

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 489
SPONSOR(S): Jenne
TIED BILLS: HB 1141

Sexual Violence Victim

IDEN./SIM. BILLS: SB 994

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Jobs & Entrepreneurship Council, 12 Y, 0 N, Marra/Topp, Thorn. Row 2: Policy & Budget Council, 33 Y, 0 N, Voyles, Hansen. Rows 3-5 are empty.

SUMMARY ANALYSIS

Current law requires employers to grant victims of domestic violence leave for certain purposes, such as obtaining medical care and protective injunctions. No such provisions exist for victims of sexual violence.

The bill extends existing employment protection to victims of sexual violence. It requires employers with 50 or more employees to permit employees who have been employed for at least 3 months to request or take up to 3 working days of leave with or without pay within a 12-month period, if the employee is a victim of sexual violence and the leave is sought to:

- Seek an injunction for protection against sexual violence;
- Obtain medical care or mental health counseling;
- Obtain services from a victim-services organization;
- Make the employee's home secure or to seek new housing; or
- Seek legal assistance to address issues arising from the act of sexual violence and to attend and prepare for court-related proceedings arising from the act of sexual violence.

The bill includes the following limitations on an employee seeking leave:

- Unless waived by the employer, employees must use all other available leave before using this leave;
- Employees must notify their employer of their planned absence (except in cases of imminent danger);
- Employers may require documentation of the sexual violence;

The bill includes the following limitations on the employer:

- Employers must keep information relating to the employee's leave confidential;
- Employers may not interfere with or retaliate against the employee's use of this leave;
- Employers may discipline or terminate employees for any other reason.

To enforce the bill, employees are provided with a right to civil suit for damages or equitable relief.

The bill attempts to expand an existing public records exemption covering personal identifying information submitted by state agency employees who are victims of domestic violence to include those who are victims of sexual violence as well. Florida's constitution requires public records exemptions be passed in legislation containing only the exemption by two-thirds vote. HB 1141, which is linked to this bill, has been filed for this purpose.

The department does not anticipate any fiscal impact to the state.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – The bill requires certain employers to grant leave for certain purposes to employees who are victims of sexual violence.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present situation

##### **Sexual Violence**

National researchers found that approximately one of every nine adult women has been the victim of forcible rape. This amounts to more than 700,000 Florida women. This number does not include teenagers or male victims.

Victims of rape who do not receive treatment services have a higher risk of posttraumatic stress disorder, depression, suicide and drug use.

According to the Florida Council Against Sexual Violence (FCASV), victims are more likely to remain productive and stable if they are able to make and keep appointments needed for recovery, to actively participate in legal proceedings, and to make their homes secure.

Under current law, sexual violence is defined to include:

- Sexual battery;
- A lewd or lascivious act committed upon or in the presence of a person younger than 16;
- Luring or enticing a child;
- Sexual performance by a child; or
- Any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

Currently, victims of sexual violence may file a sworn petition for an injunction for protection against sexual violence if the victim has reported the sexual violence to law enforcement and is cooperating in any criminal proceeding against the offender, regardless of whether criminal charges based on the violence have been filed, reduced or dismissed. Victims of sexual violence may also file for a protective injunction if the offender was sentenced to imprisonment in a state prison for the sexual violence and is now or will be released from prison within 90 days.

##### **Employment protection**

Employment protection measures were passed in the 2007 session to require employers to allow employees to request or take up to three working days of leave with or without pay in any 12-month period if the employee is the victim of **domestic violence** and the leave is sought to:

- Seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence;
- Obtain medical care or mental health counseling, or both, for the employee or a family or household member to address physical or psychological injuries resulting from the act of domestic violence;
- Obtain services from a victim-services organization, including, but not limited to, a domestic violence shelter, program, or a rape crisis center as a result of the act of domestic violence;
- Make the employee's home secure from the perpetrator of the domestic violence or to seek new housing to escape the perpetrator; or
- Seek legal assistance to address issues arising from the act of domestic violence and to attend and prepare for court-related proceedings arising from the act of domestic violence.

A victim of **sexual violence** would not be guaranteed leave for any of these reasons, unless his or her assailant was a family or household member. If the victim's assailant was a family or household member, the sexual violence would also constitute domestic violence, in which case, current law would

require the victim's employer to allow the victim to request or take leave to obtain an injunction for protection against sexual violence. However, if the victim's assailant was anyone else, the victim would not be afforded this employment protection.

#### Effect of proposed changes

The bill extends existing employment protections for victims of domestic violence and their family and household members to cover victims of sexual violence and their family and household members. "Sexual violence" is defined in the bill by reference to the s. 784.046 definition of

any one incident of:

1. Sexual battery, as defined in chapter 794;
2. A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age;
3. Luring or enticing a child, as described in chapter 787;
4. Sexual performance by a child, as described in chapter 827; or
5. Any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

The bill requires employers to allow employees to request or take up to three working days of leave with or without pay in any 12-month period if the employee or the employee's family or household member is the victim of sexual violence and the leave is sought to:

- Obtain medical care or mental health counseling, or both, for the employee or a family or household member to address physical or psychological injuries resulting from the act of sexual violence;
- Obtain services from a victim-services organization, including, but not limited to, a domestic violence shelter, program, or a rape crisis center as a result of the act of sexual violence;
- Make the employee's home secure from the perpetrator of the sexual violence or to seek new housing to escape the perpetrator; or
- Seek legal assistance to address issues arising from the act of sexual violence and to attend and prepare for court-related proceedings arising from the act of sexual violence.

Application of the bill is limited to employers with 50 or more employees and to employees who have been employed by the employer for at least 3 months. The employee is required to provide advance notice of the leave except in cases of imminent danger to the employee or the employee's family. The employer is authorized to require documentation of the act of sexual violence.

The employee must use all available annual or vacation leave, personal leave, and sick leave available to the employee prior to using the leave provided for in this bill, unless this requirement is waived by the employer.

The employer is prohibited from taking any disciplinary action against the employee for exercising rights under this bill; but the employee is not granted any rights under the bill to continued employment or other benefits not available outside the provisions of the bill.

The remedy for damages to an employee aggrieved under the bill is a civil suit for damages and equitable relief in the circuit court. The employee may claim as damages all wages and benefits that would have been due the person, up to and including the date of judgment, had the act violating this bill not occurred. However, the employee may not claim wages or benefits for a period of leave granted without pay. Additionally, employees are not relieved from the obligation to mitigate damages.

A private employer is required to keep all information relating to the employee's leave under this section confidential. An agency must keep such information confidential and exempt from disclosure to the extent authorized by statute.

The bill attempts to expand an existing public records exemption covering personal identifying information submitted by state agency employees who are victims of domestic violence to include those

who are victims of sexual violence as well. Florida's constitution requires public records exemptions be passed in legislation containing only the exemption by two-thirds vote. HB 1141, which is linked to this bill, has been filed for this purpose.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 741.313, F.S., defining the term "sexual violence"; providing specified employee leave benefits to employees who are victims of sexual violence or who have a family or household member who is a victim of sexual violence.

**Section 2.** Provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The affected businesses will determine the most cost-effective method of implementation.

D. FISCAL COMMENTS:

The department does not anticipate any fiscal impact to the state.

## 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 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. Public Records Exemption

The bill requires all employers – both public and private – to keep confidential all information relating to an employee's leave granted under this bill. The personnel records of a public employee are a public record unless specifically exempted from Florida's public records law. Accordingly, a

companion bill, HB 1141, has been filed to provide the public records exemption needed to keep confidential and exempt the information in public employee personnel files that is covered by this bill.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

N/A

D. STATEMENT OF THE SPONSOR

No statement of the sponsor submitted.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**