

STORAGE NAME: h0035.leps
DATE: March 3, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND PUBLIC SAFETY
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 35
RELATING TO: Victim and Witness Protection Protocol
SPONSOR(S): Representatives Greene and Villalobos
STATUTE(S) AFFECTED: Creates ss. 914.25 and 914.26, F.S.
COMPANION BILL(S): SB 176 (s), HB 181 (c), SB 174 (c)
ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) LAW ENFORCEMENT AND PUBLIC SAFETY
(2) CRIMINAL JUSTICE APPROPRIATIONS
(3)
(4)
(5)

I. SUMMARY:

Currently, Florida does not have a statewide protocol for providing protective services for victims and witnesses who cooperate in criminal investigations and prosecutions. House Bill 35 establishes a protocol for delivering protective services to certain victims and witnesses - specifically, those victims or witnesses who are placed "at risk of harm" because of their cooperation in the investigation or prosecution of a serious felony offense (such as murder, aggravated stalking, and drug trafficking). "At risk of harm" means that the person or that person's immediate family has been subjected to violence or other forms of intimidation, or is the subject of a substantial threat to commit violence.

If the appropriate state attorney or the statewide prosecutor determines that a victim or a witness is critical to a state criminal investigation or prosecution, the state attorney or the statewide prosecutor *may* certify the victim or witness for special protection or temporary relocation services. If a victim or witness is certified for services, the investigating law enforcement agency *may* provide for appropriate protection services. Victim and witness protection services, including temporary relocation services, *may* be provided for up to one year. If a victim or witness continues to be at risk, upon certification of the continuing risk, up to one additional year of protection services may be provided.

Agencies that provide victim and witness protection and relocation services may seek reimbursement from the *Victim and Witness Protection Review Committee* (a committee of *Florida's Violent Crime Council* that is created in the bill). The committee must develop reimbursement criteria, and must review and approve reimbursement requests.

The bill provides intent to specifically appropriate \$500,000 from the General Revenue Fund for purposes of reimbursing agencies who provide protection and relocation services. The bill *authorizes*, but does not require, law enforcement agencies to provide these services. To the extent that state and local governments provide services and are not reimbursed, there will be a fiscal impact to state and local governments. A precise fiscal impact upon state and local governments for implementing this *discretionary* program is indeterminate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 914, F.S., addresses witnesses in criminal proceedings. The chapter defines and provides criminal penalties for tampering with, or retaliating against, a witness, victim, or informant. For example, a person who knowingly engages, or threatens to engage, in any conduct that causes bodily injury to another person or damages another person's property, with the intent to retaliate against that person because of that person's testimony in an official proceeding, commits a criminal offense [see s. 914.23, F.S.]. If the conduct results in bodily injury, the offense is a second degree felony, ranked in Level 6 of the sentencing guidelines *Offense Severity Ranking Chart*. To illustrate the sentence a person may receive for committing this crime, a first-time offender who commits this offense *must* receive a state prison sentence ranging from 1.6 to 2.7 years under the sentencing guidelines (assuming the victim sustains moderate bodily injury).

Additionally, s. 914.24, F.S., creates a civil action to restrain the harassment of a victim or witness. For example, upon motion by the state attorney, a circuit court must issue a protective order prohibiting the harassment of a victim or witness in a criminal case if the court finds, based upon a preponderance of the evidence, that harassment exists or such order is necessary to prevent and restrain a retaliation offense under s. 914.23, F.S.

Currently, Florida does not have a statewide protocol for providing protective services for victims and witnesses who cooperate in criminal investigations and prosecutions.

B. EFFECT OF PROPOSED CHANGES:

House Bill 35 provides that:

The state attorney shall coordinate with law enforcement agencies within each county for the provision of protection services for a victim or a witness placed at risk of harm by virtue of cooperation in the investigation or prosecution in state court of a serious felony offense, including murder, manslaughter, sexual battery, aggravated stalking, aggravated battery, carjacking, home invasion robbery, burglary, arson, robbery, kidnapping, racketeering, and trafficking in a controlled substance.

In short, HB 35 establishes a protocol for delivering protective services to certain victims and witnesses -- specifically, a victim or a witness who is:

- ▶ *Identified* by a law enforcement agency, a state attorney, or the statewide prosecutor as being "at risk of harm," *and*
- ▶ *Certified* by the appropriate state attorney or statewide prosecutor as being critical to a state criminal investigation or prosecution of a person charged with committing a "serious felony offense."

The bill provides that "at risk of harm" means that the person or that person's immediate family has been subjected to violence or other forms of intimidation, *or* is the subject of a substantial threat to commit violence.

If the statewide prosecutor or the state attorney having jurisdiction in the case determines that a victim or witness is critical to the criminal investigation or prosecution, the statewide prosecutor or the state attorney *may* certify the victim or witness for special protection or temporary relocation services. Upon certification that a victim or witness is critical to a state investigation or prosecution, the investigating agency, in cooperation with the certifying state attorney or the statewide prosecutor, *may* provide for "appropriate witness protection services." If the state attorney or statewide prosecutor finds that there is a compelling need to temporarily relocate a victim or witness, he or she must notify the Florida Department of Law Enforcement (FDLE). FDLE must work with the state attorney or the statewide prosecutor and the investigating law enforcement agency to coordinate the temporary relocation of the victim or witness.

Victim and witness protective services, including relocation services, may be provided for up to one year or until the risk to the victim or witness has diminished, whichever is sooner. However, the state attorney or statewide prosecutor may recertify the victim or witness for up to an additional year of protective services if the victim or witness "continues to remain at risk of harm during the pendency of extended criminal proceedings in the trial court, or who becomes at risk again by a retrial of one or more defendants."

The lead agency providing protective services may seek reimbursement from the *Victim and Witness Protection Review Committee* (created in the bill as part of *Florida's Violent Crime Council*). Any reimbursement claim must cover the expenses incurred by all agencies that cooperate to provide protective services. The reimbursement claim must indicate the proposed levels of distribution between the agencies, should reimbursement be approved.

House Bill 35 provides immunity from civil liability for a state attorney, the statewide prosecutor, or a law enforcement agency (including any officer or employee thereof), who acts in good faith when determining eligibility for victim and witness protection services or when providing such services.

The bill creates a *Victim and Witness Protection Review Committee* within *Florida's Violent Crime Council*. The committee consists of a state attorney or the statewide prosecutor, a sheriff, a chief of police, and an additional person designated by the executive director of FDLE, all of whom will be appointed by the chair of the *Violent Crime Council* from the council's current membership. The committee must:

- ▶ *Develop criteria* for reimbursing agencies for costs associated with providing victim and witness protection or relocation services. The committee must establish a format for reimbursement claims.
- ▶ *Review and approve reimbursement requests*. The committee may reimburse an agency either partially or in full, or decide not to reimburse the agency. The committee must meet in conjunction with the meetings of *Florida's Violent Crime Council*.

Finally, the bill provides intent to appropriate \$500,000 from the General Revenue Fund to establish the *Victim and Witness Protections Services Reimbursement Trust Fund* (if such trust fund is created by law; see *Comments* section).

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

The bill directs the Victim and Witness Protection Review Committee (a committee created within Florida's Violent Crime Council) to develop criteria for disbursing funds to agencies for costs associated with providing victim and witness protection or relocation services. FDLE, which serves as staff to the council, may elect to place such criteria in an administrative rule (similar to the rule already in place for the council's disbursement of violent crime investigative funds).

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

HB 35 authorizes, but does not require, state and local law enforcement agencies to provide victim and witness protective services and relocation services.

- (3) any entitlement to a government service or benefit?

HB 35 provides that certain victims or witnesses may receive protection services, including relocation services. This could be viewed as creating an entitlement to a government benefit.

b. If an agency or program is eliminated or reduced:

HB 35 does not eliminate or reduce an agency or program.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

- (2) what is the cost of such responsibility at the new level/agency?

Not applicable.

- (3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No. [See 1.a.(3) above.]

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No. The beneficiaries of the legislation, specifically certain victims or witnesses that receive protection or relocation services, do not directly pay for such services.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

Although HB 35 authorizes protection and relocation services for certain victims and witnesses who may be children and/or members of a family, HB 35 does not directly purport to provide services to families or children.

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

- (5) Are families penalized for not participating in a program?

Not applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

Although HB 35 authorizes protection and relocation services for certain victims and witnesses who may be children and/or members of a family, the bill does not create or change a program that directly provides services to families or children.

- (1) parents and guardians?

Not applicable.

- (2) service providers?

Not applicable.

- (3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 creates s. 914.25, F.S., relating to victim and witness protection services, as described above.

Section 2 creates s. 914.26, F.S., relating to the *Victim and Witness Protection Review Committee*, as described above.

Section 3 provides intent to specifically appropriate \$500,000 from the General Revenue Fund to establish the *Victim and Witness Protection Services Reimbursement Trust Fund*, if created by law.

Section 4 provides that the act takes effect on July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate, see *Fiscal Comments*.

2. Recurring Effects:

Indeterminate, see *Fiscal Comments*.

3. Long Run Effects Other Than Normal Growth:

None anticipated.

4. Total Revenues and Expenditures:

Indeterminate, see *Fiscal Comments*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate, see *Fiscal Comments*.

2. Recurring Effects:

Indeterminate, see *Fiscal Comments*.

3. Long Run Effects Other Than Normal Growth:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

If law enforcement agencies provide protective services for victims and witnesses in limited circumstances, the bill may have an adverse impact on private companies that currently provide security services to those groups. However, this economic impact is indeterminate.

2. Direct Private Sector Benefits:

Indeterminate.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

The bill provides intent to specifically appropriate \$500,000 from the General Revenue Fund for purposes of reimbursing agencies who provide protective and relocation services. The bill *authorizes, but does not require*, law enforcement agencies to provide these services. To the extent that state and local governments provide services and are not reimbursed, there will be a fiscal impact to state and local governments. A precise fiscal impact upon state and local governments for implementing this *discretionary* program is indeterminate.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

House Bill 33, by Representative Greene, which created the *Victim and Witness Protection Services Reimbursement Trust Fund*, was withdrawn from consideration on January 30, 1997. As such, HB 35 should be amended to delete references to the trust fund.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

STORAGE NAME: h0035.leps

DATE: March 3, 1997

PAGE 9

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

Prepared by:

Legislative Research Director:

Kristin S. Pingree

Kristin S. Pingree