

STORAGE NAME: h0813b.cp

DATE: March 19, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 813

RELATING TO: Victim Assistance

SPONSOR(S): Representative Kosmas and Representative Heyman.

COMPANION BILL(S): SB 1278(I)

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

- (1) CRIME AND PUNISHMENT YEAS 7 NAYS 0
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill provides that victims who have a criminal history of ever having committed a felony in the state or of having committed a misdemeanor in the state within the past ten years shall not be eligible to receive crime compensation awards. The bill further provides that the Department of Legal Affairs shall have a criminal history record check performed through the Florida Crime Information Center system on any claimant on whose behalf a crime compensation award is sought.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

In 1978, the legislature created the "Florida Crimes Compensation Act" in chapter 960 of the Florida Statutes. The purpose of the act is as follows:

The Legislature recognizes that many innocent persons suffer personal injury or death as a direct result of adult and juvenile criminal acts or in their efforts to prevent crime or apprehend persons committing or attempting to commit adult and juvenile crimes. Such persons or their dependents may thereby suffer disabilities, incur financial hardships, or become dependent upon public assistance. The Legislature finds and determines that there is a need for government financial assistance for such victims of adult and juvenile crime. Accordingly, it is the intent of the Legislature that aid, care, and support be provided by the state, as a matter of moral responsibility, for such victims of adult and juvenile crime.

Section 960.02, Fla. Stat.

Eligibility for Award

The Department of Legal Affairs is given the authority to administer the "Crimes Compensation Trust Fund" and either grant or deny victim compensation claims. Section 960.065 provides that the following persons shall be eligible to file a compensation claim from the "Crimes Compensation Trust Fund":

1. a crime victim;
2. an intervenor (someone who is injured attempting to prevent the crime or aid the victim);
3. a surviving spouse, parent, sibling, or child of a deceased crime victim or intervenor;
4. any other person who is dependant for his or her principal support upon a deceased victim or intervenor.

Definition of "Crime"

Section 960.03(3) provides the following definition of the term "crime" for purposes of the crimes compensation statute:

1. a felony or misdemeanor which results in physical injury or death;
2. a violation of the driving under the influence, fleeing the scene of an accident and vehicular homicide statutes which result in physical injury or death;
3. a criminal act committed outside of this state committed against a resident of this state that would have been compensable if it had occurred in this state and that occurred in a state that does not have an eligible crime victim compensation program as the term is defined in the federal Victims of Crime Act of 1984;
4. an act of mass violence or international terrorism as defined in 18 U.S.C. s. 2331, that is committed outside of the territorial boundaries of this United States upon a resident of this state, when such act results in physical injury or death and the person is not eligible for compensation under Title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986;

Definition of "Victim"

Section 960.03(9) provides that a "victim" is a person who suffers a physical injury or death as a direct result of the crime or a person less than 16 years old who was present at the scene of the

crime, who saw or heard the crime and who suffered a psychiatric or psychological injury because of the crime but who was not physically injured.

Criteria for Award

Section 960.13 provides that no compensation award shall be made unless the department finds that a crime was committed and such crime resulted in personal injury, psychiatric or psychological injury to or death of the victim or intervenor and the crime was promptly reported to the proper authorities. The award shall be granted on an "actual need" basis and shall be provided subsequent to any insurance benefits. Crime compensation is to be considered payment of "last resort that follows all other sources."

Amount of Award

Section 960.13(9) provides that an award may not exceed a total of \$15,000 for all compensable costs or losses. An award for medical treatment may not exceed \$10,000.

Emergency Award

Section 960.12 provides that the Department of Legal Affairs may make an emergency award if it appears that an award will probably be made and undue hardship will result if an immediate payment is not made. The amount of the emergency award shall not exceed \$500 and is to be deducted from any final award made to the claimant.

Award to Elderly and Disabled

Section 960.195 provides that the Department of Legal Affairs may award up to \$500 to elderly persons and disabled adults who suffer a property loss that causes a substantial diminution in their quality of life.

Expenses of Forensic Examinations

Section 960.28 provides that the department shall pay for medical expenses up to \$150 connected with an initial forensic physical examination of a victim of a sexual battery.

B. EFFECT OF PROPOSED CHANGES:

Criminal Background Checks

The bill amends section 960.045 to provide that the Department of Legal Affairs shall have a criminal history record check performed through the Florida Crime Information Center system on anyone who files a claim for compensation.

Eliminates Awards to Convicted Felons

The bill also amends section 960.065, section 960.12 and section 960.195 to provide that any person who has a criminal history of ever having committed a felony in Florida or of having committed a misdemeanor within the past ten years shall not be eligible to receive a victim compensation award, an emergency award or an award to the elderly or disabled based on property loss.

Further, the bill amends 960.21 which creates the Crimes Compensation Trust Fund to provide that payments to a claimant who has a criminal history of ever having committed a felony in Florida or of having committed a misdemeanor within the past ten years are not authorized.

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?

This bill gives the Department of Legal Affairs the responsibility to perform a criminal history record check through the Florida Crime Information Center system on any victim or claimant on whose behalf an compensation award is sought.

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

The bill takes away victim compensation benefits to anyone who has been convicted of a felony in Florida or a misdemeanor within the past ten years.

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?

N/A

(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, it eliminates the entitlement of people convicted of a felony or a misdemeanor within the past ten years to victim compensation.

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

N/A

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:

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

N/A

- (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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 960.045, 960.065, 960.12, 960.195, 960.21

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides that the Department of Legal Affairs shall have a criminal history record check performed through the Florida Crime Information Center system on any claimant on whose behalf an award is sought.

Section 2: Provides that a victim who has ever committed a felony or has committed a misdemeanor within the past ten years shall not be eligible to receive an award.

Section 3: Provides that an emergency award shall not be granted to a claimant who has ever been a felony or has been convicted of a misdemeanor within the past 10 years.

Section 4: Provides that an award to an elderly or disabled person shall not be granted to a claimant who has ever been convicted of a felony or has been convicted of a misdemeanor within the past 10 years.

Section 5: Provides that payments from the Crimes Compensation Trust Fund are not authorized to claimants who have ever committed a felony or has committed a misdemeanor within the past 10 years.

Section 6: Provides effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Fiscal Comments.

2. Direct Private Sector Benefits:

See Fiscal Comments.

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

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill will have a fiscal impact on the Department of Legal Affairs because the department will be required to perform a background check on every applicant for compensation.

Payments for victim compensation are made from the Crimes Compensation Trust Fund. During 1997-1998, state dollars in the trust fund were in excess of \$19.7 million. These funds are derived from the payment of a fifty dollar court cost. Additionally, federal Victims of Crime Act (VOCA) dollars available for victim compensation in Florida totaled \$25,897,000. The total expenditure of state and federal dollars from the Crimes Compensation Trust fund for 1997-1998 was \$36.3 million. Of this total, \$16,399,999 was awarded to victim service programs and \$13,908,842 was awarded in victim compensation to 5,869 victims.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Because the bill is a criminal law, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce anyone's revenue raising authority.

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

The bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

The bill provides that a claimant who has a "criminal history of ever having committed a felony in this state, or of having committed a misdemeanor in this state within the 10-year period before the claim was sought" is not eligible to receive a compensation award. However, an FCIC check will only be useful to discovering whether a person has been convicted of a felony.

Equal Protection

It is possible that an equal protection challenge could be raised to the part of the statute which provides that any person convicted of a felony is not eligible to receive victim compensation benefits. "To comply with equal protection requirements, a statute must treat all people within a class the same, and the division into classes must bear some reasonable relationship to a legitimate state objective." Renau v. State, 436 So.2d 268, 269 (Fla. 1st DCA 1983).

However, the victim compensation statute specifically indicates that the intent of the legislature is to compensate innocent victims of crime. A justification for treating convicted felons differently is that a convicted felon has already burdened the criminal justice system and should not later be awarded by that same system. Florida Statutes already prohibit convicted felons from being a labor organization business agent (s 447.04(1)(b)), a racing or jai alai licensee (s 550.1815), an alcoholic beverage licensee (s 561.15(2)) and a bail bondsman (s 648.45(1)(e)).

Further, the United States Supreme Court has held that it does not deny equal protection to deny a felon the right to vote. Richardson v. Ramirez, 418 U.S. 24, 94 S.Ct. 2655 (1974). The right to vote is more fundamental than any right to receive compensation for being a victim of a crime. Additionally, the Supreme Court has held that it does not violate equal protection to deny a defendant's right to possess a firearm, even if the original conviction was allegedly invalid. Lewis v. United States, 445 U.S. 55, 100 S.Ct. 915 (1980). See also, DeVeau v. Braisted, 363 U.S. 144, 80 S.Ct. 1146 (1960)(holding that denying convicted felon the right to hold office in a waterfront labor organization did not deny equal protection); Hawker v. United States, 170 U.S. 189, 18 S.Ct. 573 (1898)(holding that denying convicted felon the right to practice medicine did not violate equal protection).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Strike Everything Amendment

On March 18, 1999, the Crime & Punishment Committee adopted a strike everything amendment sponsored by Representative Kosmas and Representative Heyman. Two amendments to the amendment were also passed and incorporated into the strike everything amendment. The strike everything amendment makes the following changes to the crimes compensation chapter:

- **Definition of Crime:** The strike everything amendment amends section 960.03 to add the offenses of boating under the influence, vessel homicide and operating an aircraft under the influence to the definition of the term "crime". Compensation currently is not authorized for the victims of these crimes.
- **Definition of Victim:** The strike everything adds the following to the definition of the word victim, "a person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who did not sustain any physical injury."
- **Catastrophic Injury:** The strike everything amendment also amends section 960.03 by adding a definition of the term "catastrophic injury". Catastrophic injury is defined as follows:
 1. Spinal cord injury involving severe paralysis of an arm, a leg or the trunk.
 2. Amputation of an arm, a hand, a foot or a leg.
 3. Severe brain or closed-head injury as evidenced by:

- a. Severe sensory or motor disturbances.
 - b. Severe communication disturbances.
 - c. Severe complex integrated disturbances of cerebral function.
 - d. Severe episodic neurological disorders or
 - e. Other severe brain and closed-head injury conditions at least as severe in nature as any condition described in subparagraphs [a-d].
4. Second degree 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.
 5. Total or industrial blindness; or
 6. Any other injury that would otherwise qualify under this chapter and that is of a nature and severity that would qualify an employee to receive disability income benefits under Title II or supplemental security income benefits under Title XVI of the Federal Social Security Act as the Social Security Act existed on July 1, 1992, without regard to any time limitations provided under the act.

The strike everything amendment provides that the Department of Legal Affairs is to establish criteria governing awards for catastrophic injury as a direct result of a crime. The amendment also provides that a victim who suffers a catastrophic injury may receive up to \$20,000 more than the ordinary cap on compensation awards.

- **Record Check:** The strike everything amendment provides that the Department of Legal Affairs shall have a criminal history record check performed through the Florida Crime Information Center (FCIC) system on any victim or other claimant on whose behalf a compensation award is sought.
- **Distribution of Literature:** The strike everything amendment provides that the Department of Legal Affairs shall produce and distribute literature providing information regarding contacting the Crime Victims' Services Office, eligibility for awards, and filing of claims.
- **Requesting Records from Law Enforcement:** The strike everything amendment alters the language of section 960.05(2)(k) which states that the Crime Victim's Services Office is to "request" records from the state attorney and law enforcement agencies relating to the crime for which compensation is being requested. The bill provides that the office must "require the submission" of the crime records from the state attorney and the law enforcement agencies.
- **Eligibility of Felons:** The strike everything amendment provides that a person who has either been adjudicated guilty of a forcible felony or was in custody at that time of the crime is not eligible to receive a compensation award, an emergency award or an award to the elderly or disabled based on property loss.
- **Emergency Award:** The strike everything amendment raises the limit on the maximum amount of an emergency award from 500 dollars to 1000 dollars.
- **Amount of Compensation:** The strike everything amendment amends 960.13 to provide that a victim compensation award for any award applied for after July 1, 1999 may not exceed \$20,000 rather than \$15,000 for any compensable costs. The section also provides that a victim who has suffered a catastrophic injury as a direct result of a crime may receive up to an additional \$20,000.
- **Relocation of Victims of Domestic Violence:** The strike everything amendment creates section 960.198 relating to relocation assistance for victims of domestic violence. The section provides that the department may award a one-time payment of up to \$1,500 and a lifetime maximum of \$3,000 to a victim of domestic violence who "needs immediate assistance to escape from a domestic violence environment." In order for an award to be granted for relocation assistance:

STORAGE NAME: h0813b.cp

DATE: March 19, 1999

PAGE 10

1. There must be proof that a domestic violence offense was committed;
 2. The domestic violence offense must be reported to the proper law enforcement activities;
 3. The victim's need for assistance must be certified by a certified domestic violence center in the state and
 4. The center certification must assert that the victim has sought injunctive relief under s. 741.30 and is cooperating with law enforcement officials if applicable.
- **Expenses of Forensic Examinations:** The strike everything amendment amends section 960.28 to increase the payment for medical expenses connected with an initial forensic physical examination of a sexual battery victim from \$150 to \$250

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

Trina Kramer

J. Willis Renuart