

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 2322

INTRODUCER: Judiciary Committee and Senator Crist

SUBJECT: Cybercrime Office

DATE: April 5, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Thompson</u>	<u>Maclure</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	<u>WM</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates in statute the Cybercrime Office in the Department of Legal Affairs (the Office of the Attorney General). This office is authorized to investigate violations of state law pertaining to the sexual exploitation of children which are facilitated by or connected to the use of any device capable of storing electronic data. Investigators employed by the office are law enforcement officers of the state, certified in accordance with s. 943.1395, F.S., who have the authority to conduct criminal investigations, bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, capias, and all necessary service of process throughout the state. As it relates to this office, the Attorney General, or any duly designated employee, is authorized to subpoena witnesses or materials within or outside the state, administer oaths and affirmations, and collect evidence for possible use in civil or criminal judicial proceedings; and to seek any civil remedy provided by law. The Attorney General, or any duly designated employee, is required to provide notice to the local sheriff, or his or her designee, of any arrest effected by the Cybercrime Office.

This bill creates section 16.61, Florida Statutes.

II. Present Situation:

The definition of cybercrime is very broad and encompasses many different crimes; however, the common factor is that cybercrime is a criminal activity that is committed on the Internet. The risks to children and teenagers in cyberspace include exposure to unwanted sexual solicitations

and approaches, unwanted sexual material, and threatening and offensive behavior directed to them.¹

In 2005, Attorney General Crist established a Cybercrime Unit “to expand programs to further safeguard children from predatory criminals.”² The website summary of the Cybercrime Unit states:

The Unit includes law enforcement investigators and prosecutors whose primary mission is to target child predators, child pornography, and Internet-based sexual exploitation of children.

The Cybercrime Unit is dedicated to investigating and prosecuting any crime perpetrated or substantially facilitated using a computer, the Internet, digital media, cellular phone, personal digital assistant (PDA), or any other electronic device. The investigators and the prosecutors in the Unit are specially trained in current technologies, tactics, and the law, and share their expertise through educational programs and community awareness efforts.

Through the Cybercrime Unit, the Attorney General encourages extensive cooperative efforts with federal and state prosecutors, the Florida Department of Law Enforcement (FDLE), the NetSmartz Workshop, the National Center for Missing and Exploited Children (NCMEC), other Attorneys General, and all Florida law enforcement agencies.³

Currently, the creation of a Cybercrime Unit (the current name for the Cybercrime Office) is not codified in Florida Statutes, as is the case, for example, with the Attorney General’s Medicaid Fraud Control Unit.⁴

¹ Crimes Against Children Research Center, *Online Victimization: A Report on Nation’s Youth* (June 2000), available at http://www.missingkids.com/en_US/publications/NC62.pdf.

² See Office of Attorney General website, <http://myfloridalegal.com/agunits>.

³ *Id.*

⁴ For example, the Medicaid Fraud Control unit is codified in s. 409.9205, F.S., which provides:

- (1) Except as provided in s. 110.205, F.S., all positions in the Medicaid Fraud Control Unit of the Department of Legal Affairs are hereby transferred to the Career Service System.
- (2) All investigators employed by the Medicaid Fraud Control Unit who have been certified under s. 943.1395, F.S., are law enforcement officers of the state. Such investigators have the authority to conduct criminal investigations, bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, capias, and other process throughout the state pertaining to Medicaid Fraud as described in this chapter. The Attorney General shall provide reasonable notice of criminal investigations conducted by the Medicaid Fraud Control Unit to, and coordinate those investigations with, the sheriffs of the respective counties.

Section 16.59, F.S., provides:

There is created in the Department of Legal Affairs the Medicaid Fraud Control Unit, which may investigate all violations of s. 409.920, F.S., and any criminal violations discovered during the course of those investigations. The Medicaid Fraud Control Unit may refer any criminal violation so uncovered to the appropriate prosecuting authority. Offices of the Medicaid Fraud Control Unit and the offices of the Agency for Health Care Administration Medicaid program integrity program shall, to the extent possible, be collocated. The agency and the Department of Legal Affairs shall conduct joint training and other joint activities designed to increase communication and coordination in recovering overpayments.

For 2005-06, the Legislature funded four positions for a Cybercrime Office from the Legal Affairs Revolving Trust Fund for this office: three investigative positions (one is a lieutenant) and one senior assistant attorney.⁵ The Cybercrime Unit investigators are certified law enforcement officers. They are authorized to conduct criminal investigations, bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, capias, and all necessary service of process throughout the state. The senior assistant attorney is authorized to subpoena witnesses or materials within or outside the state, administer oaths and affirmations, and collect evidence for possible use in civil or criminal judicial proceedings; and seek any civil remedy provided by law.⁶

III. Effect of Proposed Changes:

The bill creates s. 16.61, F.S., which statutorily codifies and creates the Cybercrime Office in the Department of Legal Affairs (the Office of the Attorney General). The new section authorizes this office to investigate violations of state law pertaining to the sexual exploitation of children which are facilitated by or connected to the use of any device capable of storing electronic data.

The new section further provides that:

- Investigators employed by the Cybercrime Office certified in accordance with s. 943.1395, F.S., are law enforcement officers of the state who shall have the authority to conduct criminal investigations, bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, capias, and all necessary service of process throughout the state.⁷
- In carrying out the duties and responsibilities of this section, the Attorney General, or any duly designated employee, is authorized to subpoena witnesses or materials within or outside the state, administer oaths and affirmations, and collect evidence for possible use in civil or criminal judicial proceedings; and seek any civil remedy provided by law, including, but not limited to, a remedy provided under s. 932.701, F.S.⁸
- The Attorney General, or any duly designated employee, shall provide notice to the local sheriff, or his or her designee, of any arrest effected by the Cybercrime Office.

The bill takes effect on July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁵ According to staff of the Senate Committee on Justice Appropriations, the total appropriation was \$416,030 (\$72,683 of which was non-recurring).

⁶ Information provided by staff of the Office of the Attorney General on March 31, 2006.

⁷ According to staff of the Office of the Attorney General, the Cybercrime Unit currently functions in this manner. This bill specifically codifies the authority.

⁸ According to staff of the Office of the Attorney General, the Cybercrime Unit currently functions in this manner. This bill specifically codifies this authority.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to a fiscal analysis provided by the Department of Legal Affairs, the bill will have no fiscal impact on the department. Costs to implement this bill will be absorbed within current appropriations.⁹ The department has not asked for any additional funding beyond the appropriation it has already received.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁹ Department of Legal Affairs Fiscal Analysis on Senate Bill 2322, dated March 16, 2006.

¹⁰ Information provided by staff of the Office of the Attorney General on March 31, 2006.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
