

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 989
SPONSOR(S): Snyder
TIED BILLS:

Victims of Sexual Battery
IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>8 Y, 0 N</u>	<u>Ladd</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	<u> </u>	<u> </u>	<u> </u>
3) <u>Policy & Budget Council</u>	<u> </u>	<u> </u>	<u> </u>
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SUMMARY ANALYSIS

HB 989 relates to crime victim rights, compensation, and services.

The bill prohibits law enforcement from requiring the victim of a sex offense to submit to a polygraph or other lie detection examination as a condition precedent to investigation of the offense. The bill also provides for victim advocates to be present during the forensic examination upon request of the victim or guardian and also requires that an order to submit the offender to HIV testing be issued within 48 hours of the request.

The bill eliminates the requirement that the victim must report the sex offense and assist law enforcement with the investigation and prosecution of the offender to receive payment of the medical expenses associated with the violation. There is also a provision to raise the amount paid by the Department of Legal Affairs for the medical exam from \$250 to \$500.

The bill has an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families: The bill provides for payment of the physical examination for the victim of a sex offense without requiring the victim cooperate with law enforcement.

B. EFFECT OF PROPOSED CHANGES:

I. Victim's Assistance- Current Situation

Chapter 960, F.S. (2006) provides guidelines for the fair treatment of victims and witnesses in the criminal justice and juvenile justice systems. The chapter requires law enforcement to provide information concerning services available to crime victims, witnesses, and their families. There are also provisions regarding victim compensation for expenses incurred as a result of a crime.

Section 960.001, F.S. specifies the rights, services, and procedures associated with crime victims. Currently, law enforcement must inform victims of the availability of the crime victim compensation fund, crisis intervention services, support programs, their role in the criminal process, their right to be heard during stages of the proceedings, and their right to a timely disposition of the case. There are also provisions for notification of next of kin, protection services, court scheduling and notice to employers regarding assistance with the prosecution; and consultations regarding plea agreements, sentencing, and return of property.

II. Cannot Require Polygraph of Victim to Proceed with Investigation of Sex Offense

HB 989 adds §960.001(1)(t) to the enumerated list of rights, services, and procedures available to victims of crime. Section 960.001(1)(t) provides that neither law enforcement (including prosecutors) nor any other government official can require a victim of sexual battery¹ or other sexual offense² to submit to a polygraph or other truth-telling device examination as a condition precedent to an investigation of the offense. Further, the bill explicitly states that the refusal to submit to such an examination shall not prevent the investigation, charging, or prosecution of the offense.

III. Victim's May Request Victim Advocates Presence during Forensic Examination

HB 989 provides the addition of §960.001(1)(u). Section 960.001(1)(u) requires that a victim advocate from a certified rape crisis center be permitted to attend any forensic medical examination upon request by the victim, parent, guardian, or lawful representative.

IV. HIV Testing Order within 48 Hours After Motion

HB amends §960.003(2)(a), F.S. Currently, the victim or victim's parent or legal guardian may request the court order an HIV test of the accused if the accused has been charged by indictment, information, or petition for delinquency. The bill provides that after the request is made by the victim, the court must enter the order to test within 48 hours.

¹ Fla. Stat. §794.011

² The bill does specify what offenses qualify as a "sex offense."

V. Requiring Crime Victims' Services Office to Pay for Forensic Physical Examination of a Victim of Sexual Battery or a Lewd and Lascivious Offense When Victim Does Not Cooperate with Law Enforcement

Currently, the Crime Victims' Services Office of the Department of Legal Affairs pays for medical expenses connected with an initial forensic physical examination of a victim who reports a violation of sexual battery or a lewd and lascivious offense when the victim reports the violation to a law enforcement officer. The payment may not exceed \$250 and requires law enforcement to certify the initial forensic physical examination is needed to aid in the investigation of an alleged sexual offense. HB 989 amends §960.28, F.S. to increase the amount of payment for the examination from \$250 to \$500 and does not require the victim report or cooperate with law enforcement or require the examination be necessary in the investigation of the victim's alleged sexual offense.

Therefore, a victim who does not report a violation of sexual battery or a lewd and lascivious offense (apparently to law enforcement), and who does not assist with the prosecution of the offender may still receive payment of \$500 on her behalf to cover the cost of the examination.

C. SECTION DIRECTORY:

Section 1. Adds §960.001, (t) and (u), to Florida Statutes prohibiting law enforcement from requiring lie detecting devices from victims of sexual offenses as a condition precedent to investigation of the offense.

Section 2. Amends §960.003(2)(a), F.S. to requires a court order to be issued within 48 hours after motion to request sex offender undergo HIV testing.

Section 3. Amends §960.28(2), F.S. to require payment of \$500 for examination for victims regardless of whether they report or assist law enforcement in the investigation of an alleged sexual offense.

Section 4. Provides for an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures: OAG anticipates the provisions set forth in this bill would require twice the amount currently spent for forensic physical examinations to an estimated total of \$2,373,038.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other: None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. The bill prohibits law enforcement from requiring a victim “to submit to a polygraph examination or other truth-telling device.”

The language may be better stated “to submit to a polygraph or other truth-telling device examination”.

Also, the term “sex offense” is not defined or cross referenced. Therefore it is unclear if lewd and lascivious conduct qualifies.

2. Section 960.003(2)(a) reads “upon request of the victim or..., the court shall order such person to undergo HIV testing within 48 hours.” The language is unclear as to whether the court must issue an order within 48 hours or ensure that the test be administered within 48 hours of the request.

If the intent is to have the offender tested within 48 hours of the request, the language may be better stated, “the defendant shall undergo HIV testing within 48 hours of issuance of a court order after request by the victim, or the victim’s legal guardian, or of the parent of legal guardian if the victim is a minor.

D. STATEMENT OF THE SPONSOR

The bill sponsor submitted the following statement: This legislation, if enacted, will go a significant way towards providing a more compassionate investigative and forensic environment for victims of sexual battery and lewd and lascivious assaults. It places language into the existing state statute that addresses police procedures which most law enforcement agencies currently employ. It will also insert language that is a federal prerequisite for continued Congressional funding under the auspices of the Violence Against Women Act (VAWA) 2005. Florida currently receives approximately \$6 million annually from VAWA that supports various law enforcement and prosecution projects.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

An amendment was adopted by the Homeland Security and Public Safety Committee relating to compensation for crimes committed against Florida residents outside of Florida. Section 960.03(c), F.S. defines “crime” as a criminal act that would have been compensable if it had occurred in this state and which occurred in a state that does not have an eligible crime victim compensation program.

The amendment removes from the definition of “crime” the requirement that the crime occur in another state, replacing “state” with “jurisdiction”. The change will permit compensation when the crime occurs outside of the 50 United States.

The amendment encompasses the provisions of s. 960.03(d) F.S., and therefore s. 960.03(d) was removed from the bill.