

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 173 w/CS 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)	9 Y, 0 N	Chavis	Collins
4) Health Care	20 Y, 0 N w/CS	Chavis	Collins
5) Public Safety & Crime Prevention	14 Y, 0 N w/CS	Maynard	De La Paz
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 offenses 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.

HB 173 w/CS 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 to or are found guilty of a violation of 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. 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. The bill provides definitions for: Department, Rape crisis center, Sexual battery counselor, Trained volunteer, Victim, and Sexual battery recovery services. The bill specifies the use of 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.

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.

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

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DATE: April 10, 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 type="checkbox"/> | No <input checked="" 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 contendere,¹ 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.
2. The bill does not require any "victim," as the term is defined in the bill, to report the offense to law enforcement.

B. EFFECT OF PROPOSED CHANGES:

HB 173 w/CS creates the "Sexual Battery Victims' Access to Services Act" (act) and provides certain 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 battery 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.

HB 173 w/CS defines a "victim" as "a person who consults a sexual assault counselor or a trained volunteer for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual battery." The bill provides that services the rape crisis centers provide to victims differs on the basis of whether the victim has reported the offense to law enforcement. For victims who have reported the offense to law enforcement a rape crisis center may provide:

- A telephone hotline that is operated 24 hours a day and answered by a sexual battery counselor or trained volunteer
- Information and referral services.
- Crisis-intervention services.
- Advocacy and support services.
- Therapy services.
- Service coordination.
- Programs to promote community awareness of available services.
- Medical intervention.

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.

Those victims who have not reported the offense to law enforcement receive all of the above services with the exception of *medical intervention*, which is defined as “services necessary for the forensic examination of a victim or medical treatment for injuries of a victim of sexual battery.” *Crisis intervention service* is defined by the bill with committee substitute as “advice, counseling, or consultation provided by a sexual battery counselor or trained volunteer to a victim aimed at reducing the level of emotional trauma experienced by the victim.”

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 any offense as defined in s. 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.

While updated fiscal analysis information was not provided by the Department of Health at the time of the publication of this analysis, it is estimated that the department will require 1 Coordinator of Human Services contract position, along with the requisite office equipment, computer, software, and travel activities.

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 battery 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 battery services has never existed in

² According to 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>]

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 Battery

The only statistics currently published in Florida relating to sexual battery 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.

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

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

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.

⁴ Ibid.

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.

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 for specified offenses; 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:

HB 173 w/CS 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. Based on information provided by the Department of Corrections, there were 1,354 persons sentenced to prison or state supervision for sexual battery, 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.

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; however, it is estimated that the department will require 1 Coordinator of Human Services contract position, along with the requisite office equipment, computer, software, and travel activities.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

For the local governments that provide funding for rape treatment centers (Broward County, Orlando, and Jacksonville), the funds distributed from the trust fund would assist in supplementing or replacing existing local government funding.

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 rulemaking authority is granted under this bill; however "tied" bill HB 175 grants the Department of Health rulemaking authority to establish criteria for distributing moneys from the trust fund to rape crisis centers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 173 w/CS, as adopted by the Future of Florida's Families, the Health Services Subcommittee, and the Health Care Committee is inconsistent with the "tied" bill, HB 175, which creates a trust fund within the Department of Health for the moneys collected under this act. HB 175 is authorized to accept funds generated by additional court costs assessed on s. 794.011, F.S. HB 173 w/CS has increased the number of offenses upon which the court can levy the surcharge.

HB 173 w/CS changes, from the original version of the bill, all references of "sexual assault" to "sexual battery," because the term "sexual assault" is not a crime in Florida, but "sexual battery" is defined in 794.011(1)(h), F.S..⁸ "Sexual assault," though undefined, does exist in current law except in two places: 1) The evidence code refers to a "sexual assault counselor-victim privilege." Under s. 90.5035(1)(b), F.S., A "sexual assault counselor" is any employee of a rape crisis center whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault or sexual battery." Because sexual battery counselors as defined in the bill similarly provide advise and counsel to sexual battery victim, the privilege should extend to them. The only other place in statute that the term "sexual assault" is used is in reference to domestic battery. For example, s. 741.28, F.S., includes sexual assault as one of the offenses which if it results in injury or death of family member and is committed by another family member may constitute "domestic violence."

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;

⁸ "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

- 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

On March 19, 2003, the Health Services Subcommittee adopted two amendments: The traveling “CS,” as described above; and a “technical” amendment correcting a scrivener’s error.

On March 19, 2003, the Health Care Committee adopted the amended CS.

On April 10, 2003, the Committee on Public Safety & Crime Prevention passed an amended amendment as committee substitute which: 1) defines “medical intervention,” and “crisis-intervention services,” which are services to be provided by Rape Crisis Centers, 2) narrows the scope of services which may be provided based on whether the victim has reported the offense to law enforcement, 3) ties the definition of “sexual battery” to the existing definition relating to current offenses and makes it the offense for which victims may seek services, and 4) changes use of term in the bill of “sexual assault” (which is not defined in Florida Statutes) to “sexual battery.”