

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 173 Services for Victims of Sexual Assault
SPONSOR(S): Murman
TIED BILLS: HB 175 **IDEN./SIM. BILLS:** SB 144(s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long Term Care (Sub)	9 Y, 0 N	Meyer	Liem
2) Future of Florida's Families	15 Y, 0 N w/CS	Meyer	Liem
3) Health Services (Sub)		Chavis	Collins
4) Health Care			
5) Public Safety & Crime Prevention			
6) Finance & Tax			
7) Health Appropriations (Sub)			
8) Appropriations			

SUMMARY ANALYSIS

In the calendar year 2001, 12,756 sex offenses were reported in Florida. Experts believe that less than thirty per cent of sexual assaults are reported to law enforcement. That would suggest that there were an additional 32,801 victims. (Source: Florida Statistical Analysis Center: FDLE; Florida Uniform Crime Report.) The Florida Council Against Sexual Violence reports that one in every eight adult women has been a victim of forcible rape.

CS/HB 173 directs the Department of Health to contract with a not-for-profit organization which is qualified as a charitable organization under s. 510(c)(3) of the Internal Revenue Service Code, to allocate funds to rape crisis centers. The dollars to be allocated would come from a court assessment of \$151 on individuals who plead guilty, or nolo contendere or are found guilty regardless of adjudication of any sanction as defined in ss. 784.011, 784.021, 784.03, 784.041, 784.045, 784.048, 784.07, 784.08, 784.081, 784.082, 784.083, 784.085, or 794.011, F.S. One dollar of the fee is to be retained by the office of the clerk of court to offset costs incurred by the clerk in collecting this additional court cost. The bill requires the court to assess this surcharge unless the court specifically waives the assessment "on the record." In addition, the court must require the payment of this assessment as a condition of probation, community control, or any other court-ordered supervision. In addition, the bill: Defines: Department, Rape crisis center, Sexual assault counselor, Trained volunteer, Victim, and Sexual assault recovery services; Specifies the use of funds and distribution of funds; Authorizes the department to conduct an audit; and Requires the department to report annually to the Legislature by a specified date.

Historically, such fees, while assessed by the courts, have extremely low collection rates. According to the Department of Health, while it is difficult to determine how much in fees would actually be collected; it is estimated that if 100% of those convicted of s. 794.011 alone, paid into the trust fund, revenue of \$34,800 would be generated. Based on information provided by the Department of Corrections, there were 1,354 persons sentenced to prison or state supervision for s. 794.011, F.S. (sexual battery) If the additional court cost of \$151 (minus the \$1 to be retained by the clerk of the court) had been collected, \$203,100 would be available for the trust fund. Number of convictions based on the other criminal sanctions was not available at the time of the publication of this analysis.

The bill will take effect on July 1, 2003.

In addition, HB 175 creates the Rape Crisis Program Trust Fund and, if passed, will take effect on July 1, 2003, if HB 173 or similar legislation creating the Sexual Assault Victim's Access to Services Act is adopted in the same legislative session, or an extension thereof, and becomes law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0173.hc.doc
DATE: March 19, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

1. The bill provides for the collection of an additional \$151 to existing court costs from individuals who plead guilty, or nolo contendere¹, or are found guilty of regardless of adjudication of any sanction, as defined in 784.011, 784.021, 784.03, 784.041, 784.045, 784.048, 784.07, 784.08, 784.081, 784.082, 784.083, 784.085, or 794.011, F.S

B. EFFECT OF PROPOSED CHANGES:

CS/HB 173 creates the "Sexual Assault Victims' Access to Services Act" (act) and provides definitions. The bill authorizes the Florida Department of Health (department) to contract with one statewide nonprofit agency, to allocate the funds from the Rape crisis Program Trust Fund to rape crisis centers throughout the state. Typically, these centers provide services to victims of sexual assault and support state initiatives. The bill requires that at least 95 percent of the funds are required to be distributed annually to local nonprofit rape crisis programs. No more than 15 percent of the funds may be used for statewide initiatives; and, no more than 5 % of the funds may be used for administrative costs. The department is charged with the responsibility to ensure that the funds allocated under the act are expended in a manner that is consistent with the requirements of the act. The department may require an annual audit of the expenditures. The bill requires the department to provide a report to the Legislature by February 1 of each year.

The bill authorizes an "assessment of additional costs to fund rape crisis programs." The assessment would be levied whenever a person plead guilty, nolo contendere; or was found guilty of an any sanction as defined in . 784.011, 784.021, 784.03, 784.041, 784.045, 784.048, 784.07, 784.08, 784.081, 784.082, 784.083, 784.085, or 794.011, F.S. The section authorizes an assessment of \$151. The court must assess this additional cost unless the court specifically waives the assessment on the record; and, the court must require payment of the assessment as a condition of probation, community control, or any other court-ordered supervision.

The clerk of the court is required to collect the assessment and transfer \$150 of the assessment to the State Treasury for deposit into the Rape Crisis Program Trust Fund. One dollar of the assessment is retained by the clerk of the court as a processing fee. In addition, payments made while an offender is incarcerated must be forwarded to the State Treasury for deposit into the trust fund.

The act takes effect on July 1, 2003.

¹ Latin for "no contest." In a criminal proceeding, a defendant may enter a plea of nolo contendere, in which he does not accept or deny responsibility for the charges but agrees to accept punishment.

Rape Crisis Centers

While some states fund rape crisis centers, Florida does not.² In Florida, most rape crisis centers depend on federal money. The department currently receives about \$2.3 million dollars from the federal Centers for Disease Control and Prevention (CDC) to offer programs in rape prevention and education. Of that budget, approximately \$391,377 from the Preventive Health Block grant is contracted with providers around the state for services to victims. Both components are implemented through a competitive bid Request For Proposal (RFP) process that results in delivery of services through contracts.

Florida has 37 Rape Crisis Programs. In three areas, Broward County, Orlando, and Jacksonville, the local government funds stand-alone rape treatment centers. In Miami, Jackson Memorial Hospital houses a hospital-based rape treatment center. In two judicial circuits, rape crisis services are provided through the State Attorney's Office. However, forty per cent of the counties do not have a rape crisis program and rural counties are especially underserved according to the Florida Council Against Sexual Violence. Florida ranks 47th in the nation in the number of rape crisis programs per capita. Only one program exists for every 400,000 people. Considering that one of every eight women has been the victim of forcible rape, just one program exists for every 50,000 survivors.³

In 2000, the Florida Council Against Sexual Violence contracted with the Florida State University Family Violence Institute to conduct a statewide needs assessment of sexual assault services. The following is their key finding: "The state of Florida must create a more stable funding mechanism for sexual violence programs." A stable source of funding for sexual assault services has never existed in Florida. As a result, only 10% of programs in Florida provide the basic services that all victims of sexual violence need. Almost one out of every three programs provides services to three counties or more. Even if a basic array of services is available in the hub city, rural counties and outlying areas have very few, if any, services available.

According to the Florida Council Against Sexual Violence,⁴ Florida's rape crisis programs have served over 10,000 victims with face-to-face service in 2000, and provided thousands of additional hours of service to clients through 24-hour hotlines. Over 50% of the programs provide services to more than 1 county, with 29% providing services to more than three counties. Forty percent of Florida's 67 counties do not have a rape crisis program within their county. Many programs have a waiting list for basic services.

Florida's Statistics On Sexual Assault

The only statistics currently published in Florida relating to sexual assault come from the Florida Department of Law Enforcement's (FDLE) totals gathered from law enforcement agencies throughout the state. However, these numbers do not reflect the total number of individuals that were victimized by sexual offenses, but represent only sexual offenses that were reported to law enforcement.

² According information provided by the Florida Department of Health, the following states provide state funding for rape crisis centers: Alaska, California, Connecticut, Georgia, Indiana, Maine, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Virginia, and Washington

³ Florida Council Against Sexual Violence, 2002-2003 Legislative Priority. [<http://www.fcasv.org>]

⁴ Ibid.

TOTAL FORCIBLE SEX OFFENSES REPORTED IN FLORIDA
2001 CRIME VICTIM REPORTS⁵

Attempted Rape	455
Forcible Sodomy	1,587
Forcible Fondling	4,539
Total	12,756

The Florida Council Against Sexual Violence reports that rape, while underreported in every state, the official statistics still paint a picture of significant proportions:

- One in eight adult women has been the victim of forcible rape;
- A sexual offense is reported to law enforcement every 42 minutes;
- Rape is responsible for eleven to twenty per cent of teen pregnancies;
- Medical expenses, lost productivity, and treatment of psychological trauma cost each victim about \$11,000.

Federal Funding

The 1984 Victims of Crime Act (VOCA) established the Crime Victims Fund in the U.S. Treasury. This Fund receives fines, penalty assessments, and bond forfeitures from convicted Federal criminals - not taxpayers. The Office for Victims of Crime oversees the distribution of these dollars and uses part of the money to award annual victim assistance grants to the States. States, in turn, award VOCA subgrants to nearly 3,000 community-based public and private nonprofit organizations that serve crime victims. All States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and Palau receive an annual VOCA victim assistance grant. Each State and Territory (except Palau) receives a base amount, the remainder of the available funds are distributed to the States on the basis of population. However, it is anticipated that the Florida VOCA allocation from the Department of Justice for 2003/2004 grant cycle, will be less than the allocation for the 2002/2003 grant cycle.⁶ It is estimated that that Florida will likely experience more than a \$3 million cut next year in victim services dollars.⁷

Court Costs

The 1997 Legislature created ch. 938, F.S., to consolidate and categorize all the court costs imposed on offenders. The fines and fees assessed at sentencing used to support a wide range of state and local criminal justice programs, including victims' services, law enforcement initiatives and teen courts,. Unfortunately, while each year, millions of dollars in fines and fees are imposed as penalties very little is actually collected. OPPAGA and Auditor General reports have identified problems with the assessment, collection and distribution of court costs, fines and fees. According to OPPAGA, "[b]ecause court costs have been divided among the state and the 67 counties; there is no reliable audited expenditure data for many components of the court system."

According to the Department of Health, it is difficult to determine how much in fees would actually be collected; however, if 100% of those convicted of sexual battery, as defined in s. 794.011, F.S., paid into the trust fund, revenue of \$34,800 would be generated. However, according to the Department of Corrections, there were 1,354 persons sentenced to prison or state supervision for sexual battery. If the additional court cost of \$151 (minus the \$1 to be retained by the clerk of the court) had been collected, \$203,100 would be available in the trust fund.

⁵ Florida Statistical Analysis Center: FDLE (1989-2001). Crime in Florida, Florida Uniform Crime Report; Tallahassee, FL.

⁶ The Public Administrator's Grant Network, State Funding Opportunities, [http://216.239.51.100/search?q=cache:W-anMWvI5lQC:www.pagnet.info/grants_state.php+%2B%22VOCA%22+%2BFlorida&hl=en&ie=UTF-8]

⁷ The Florida Council Against Sexual Violence, "Public Awareness Campaign News," Fall 2002, page 5.

State Inmates

To pay court ordered restitution, fines and court costs, some offenders have the opportunity to work at paid employment, either through the Community Work Release Program or Prison Rehabilitative Industries and Diversified Enterprises (PRIDE). Offenders who work outside the confines of a Community Work Release Center, in private industry, are required to use 10% of their net wages to pay court ordered restitution, fines and court costs. PRIDE sets aside a portion of their corporate profits to pay court ordered restitution, fines and court costs for offenders who are employed in one of their industries. Payments are based on the number of hours an offender works in a PRIDE industry and the type of job performed.

Offenders on Probation

Offenders are required to pay court ordered restitution, fines and court costs while being supervised by Probation and Parole Services.

C. SECTION DIRECTORY:

Section 1. Provides legislative findings and intent related to the lack of adequate services for persons who are victims of sexual battery.

Section 2. Provides a popular name and defines terms. In addition, this section directs the department to contract with a statewide not-for-profit organization that meets specified criteria and provides directions and limits to the allocation of funds. Provides for administration of act by the department; authorizes the department to require an audit; and requires the department to provide an annual report to the Legislature.

Section 3. Authorizes a \$151 assessment by the court, under specified circumstances; provides an exception; and provides for the disbursement of the funds. Assessments are required to be transferred to the State Treasury for deposit in the Rape Crisis Program Trust Fund. In addition, provides that payments made by offenders while incarcerated to also be deposited in the Rape Crisis Program Trust Fund.

Section 4. Provides that the act takes effect on July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

CS/HB 173 requires that when a person pleads guilty or nolo contendere to, or is found guilty of specific acts, the offender will be charged \$151 assessment, unless the court specifically waives the assessment on the record. According to the Department of Health, citing information provided by the State Court Administrator's Office, 232 individuals were convicted for s. 794.011, F.S. (sexual battery) last year. While it is difficult to determine how much of the assessment would actually be collected, if 100% of those convicted paid into the trust fund, \$34,800 (\$150 X 232) would have been paid to the trust fund.

Historically, such fees, while assessed by the courts, have extremely low collection rates. According to the Department of Health, while it is difficult to determine how much in fees would actually be collected; it is estimated that if 100% of those convicted of s. 794.011 alone, paid into the trust fund, revenue of \$34,800 would be generated. Based on information provided by the Department of Corrections, there were 1,354 persons sentenced to prison or state supervision for

sexual batter, as defined in s. 794.011, F.S. If the additional court cost of \$151 (minus the \$1 to be retained by the clerk of the court) had been collected, \$203,100 would be available for the trust fund of which 5 percent would be available to the Department of Health. Number of convictions based on the other criminal sanctions was not available at the time of the publication of this analysis.

2. Expenditures:

Information regarding estimated expenditures by the Department of Health to implement this bill was not received at the time of the publication of this analysis.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Historically, such fees, while assessed by the courts, have extremely low collection rates. According to the Department of Health, while it is difficult to determine how much in fees would actually be collected; it is estimated that if 100% of those convicted paid into the trust fund, revenue of \$34,800 would be generated. Based on information provided by the Department of Corrections, there were 1,354 persons sentenced to prison or state supervision for sexual batter, as defined in s. 794.011, F.S. If the additional court cost of \$151 (minus the \$1 to be retained by the clerk of the court) had been collected, \$203,100 would be available for the trust fund of which 95 percent would be available to the Department of Health. Number of convictions based on the other criminal sanctions was not available at the time of the publication of this analysis.

2. Expenditures:

The \$1 fee authorized by this bill to be retained by the court for administrative costs is comparable to that authorized by s. 938.08, F.S., relating to additional cost to fund programs in domestic violence. No other information is available at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will impose additional costs on persons convicted sexual assault.

D. FISCAL COMMENTS:

It is uncertain how much money in assessments would actually be collected and what impact this would have on the clerk of the court; however, the \$1 fee retained by the clerk of the court is comparable to other such assessments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No rule making authority is granted.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Children & Family Services is currently responsible for programs related to domestic violence. The committee may want to consider whether these violence intervention programs should be relocated or co-located.

A technical amendment is needed to correct in incorrect citation to a sanction for imposition of the additional court costs.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 13, 2003, the Committee on Future Families of Florida adopted a committee substitute to HB 173, as reflected in this analysis. The substantial differences between the bill, as filed and the committee substitute are as follows:

- Expanded the number of criminal sanctions the court cost could be imposed upon from 1 to 13;
- Increased the percentage of the trust fund to be distributed to the non-profit statewide association from 85 percent to 95 percent;
- Provided additional definitions; and
- Eliminated the requirement for the statewide association to be qualified as a charitable organization under s. 501(c)(3) of the Internal Revenue Service