; or
- When any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits.

The statutory authorization in s. 16.56(1)(a), F.S., is more restrictive than that which OSP is granted by the Florida Constitution. Section 16.56(1)(a), F.S., only grants jurisdiction to OSP when a crime is connected with an organized criminal conspiracy affecting two or more judicial circuits, whereas the Florida Constitution broadly authorizes OSP to prosecute specified criminal offenses that affect two or more judicial circuits.

OSP may investigate and prosecute the following crimes, including any attempt, solicitation, or conspiracy to commit such crimes, including:

- Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, home-invasion robbery, and patient brokering;
- A crime involving narcotic or other dangerous drugs;
- A violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act;
- A violation of the Florida Anti-Fencing Act;
- A violation of the Florida Antitrust Act of 1980, as amended;
- A crime involving, or resulting in, fraud or deceit upon any person;
- A violation of s. 847.0135, F.S., relating to computer pornography and child exploitation prevention, or an offense related to a violation of s. 847.0135, F.S., or a 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;
- A violation of ch. 815, F.S.;
- A violation of ch. 825, F.S.;
- A criminal violation of ch. 499, part I, F.S.;
- A violation of the Florida Motor Fuel Tax Relief Act of 2004;
- A criminal violation of ss. 409.920 or 409.9201, F.S.;
- A crime involving voter registration, voting, or candidate or issue petition activities;
- A criminal violation of the Florida Money Laundering Act;
- A criminal violation of the Florida Securities and Investor Protection Act;
- A violation of ch. 787, F.S., and any and all offenses related to a violation of ch. 787, F.S.; or
- A criminal violation of ch. 24, F.S., ch. 285, part II, F.S., ch. 546, F.S., ch. 550, F.S., ch. 551, F.S., or ch. 849, F.S.<sup>1</sup>

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<sup>1</sup> S. 16.56(1)(a), F.S.  
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OSP is also authorized to prosecute any crime specified in s. 16.56(1)(a), F.S., if the crime was facilitated by or connected to the use of the Internet.<sup>2</sup>

### *Prosecution of Election Crimes*

On August 18, 2022, the Florida Department of Law Enforcement (FDLE) arrested 20 individuals for violating election laws.<sup>3</sup> According to FDLE, the individuals arrested were ineligible to vote because of previous convictions for murder or a felony sexual offense.<sup>4</sup> Under the statutory authority provided in s. 16.56(1)(a)13., F.S., OSP charged each person with two crimes: willfully swearing or making a false oath or affirmation in connection with voting or elections<sup>5</sup> and willfully voting as an unqualified elector.<sup>6</sup> Both crimes are third degree felonies.<sup>7</sup>

Three defendants filed a motion to dismiss, alleging that OPS did not have jurisdiction to prosecute because the crimes of making a false affirmation on a voter application and knowingly voting while ineligible occurred in only one judicial circuit, rather than multiple judicial circuits as required under s. 16.56(1)(a), F.S.<sup>8</sup> OPS argued that it had jurisdiction to prosecute because the completed voter registration form and ballot were subsequently transferred by the county supervisor of elections office to the Florida Department of State, which is located in another judicial circuit.<sup>9</sup> In all three cases, the trial court dismissed the defendants' cases, ruling that OSP lacked jurisdiction because the crimes were only committed in one judicial circuit.<sup>10</sup> Each court found that the act of transferring the voter registration information and voted ballot to another judicial circuit were ministerial activities performed by the government, not by one of the defendants, and the act of transferring such registration and ballot to another judicial circuit were not part of the criminal act with which the defendants were charged.<sup>11</sup> Thus, there was neither a "related transaction" nor a criminal conspiracy, as required under s. 16.56(1)(a), F.S., to invoke the jurisdiction of OSP.

### **Effect of Proposed Changes**

HB 3B amends s. 16.56, F.S., to authorize OSP, under specified circumstances, to investigate and prosecute any crime, including any attempt, solicitation, or conspiracy to commit any crime, involving:

- Voting in an election in which a candidate for a federal or state office is on the ballot;
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The bill authorizes OSP to investigate and prosecute the specified crimes related to voting, petition activities, and voter registration only when such a crime is:

- Occurring, or has occurred, in two or more judicial circuits as part of a related transaction;
- Affecting, or has affected, two or more judicial circuits; or
- Facilitated by or connected to the use of the Internet.

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<sup>2</sup> S. 16.56(1)(b), F.S.

<sup>3</sup> Florida Department of Law Enforcement, *In case you missed it: FDLE arrests convicted murders [sic], sex offenders for voting illegally*, <https://www.fdle.state.fl.us/News/2022/August/In-case-you-missed-it-FDLE-arrests-convicted-murde> (last visited Feb. 6, 2023).

<sup>4</sup> *Id.* A person who has been convicted of a felony offense and who has not had his or her right to vote restored is not entitled to register or vote in an election. S. 97.041(2)(b), F.S. For a person convicted of murder or a felony sexual offense, the right to vote may only be restored through the clemency process under article IV, s. 8 of the Florida Constitution.

<sup>5</sup> Section 104.011(1), F.S., prohibits a person from willfully swearing or affirming falsely to any oath or affirmation, or willfully procuring another person to swear or affirm falsely to an oath or affirmation, in connection with or arising out of voting or elections.

<sup>6</sup> Florida Department of Law Enforcement, *supra* note 3. Section 104.15, F.S., prohibits a person from willfully voting at any election knowing that he or she is not a qualified elector.

<sup>7</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>8</sup> *State v. Wood*, No. F22-15009 (Fla. 11th Cir. Ct. 2022). *State v. Miller*, No. F22-15012 (Fla. 11th Cir. Ct. 2022). *State v. Lewis*, No. 22-008077CF10A (Fla. 17th Cir. Ct. 2022). Two defendants registered to vote and voted in Miami-Dade County, in the Eleventh Judicial Circuit. One defendant registered to vote and voted in Broward County, in the Seventeenth Judicial Circuit.

<sup>9</sup> *Id.* Voter registration forms and voted ballots are transferred from the county supervisor of elections to the Department of State. See ss. 97.053(6), F.S. and 102.112(1), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

As such, for crimes involving voting, petition activities, or voter registration, the bill modifies OSP's jurisdiction by deleting the current statutory requirement that such a crime be connected with an organized criminal conspiracy that affects two or more judicial circuits, and simply requires the crime to have affected two or more judicial circuits. This conforms the statutory authority of OSP to investigate and prosecute election-related offenses with the jurisdictional limits provided under the Florida Constitution.

The bill provides an effective date of upon becoming a law.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 16.56, F.S., relating to Office of Statewide Prosecution.

**Section 2:** Provides an effective date of upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

OSP may require additional resources to investigate and prosecute the voting or elections crimes specified in the bill. However, OSP is already investigating and prosecuting such crimes, so any increase in workload would likely be absorbed within current resources. Authorizing OSP to prosecute voting and elections crimes specified in the bill may increase prosecutions for such crimes and, to the extent a person convicted of committing such a crime is sentenced to prison, may have a positive indeterminate impact on prison beds.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**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 governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**