

STORAGE NAME: h1779s1z.jud

DATE: June 21, 1999

****FINAL ACTION****

****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
FINAL ANALYSIS**

BILL #: CS/HB 1779

RELATING TO: Victim Compensation

SPONSOR(S): Committee on Judiciary and Rep. Pruitt

COMPANION BILL(S): CS/SB 1484(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIARY YEAS 8 NAYS 0
- (2) CRIME & PUNISHMENT (W/D)
- (3) CRIMINAL JUSTICE APPROPRIATIONS (W/D)
- (4)
- (5)

I. FINAL ACTION STATUS:

CS/HB 1779 was approved by the Governor on June 17, 1999. (Chapter# 99-373)

II. SUMMARY:

CS/HB 1779 expands the Florida Crimes Compensation Act, ss. 960.01 *et seq.*, F.S., to permit awards based on boating and flying under the influence offenses.

The bill expands the Act, which restricts adult award eligibility to persons who have been physically injured, to also permit eligibility for adults who, as a result of a forcible felony, suffer mental injury.

The bill increases existing statutory limitations on award eligibility, by adding that persons who were incarcerated at the time of the crime, who have been habitualized, or who have been adjudicated of a forcible felony are not eligible for an award.

The bill increases the current \$15,000 maximum award amount for all costs and losses to \$25,000, and provides that in the event a "catastrophic injury" is suffered the maximum award is \$50,000. The bill also increases the current \$500 emergency award maximum to \$1,000, and the current \$150 maximum for forensic physical exam costs to \$250.

The bill exempts loss of support benefits received from collateral sources from the Act's current requirement that all awards be reduced by any collateral benefit.

The bill creates a new section which provides that domestic violence crime victims may receive relocation assistance awards. Up to \$1,500 may be awarded for any one claim, and up to \$3,000 may be awarded during the victim's lifetime.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Florida Crimes Compensation Act

Section 960.01, F.S., creates the Florida Crimes Compensation Act. The Act's intent is to grant crimes compensation awards to innocent victims injured by crime or to innocent persons injured because they intervene in a crime. See s. 960.02, F.S. (stating the Legislature's intent). The Act is administered by the Department of Legal Affairs through its Office of Crime Victims' Services. ss. 960.02, 960.045, and 960.05, F.S.

The Act provides victims and intervenors with financial assistance for lost wages, disability, loss of support, and funeral expenses, and with reimbursement for other out-of-pocket and treatment expenses directly related to a crime injury. Funding for this assistance is provided by the Crimes Compensation Trust Fund and Federal Victims of Crime Act (VOCA) grants. s. 960.21, F.S.

Crimes subject to the Act

Pursuant to s. 960.03(3), F.S., an award may be provided for a crime involving physical injury or death which is caused by:

- ◆ a state or federal felony or misdemeanor offense;
- ◆ the offenses of driving under the influence, leaving the scene of an accident involving injuries or death, or vehicular homicide;
- ◆ a criminal act outside of this state against a resident of this state if the crime would have been compensable in this state; and
- ◆ an act of mass violence or international terrorism, as defined in 18 U.S.C. s. 2331, committed outside of the United States upon a resident of this state.

Persons who are eligible for crimes compensation awards

Presently, s. 960.065(1), F.S., makes the following persons eligible for crimes compensation awards:

- ◆ a victim or intervenor;
- ◆ a spouse, parent, sibling, or child of a deceased victim or intervenor; and
- ◆ any other person who depended upon the deceased victim or intervenor for his or her principal support.

A victim is a person who suffers physical injury or death as a result of a crime, or a person under 16 years of age who suffers psychiatric or psychological injury as a result of having seen or heard a crime. s. 960.03(9), F.S. An intervenor is a person who suffers physical injury or death as a result of acting to prevent a crime, to aid a crime victim, or to lawfully apprehend a person reasonably suspected of having committed a crime. s. 960.03(8), F.S.

Any person, however, who committed or aided in the commission of the crime upon which a claim is based or who was engaged in an unlawful activity at the time of the crime, is not eligible for a crimes compensation award. s. 960.065, F.S.

Persons who may file a claim; timing of claim; record requirements

Claims for crimes compensation awards may be filed by the person eligible for the award, pursuant to s. 960.065, F.S. In the event an eligible person is a minor or mentally incompetent, a claim may be filed by his or her legal guardian. s. 960.07(1), F.S.

Unless the Department finds good cause to extend the time for filing, claims must be filed no later than one year after:

- ◆ the occurrence of the crime upon which the claim is based;
- ◆ the death of the victim or intervenor; or
- ◆ the death of the victim or intervenor is determined to be the result of a crime, and the crime occurred after June 30, 1994.

The Department is permitted to require a victim or intervenor to provide his or her medical records when needed to determine a claim, and to direct a medical examination of the victim or intervenor when necessary. s. 960.05(2)(m), F.S.

Awards

Section 960.13(1), F.S., provides that in order for a crimes compensation award to be granted, the Department must find that:

- ◆ a crime was committed;
- ◆ the crime resulted in physical, psychiatric, or psychological injury or death to the victim or intervenor; and
- ◆ the crime was promptly reported to the authorities within 72 hours after the crime was committed, unless good cause is found by the Department for the delay.

Moreover, a crimes compensation award may only be granted on an actual need basis and is considered a payment of last resort, subsequent to all insurance benefits. s. 960.13(2) and (3), F.S. Any award made must be reduced by the amount of any payments or services received by a claimant as a result of the injury or death, except that the award need not be reduced by the amount of a court ordered restitution. s. 960.13(6), F.S.

Section 960.13(9), F.S., provides that an award for treatment costs or for a minor's mental health care may not exceed \$10,000, and that the total award for all compensable costs or losses may not exceed \$15,000. The Department is statutorily vested with the authority to establish award maximums below the aforementioned amounts, and may at any time reconsider a claim and modify or rescind an existing order for compensation, based on a change in the medical circumstances of a victim or intervenor. ss. 960.13(9) and 960.14(3), F.S.

Furthermore, s. 960.12, F.S., vests the Department with the discretion to issue an emergency award when it is likely that a crime compensation award will be granted, and when the claimant is receiving social security benefits or it appears that the claimant will suffer undue hardship unless immediate payment is made. The amount of the award may not exceed \$500 and must be deducted from any final amount awarded to the claimant.

Physical examination costs

Section 960.28, F.S., provides that the Department must pay for medical expenses associated with the initial forensic physical examination of a victim who reports a violation of ch. 794, entitled "Sexual Battery," or ch. 800, entitled "Lewdness; Indecent Exposure." Payment for this expense is limited to \$150. s. 960.28(2), F.S.

B. EFFECT OF PROPOSED CHANGES:

Crimes subject to the Act

The bill broadens s. 960.03(3)(b), F.S., to provide that a person may be entitled to crimes compensation for injuries resulting from boating or operating an aircraft under the influence offenses, in addition to current law's provision that compensation may be predicated upon injuries resulting from driving under the influence offenses.

Persons who are eligible for crimes compensation awards

The bill clarifies s. 960.065(1), F.S., which provides that persons eligible for awards include the parent of a deceased victim or intervenor, to also specifically include the deceased's legal guardian.

The bill amends s. 960.03(12), F.S., to provide that any person, who suffers only psychiatric or psychological injury as a direct result of a forcible felony, is a victim for purposes of the Act. In so providing, the bill changes current law which excludes an adult, who is not physically injured, from the definition of victim, and would enable a victim of a crime, such as a kidnaping, to be compensated for mental health counseling costs, despite the lack of a physical injury.

The bill increases the limitations on crimes compensation award eligibility contained in s. 960.065(2), F.S. Presently, any person, meaning the victim/intervenor or his or her surviving representative, who committed or aided in the commission of the crime upon which the claim is based or who was engaged in unlawful activity at the time of the crime, is not eligible for an award. The bill adds that the following victims/intervenors and surviving representatives are also excluded from award eligibility if he or she:

- ◆ was in juvenile detention, jail, or state or federal prison at the time of the crime;
- ◆ has been adjudicated a habitual felony offender, habitual violent offender, or violent career criminal; or
- ◆ has been adjudicated guilty of a forcible felony, i.e., a felony involving the use or threat of physical force or violence against an individual.

Persons who may file a claim; timing of claim; record requirements

The bill increases the Department's ability to obtain records related to the crime from the victim/intervenor or his or her representative. Currently, s. 960.05(2)(m), F.S., only enables the Department, when determining a claim, to require a victim or intervenor to provide his or her "medical records." The bill deletes the modifier "medical"; thereby, affording the Department statutory authority to obtain all records needed to determine a claim.

Awards

The bill increases the maximum award amounts in order to more adequately compensate victims for their losses. Currently, s. 960.13(9), F.S., provides that the total for all costs or losses compensated by an award cannot exceed \$15,000, notwithstanding the type of injury involved. The bill increases this maximum amount to \$25,000. Moreover, the bill adds that the maximum amount is \$50,000 in the event the Department makes a written finding that the victim has suffered a "catastrophic injury," which is defined as a permanent impairment consisting of:

- ◆ spinal cord injury involving severe paralysis;
- ◆ amputation of an arm, hand, foot, or leg ;
- ◆ severe brain or closed-head injury;
- ◆ second or third degree burns on 25 percent or more of the total body surface or third degree burns on 5 percent or more of the face and hands;
- ◆ total or industrial blindness; or
- ◆ other severe injuries which would qualify an employee to federal disability income benefits or supplemental security income benefits.

The bill amends s. 960.13(6), F.S., to exempt loss of support benefits paid by collateral sources from those benefits which must, under current law, reduce the amount of an award. Loss of support benefits are payments to surviving dependents of the deceased victim/intervenor which compensate the dependents for the loss of the deceased's income. Typically, collateral sources, which pay such benefits, only cover immediate loss of support needs and do not adequately compensate long-term loss. Thus, the bill's exemption will afford dependents greater opportunity to have loss of support needs satisfied.

The bill amends s. 960.14(3), F.S., to broaden the Department's ability to reconsider a claim and modify or rescind an order for compensation. Currently, the Department may only reconsider, modify, or rescind based on a change in the victim's/intervenor's "medical circumstances." The bill deletes the term "medical"; thereby, enabling the Department to reconsider, modify, or rescind based upon any change in the victim's/intervenor's circumstances.

The bill amends s. 960.12, F.S., to increase the maximum amount of an emergency award from \$500 to \$1,000.

Physical examination costs

The bill amends s. 960.28, F.S., which requires the Department to pay the cost of certain victims' forensic physical exams, by increasing the payment maximum from \$150 to \$250.

Relocation assistance for victims of domestic violence

The bill creates s. 960.198, F.S., to provide that the Department can make a one-time relocation award to a domestic violence crime victim, who needs immediate assistance to escape from a domestic violence environment. The maximum award is \$1,500 for any one claim and \$3,000 for all claims during a person's lifetime. In order for a victim to claim the relocation award:

- ◆ there must be proof that a domestic violence offense was committed;
- ◆ the domestic violence offense must be reported to the proper authorities;
- ◆ the victim's need for assistance must be certified by a state domestic violence shelter; and
- ◆ the shelter certification should provide that the victim has sought injunctive relieve and is cooperating with law enforcement.

Effective date

The bill applies to crimes committed on or after January 1, 2000.

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?

No.

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

No.

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

Yes. The bill will entitled injured victims to increased benefits.

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

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

The bill does not eliminate or reduce any agency or program.

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

N/A

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

N/A

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?

Yes. The bill excludes from coverage persons who were incarcerated at the time of injury, those who have been habitualized, and those who have been convicted of forcible felonies

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

No.

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?

Yes. The bill denies benefits to persons who were incarcerated at the time of injury, those who have been habitualized, and those who have been convicted of forcible felonies.

5. Family Empowerment:

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

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

The bill does not purport to provide services to families or children.

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

- 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:

- (1) parents and guardians?

The bill does not create or change a program providing services to families or children.

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 960.001, 960.03, 960.05, 960.065, 960.12, 960.13, 960.14, 960.198, and 960.28, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 960.03, F.S., to clarify the definition of 'catastrophic injury,' extends the application of the Act to victims of boating and flying aircraft under the influence, clarifies the definition of "victim" in part to include persons suffering psychological or psychiatric injuries resulting from forcible felonies committed against them.

Section 2 amends s. 960.05, F.S., to clarify the records that may be submitted by victims or intervenors to the Crime Victims' Services Office.

Section 3 amends s. 960.065, F.S., to limit the application of the Act by excluding persons who were incarcerated at the time of a crime, those who have been habitualized, or persons convicted of forcible felonies from eligibility for awards.

Section 4 amends s. 960.12, F.S., to increase the amount of an emergency award from \$500 to \$1,000.

Section 5 amends s. 960.13, F.S., to increase the amount of an award from a maximum of \$15,000 to \$25,000 and provides a \$50,000 cap for catastrophic injury awards.

Section 6 amends s. 960.14, F.S., to allow the Department of Legal Affairs to reconsider an award if there is a change in circumstances of a victim or intervenor.

Section 7 creates s. 960.198, F.S., to provide for relocation assistance to victims of \$1,500 for any one claim up to \$3,000 during the victim's life. Provides for demonstration of proof of eligibility.

Section 8 amends s. 960.28, F.S., to increase the cap on payments for initial forensic examinations from \$150 to \$250.

Section 9 provides that the bill shall be effective with respect to crimes committed on or after January 1, 2000.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Not estimated.

2. Recurring Effects:

Total expenditures for the Florida Crimes Compensation Act for fiscal year 1997 to 1998 were \$36.3 million dollars. The Office of Crime Victims' Services estimates that the changes created by the bill could result in increasing expenditures by \$6,356,600, a 17.5 percent increase. Funding for the Act is solely provided by the Florida Crimes Compensation Trust Fund and Federal Victims of Crime Act (VOCA) grants. The Department is statutorily authorized to administer the fund and to lower the statutory maximums for award amounts depending upon the amount of funds available. ss. 960.13(9) and 960.21, F.S.

Given the Act's trust and grant funding, the bill's increase in expenditures will have no impact on the State's general revenue fund.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Not estimated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

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

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. **FISCAL COMMENTS:**

N/A

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

A. **APPLICABILITY OF THE MANDATES PROVISION:**

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

The bill does not affect the revenue raising authority of any city or county.

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

The bill does not affect the state tax shared with a city or county.

VI. COMMENTS:

N/A

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Judiciary adopted 6 amendments and made the bill a committee substitute. The amendments confer standing on the victim of a crime and the state attorney to assert the victim's rights; provide for a clarifying technical amendment; provide that sections 2 through 9 of the bill apply to crimes committed on or after January 1, 2000; allow the crime victims' services office to receive confidential records from the state attorney or other law enforcement agencies; provide for denial, reduction, or withdrawal of an award if the claimant or award recipient has not cooperated with a state attorney, the Department of Legal Affairs, or other law enforcement agencies; remove the requirement that a victim seek injunctive relief before being eligible to receive relocation assistance; replace the term "shelter" with "center" with respect to certified domestic violence centers; and provide that persons who are in custody or confined, regardless of adjudication, in a county or municipal facility, state or federal correctional facility, or a juvenile detention, commitment, or assessment facility at the time the crime upon which a claim is based, or who have been adjudicated as a habitual felony offender or guilty of a forcible felony shall not be eligible for an award; provide an exemption in cases where proof is demonstrated that such disqualification would be unjust; provide that a decision that such proof does not exist does not constitute final agency action subject to review under Chapter 120, F.S.

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VIII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON JUDICIARY:

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