

STORAGE NAME: h0035s1.leps

DATE: March 6, 1997

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

BILL #: CS/HB 35

RELATING TO: Victim and Witness Protection Protocol

SPONSOR(S): Committee on Law Enforcement and Public Safety and Representatives Greene, Futch and Villalobos

STATUTE(S) AFFECTED: Creates: s. 914.25, F.S.; Amends: s. 943.031, 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 YEAS 7 NAYS 0
- (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. CS/HB 35 *authorizes, but does not require* law enforcement agencies to provide protective services, including temporary relocation services, to a victim or witness at risk of harm. The bill establishes a protocol for delivering protective services to certain victims and witnesses -- specifically, those victims or witnesses who are "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 protective or temporary relocation services. If a victim or witness is certified for services, a law enforcement agency *may* provide for protective services, as deemed appropriate by the agency, 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 protective services may be provided.

Agencies that provide victim and witness protective and temporary 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 all reimbursement requests.

The bill provides intent to specifically appropriate \$500,000 from the General Revenue Fund for purposes of reimbursing law enforcement agencies that provide protective and temporary 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

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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:

CS/HB 35 *authorizes, but does not require* law enforcement agencies to provide protective services, including temporary relocation services, to a victim or witness at risk of harm. The bill defines a "victim or witness at risk of harm" as:

A victim or witness who, as a result of cooperating in a criminal investigation or a prosecution, has been subjected to violence or other forms of intimidation, or who is the subject of a substantial threat to commit violence. The term also includes a member of the victim's or witness' immediate family.

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

- ▶ *Identified* by the statewide prosecutor, a state attorney, or a law enforcement officer 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 committee substitute defines a "serious felony offense" as one of the following offenses: murder, manslaughter, sexual battery, aggravated stalking, aggravated battery, carjacking, home invasion robbery, burglary, arson, robbery, kidnapping, racketeering, or trafficking in a controlled substance.]

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 of a serious felony, the statewide prosecutor or the state attorney *may*:

- ▶ Certify that the victim or witness receive protective services; *or*
- ▶ If the statewide prosecutor or the state attorney finds a compelling need to temporarily relocate the victim or witness, certify that the victim or witness receive protective services, including temporary relocation services.

When a victim or witness has been certified to receive protective services, a law enforcement agency, in consultation with the certifying state attorney or the statewide prosecutor, *may* provide protective services, as deemed appropriate by the agency. If a victim or witness needs to be temporarily relocated, the statewide prosecutor or the state attorney must notify the Florida Department of Law Enforcement (FDLE). FDLE must work with the statewide prosecutor or the state attorney, and any other law enforcement agency involved in the criminal investigation or prosecution, to coordinate the temporary relocation of the victim or witness.

Victim and witness protective services, including temporary 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, if deemed necessary, the statewide prosecutor or the state attorney may recertify the victim or witness for up to one additional year of protective services.

CS/HB 35 provides immunity from civil liability for the statewide prosecutor, any state attorney, or a law enforcement officer who acts in good faith when determining eligibility for victim and witness protective services, including temporary relocation services, *or* when providing such services.

The lead law enforcement agency providing protective services, including temporary relocation services, may seek reimbursement from the *Victim and Witness Protection Review Committee*. The bill creates this committee within *Florida's Violent Crime Council*. The committee consists of the statewide prosecutor or a state attorney, 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 meet in conjunction with the meetings of *Florida's Violent Crime Council* and will:

- ▶ *Develop criteria* for reimbursing agencies for costs associated with providing victim and witness protective or temporary relocation services. The committee must establish a format for reimbursement requests.
- ▶ *Review and approve or deny, in whole or in part, reimbursement requests.* The committee may use available funds to reimburse an agency either partially or in full, or may decide not to reimburse the agency.

The lead law enforcement agency providing protective services shall submit a reimbursement request on behalf of all law enforcement agencies that cooperated in providing protective services. As part of the reimbursement request, the lead agency

must indicate how any reimbursement proceeds will be distributed among the agencies that provided services.

Finally, the bill provides intent to appropriate \$500,000 from the General Revenue Fund to the Operating Trust Fund within the Department of Law Enforcement for the purpose of implementing the provisions of the bill.

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 law enforcement agencies for costs associated with providing victim and witness protective or temporary 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?

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

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

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

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

CS/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 protective or temporary 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 CS/HB 35 authorizes protective and temporary relocation services for certain victims and witnesses who may be children and/or members of a family, CS/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 CS/HB 35 authorizes protective and temporary 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 protective services for certain victims and witnesses, as described above.

Section 2 adds subsection (6) to s. 943.031, F.S., relating to *Florida's Violent Crime Council*, to create 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 the Operating Trust Fund within the Department of Law Enforcement for the purpose of implementing the provisions of the bill.

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 law enforcement agencies that provide protective and temporary relocation services for certain victims and witnesses. The bill *authorizes, but does not require*, law enforcement agencies to provide these services. To the extent that state and local governments provide these 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:

Staff recommends the following clarifying amendment to CS/HB 35:

On page 2, delete lines 5 and 6 and insert the following:

victim or witness who, as a result of cooperating in an investigation or prosecution of a serious felony offense, has been subjected to

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Substantive differences between HB 35 and the committee substitute include:

- ▶ HB 35 contained references to the *Victim and Witness Protection Services Reimbursement Trust Fund*, a trust fund created in HB 33, by Representative Greene. HB 33 was withdrawn from consideration on January 30, 1997. CS/HB 35 deletes references to the trust fund and provides intent to appropriate \$500,000 to FDLE's Operating Trust Fund to implement the provisions of the bill.

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- ▶ HB 35 provided that protective services could be extended for up to one additional year 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 committee substitute gives the statewide prosecutor or the state attorney the discretion to extend protective services for up to one additional year, *if deemed necessary*.

Additionally, the committee substitute places provisions relating to the *Victim and Witness Protection Review Committee* in the statute that addresses *Florida’s Violent Crime Council* (s. 943.031, F.S.), and makes other technical and clarifying language changes.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

Prepared by:

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