

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill expands victim compensation eligibility to all victims of vehicular homicide and specifies material fact witness-victims are eligible for compensation.

Safeguard Individual Liberty – The bill makes it a crime for a person who takes custody of or exercises control over a person he or she knows to be injured as a result of criminal activity to deprive that person of medical care with the intent to avoid, delay, hinder, or obstruct any investigation of the criminal activity contributing to the injury.

B. EFFECT OF PROPOSED CHANGES:

Victim's Assistance - Expansion of Eligible Crimes to Include Vehicular Homicide 782.071(1)(a)

Vehicular homicide is the killing of a human being caused by the reckless operation of a motor vehicle in a manner likely to cause the death of, or great bodily harm to, another.¹ Vehicular homicide is a second degree felony; however, the offense is reclassified to a first degree felony if the at-fault party knew or should have known that the accident occurred and the person failed to give information and render aid.²

The Florida Crimes Compensation Act (the Act),³ authorizes the Florida Attorney General's Division of Victim Services to administer a compensation program to ensure financial assistance for innocent victims of crime. The Act's definition of the term "crime" enumerates certain offenses for which a victim is eligible for compensation. Such offenses include driving an automobile or boat under the influence, leaving the scene of an accident, and operating an aircraft while intoxicated or in a careless or reckless manner.⁴ The definition of the term "crime" also includes vehicular homicide, but only when the offense is classified as a first degree felony.⁵

HB 835 amends the definition of the term "crime" for victim compensation purposes to remove the requirement that the vehicular homicide offense be a first degree felony. As a result, all vehicular homicide offenses, regardless of its felony classification level, will be included in the list of offenses for which a victim may be eligible for compensation. Thus, even if the offender did not leave the scene of an accident, the victim will be eligible for compensation.

Expanding the List of Persons Eligible for Victims Compensation Awards

In addition to enumerating offenses for which a victim is eligible for compensation, the Act specifies certain groups of people who are eligible for compensation. Currently, only victims; intervenors; surviving spouses, parents or guardians, siblings, or children of a deceased victim or intervenor; and other persons who are dependent upon a deceased victim or intervenor are eligible for victim compensation awards.⁶

HB 835 adds an additional category of persons who are eligible for victim compensation awards. Specifically, the bill provides that a person who is a victim in another crime or case and whose

¹ s. 782.071(1)(a), F.S.

² s. 782.07(1)(b), F.S.

³ ss. 960.01-960.28, F.S.

⁴ s. 960.03(3)(b), F.S.

⁵ *Id.*

⁶ s. 960.065, F.S.

testimony is proffered pursuant to s. 90.404(2), F.S.,⁷ (the Williams Rule⁸) is eligible for victim compensation awards.

Time for Filing a Claim for Compensation

Currently, a claim for compensation must be filed no later than one year after:

- The occurrence of the crime upon which the claim is based;
- The death of the victim or intervenor;
- The death of the victim or intervenor is determined to be the result of a crime, and the crime occurred after June 30, 1994.⁹

For good cause, the Department of Legal Affairs may extend the time for filling a claim for compensation for two years after any of the above occurrences.¹⁰

HB 835 provides that for crimes occurring between June 30, 1994, and June 30, 2007, the Department of Legal Affairs may extend until June 30, 2008, the time for filing a claim for compensation when the claimant is a victim of an attempt to commit murder and is rendered a paraplegic requiring life-supporting or life-sustaining equipment as defined in s. 400.925, as a result of the crime.

Depriving a Crime Victim of Medical Care

HB 835 creates s. 843.21, F.S., making it a crime for a person who takes custody of or exercises control over a person he or she knows to be injured as a result of criminal activity to deprive that person of medical care with the intent to avoid, delay, hinder, or obstruct any investigation of the criminal activity contributing to the injury. The bill makes such crime a third degree felony¹¹ where the victim's medical condition worsens as a result of the deprivation of medical care. It is a second degree felony¹² where the deprivation of medical care results in the victim's death. This provision of the bill has an effective date of October 1, 2007.

C. SECTION DIRECTORY:

Section 1. Amends s. 960.03, F.S., relating to definitions; ss. 960.01-960.28.

Section 2. Amends s. 960.065, F.S., relating to eligibility for awards.

Section 3. Providing an effective date and creating s. 843.21, F.S., relating to depriving persons injured by crime of medical care.

Section 4. Amends s. 960.07, F.S. relating to filing of claims for compensation.

Section 5. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁷ Section 90.404(2), F.S., provides that similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity. In a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

⁸ The Florida Supreme Court established what is known as the "Williams Rule" in *Williams v. State*, 110 So.2d 654 (Fla. 1959), which held that evidence of any facts relevant to a material fact in issue, except where the sole relevancy is character or propensity of the accused, is admissible unless precluded by some specific exception or rule of exclusion.

⁹ s. 960.07, F.S.

¹⁰ *Id.*

¹¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

¹² A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The impact is indeterminate although the Department of Legal Affairs does estimate increased expenditures of \$2.8 million from the Crime Victims Compensation Trust Fund if HB 835 becomes law. Please see fiscal comments for additional explanation.

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, to the extent that this bill makes it a crime for a person who takes custody of or exercises control over a person he or she knows to be injured as a result of criminal activity to deprive that person of medical care with the intent to avoid, delay, hinder, or obstruct any investigation of the criminal activity contributing to the injury, there may be an additional prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The department's estimate is based on data gathered from 8 of the state's 20 judicial circuits. The department warns that the information used for the estimate is incomplete and inconclusive. This calls into question the reliability of the data used for the estimate and any resulting conclusions. Despite these limitations, the department states that the potential fiscal impact on the Crime Victim Compensation Trust Fund will be significant. In defense of this conclusion, it cites a \$1.4 million impact from only considering the cases reported by the 8 circuits that did report data. These 8 circuits do not include some of the more populous circuits in the state.

The Crime Victim Compensation Trust Fund is projected to have a \$2.3 million unencumbered cash balance on June 30, 2008. If the department's estimated \$2.8 million impact materializes, this could require the department to reduce awards to individuals eligible for assistance under current law.

The department has not indicated the need for additional trust fund spending authority if the bill passes.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 2 of the bill adds persons who are victims in another crime or case and whose testimony is proffered pursuant to the Williams Rule to the list of people eligible for victim compensation awards. This provision may be interpreted to allow such persons to receive victim compensation awards multiple times (e.g. a victim who received an award for a crime that was committed upon them may later be eligible to receive an award if they proffer testimony pursuant to s. 90.404(2), F.S., in a separate case years later). The Department of Legal Affairs may be able to address this issue through their rule-making authority.

D. STATEMENT OF THE SPONSOR

No statement submitted by the original bill sponsor.

The chair of the Safety & Security Council chose not to submit any further comments regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 18, 2007, the Safety & Security Council adopted two amendments and reported the bill favorably as a council substitute. The first amendment extends the time period for filing a claim for victim compensation for certain victims. The second amendment adds a provision to the bill making it a crime for a person who takes custody of or exercises control over a person he or she knows to be injured as a result of criminal activity to deprive that person of medical care with the intent to avoid, delay, hinder, or obstruct any investigation of the criminal activity contributing to the injury.

This analysis is drafted to the council substitute.