

STORAGE NAME: h1187.cpcs.doc

DATE: April 6, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 1187

RELATING TO: White Collar Crime

SPONSOR(S): Representative(s) Wishner

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY
 - (2) JUDICIAL OVERSIGHT
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
-

I. SUMMARY:

The bill creates a new section of law which provides that a person commits "aggravated white collar crime" if a person in committing one of a specified list of white collar crimes obtains or attempts to obtain \$100,000 or more and victimizes ten or more elderly persons, twenty or more persons or any state agency or political subdivision of the state. The section provides for enhanced penalties based on the degree of the underlying offense.

The bill also allows the state to seek restitution for victims of aggravated white collar crime that are not listed in the charging document. The Task Force on Privacy and Technology recommended legislation that is the substance of this bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill provides for increased involvement of the state in restitution matters.

B. PRESENT SITUATION:

The theft of property valued at \$100,000 or more is a first degree felony. s. 812.014, F.S.

The restitution statute requires the court to order a defendant to make restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense and damage or loss related to the defendant's criminal episode. s. 775.089(1)(a), F.S. The restitution statute defines the term "victim" as "any person who suffers property damage or loss, monetary expense....as a direct or indirect result of the defendant's offense or criminal episode". s. 775.089(1)(c), F.S. Courts have held that before a defendant can be ordered pay restitution to a victim, the victim must be alleged in the charging document. Perez v. State, 596 So.2d 487 (Fla. 5th DCA 1992); Stewart v. State, 629 So.2d 982 (Fla. 5th DCA 1993). In cases where the state seeks to obtain restitution for victims who were not named in cases formally charged against the defendant, the state attorney must rely on plea negotiations and reach an agreement with a defendant to pay restitution to these victims uncharged cases.

C. EFFECT OF PROPOSED CHANGES:

The bill creates a new section of statute entitled the "White Collar Crime Victim Protection Act" which defines the term "white collar crime" to mean violations of the following laws

- Chapter 560, relating to the Money Transmitter's Code
- Chapter 812, relating to theft, robbery and related crimes
- Chapter 815, relating to computer related crimes
- Chapter 817, relating to fraudulent practices
- Chapter 825, relating to abuse, neglect or exploitation of the elderly or disabled
- Chapter 831, relating to forgery and counterfeiting
- Chapter 832, relating to the issuance of worthless checks
- Chapter 838, relating to bribery and misuse of public office
- Chapter 839, relating to offenses by public officers and employees
- Chapter 895, relating to offenses concerning racketeering and illegal debts
- Chapter 896, relating to financial transactions

- A felony offense that is committed with intent to defraud or that involves a conspiracy to defraud
- A felony offense that is committed with intent to temporarily or permanently deprive a person of his or her property or that involves a conspiracy to temporarily or permanently deprive a person of his or her property.
- A felony offense that involves or results in the commission of fraud or deceit upon a person or that involves a conspiracy to commit fraud or deceit upon a person.

The bill provides that a person commits aggravated white collar crime, if the person in committing one of the above offenses, obtains or attempts to obtain \$100,000 or more and victimizes: 1) ten or more elderly persons; 2) twenty or more persons; or 3) any state agency or political subdivision of the state.

The bill provides that the ranking of an aggravated white collar crime within the Offense Severity Ranking Chart of the Criminal Punishment Code as follows:

- A third degree felony is ranked in Level 7.
- A second degree felony is ranked in Level 8.
- A first degree felony is ranked in Level 9.¹

The bill requires a person convicted of aggravated white collar crime to pay a fine of \$500,000 or double the value of the pecuniary gain or loss, whichever is greater.

The bill provides that a defendant convicted of an aggravated white collar crime is liable for all court costs and shall pay restitution to each victim of the crime, regardless of whether the victim is named in the information or indictment. The term "victim" is defined as a person directly and proximately harmed as a result of the commission of the offense for which restitution may be ordered, including, in the case of an offense that involves a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern of criminal activity. The bill requires the court to hold a hearing to determine the identity of qualifying victims and to order the defendant to pay restitution based on his or her ability to pay in accordance with s. 775.089, F.S.

The bill requires the trial court to make the payment of restitution a condition of any probation granted to the defendant. The bill authorizes the court to order continued probation for up to 10 years or until full restitution is made to the victims, whichever occurs earlier. The court will retain jurisdiction to enforce its order to pay fines or restitution. The court may initiate proceedings against a defendant for a violation of probation or for contempt of court if the defendant willfully fails to comply with a lawful order of the court.

The amends s. 910.15 which relates to venue for certain offenses to provide that a person charged with committing:

- a. a fraudulent practice in a manner in which it may reasonably be assumed that a communication made to facilitate the fraudulent practice or a false or misleading representation could or would be disseminated across jurisdictional lines or
- b. a theft involving the use of the mail, telephone, newspaper, radio, television or other means of communication,

¹ The default ranking for a third degree felony is Level 1, for a second degree felony is Level 4 and for a first degree felony is Level 7.

may be tried in the county in which the dissemination originated, in which the dissemination was made, or in which any act necessary to consummate the offense occurred. For purposes of this section, if a communication is made by or made available through use of the Internet, the communication was made in every county within the state.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates a new section of Florida Statutes entitled the White Collar Crime Victim Protection Act.

Section 2: Amends s. 910.15, F.S.

Section 3: Severability clause.

Section 4: Provides effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has determined that this bill will have an insignificant prison bed impact on the Department of Corrections. The bill may result in restitution being paid to a higher number of victims of white collar crimes. Also, the bill requires the court to impose a fine of \$500,000 or double the amount of loss, whichever is greater.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities 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:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

An "aggravated white collar crime" occurs when a person in committing one of a list of specified offenses obtains or attempts to obtain \$100,000 and "victimizes" twenty or more persons or ten or more elderly persons, or any state agency or political subdivision. The state will be required to prove the elements of the underlying white collar offense, the fact that the defendant obtained or attempted to obtain \$100,000 or more and the fact that there were the required number or type of victims. The bill does not define the term "victimizes". It is not clear whether a person would be considered "victimized" if the defendant attempted to commit a white collar crime against the victim but was unsuccessful. Also, it appears that the state would have to prove that the defendant committed the same underlying offense against each of the victims.

It is unclear in the bill whether "aggravated white collar crime" is an offense in and of itself, or whether it is a sentencing enhancement for person's convicted of the underlying offenses in a manner which satisfies the specified criteria set forth in the bill.

While subsection 4 of the bill provides that an aggravated white collar crime is punishable as provided in "s. 775.082, s. 775.083 or s. 775.084", this subsection does not specify what level of felony the offense will be. The maximum penalty for a felony is based on whether the offense is a first, second or third degree felony. Subsection 5 of the bill states that, notwithstanding the ordinary ranking of an offense within the offense severity ranking chart, an aggravated white collar crime will be ranked as follows: a third degree felony is ranked in level 7; a second degree felony is ranked in level 8 and a first degree offense is ranked in level 9. This indicates that under the bill, the degree of felony will be the same as that of the underlying white collar crime. Thus, while an "aggravated white collar crime" may have a higher minimum penalty than that of the underlying offense, the maximum penalty is not increased by the bill.

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Under the bill, the state will not have to name a victim in the charging document in order to seek restitution after a conviction. However, in the restitution hearing, the state will still have to prove that the defendant committed a crime against the victim and the amount of loss that the victim suffered. The standard of proof in a restitution hearing is the preponderance of the evidence. Hamilton v. State, 753 So.2d 743 (Fla. 3rd DCA 2000).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

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