

II. Present Situation:

Sexual Violence in Florida

Approximately one of every nine adult women in Florida has been the victim of forcible rape. According to the 2000 Census, there are about 6.4 million women aged 18 or older living in Florida. This means that the estimated number of adult women in Florida who have been raped is nearly 713,000.¹

Victims of rape are six times more likely than non-victims to experience posttraumatic stress disorder, a debilitating mental health disorder that occurs in response to a traumatic event, such as military combat or violent crime. Several other mental health and substance abuse problems often affect rape victims, including:

- Major depression;
- Serious suicidal thoughts;
- Suicide attempts;
- Marijuana use;
- Cocaine use; and
- Use of hard drugs other than cocaine.²

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.³

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.⁴

Employment Issues: Domestic Violence

In 2007, the Legislature enacted s. 741.313, F.S.,⁵ providing that an employer must permit an employee to request and take up to 3-working days of leave from work in any 12-month period if the employee or a family or household member of an employee is the victim of domestic

¹ Ruggiero, K. J. & Kilpatrick, D.G., *Rape in Florida: A Report to the State*, Charleston, SC: National Violence Against Women Prevention Research Center, Medical University of South Carolina (2003). This estimate is conservative because it does not include women who have never been forcibly raped but who have experienced attempted rapes, alcohol or drug facilitated rapes, incapacitation rapes, or statutory rapes. It also does not include victims under the age of 18 or victims who are male.

² *Id.*

³ FCASV, *Employment Protections for Victims of Sexual Violence*, SB 994 and HB 489 (2008).

⁴ Section 784.046(c), F.S.

⁵ Chapter 2007-107, L.O.F.

violence. Under the section, an employee may use the leave from work to, *inter alia*, seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence. The section does not otherwise provide that victims of sexual violence may avail themselves of the statute's protections.

Section 741.313, F.S., applies to public and private 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, and must use all available annual or vacation leave, personal leave, and sick leave, unless this requirement is waived by the employer.

Generally, the personnel records of public employees are public records,⁶ although an employee's records documenting an act of domestic violence are confidential and exempt from Florida's public records law, s. 119.07(1), F.S. The written request for leave submitted by an agency employee pursuant to this section is confidential and exempt for one year after the leave has been taken.

Employment Issues: Sexual Violence

The Federal Family and Medical Leave Act of 1993 (FMLA), while not specifically directed to sexual violence, requires employers to grant up to 12 weeks of unpaid leave during any 12-month period for specified family and medical needs.⁷

The Florida Department of Management Services has provided by rule that executive agencies must approve parental or family medical leave to assist employees in meeting family needs, specifically allowing leave to be granted for up to six months for a family member's serious health condition as defined in the FMLA.⁸ Additionally, agencies are required to approve up to 30 days family leave for "non-medical family responsibilities," which would appear to be broad enough to include sexual violence-related issues. If the employee is granted such leave, the employee may request to use accrued leave credits. If the employee does not so request, the agency may place the employee on leave without pay.⁹

Florida law currently prohibits dismissing from employment any person who testifies in a judicial proceeding in response to a subpoena but provides none of the other protections enumerated in the bill to victims of sexual violence.¹⁰

III. Effect of Proposed Changes:

The bill defines "sexual violence" with reference to s. 784.046, F.S.

⁶ *Michel v. Douglas*, 464 So.2d 545 (Fla. 1985).

⁷ Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 6 (codified as amended at 29 U.S.C. §§ 2601-2654).

⁸ The FMLA defines a serious health condition as an illness, injury, impairment, or physical or mental condition that involves (1) inpatient care in a hospital, hospice, or residential medical care facility; or (2) continuing treatment by a health care provider. Family and Medical Leave Act of 1993, Pub. L. No. 103-3, § 101(11), 107 Stat. 6 (codified as amended at 29 U.S.C. § 2611(11)).

⁹ Fla. Admin. Code R. Rule 60L-34.0051 (2006).

¹⁰ Section 92.57, F.S.

The bill expands s. 741.313, F.S., to allow victims of sexual violence to benefit from the protections offered by the statute. The bill requires employers to allow employees to request and take up to 3-working days of leave, if the employee, or a family or household member of the employee, is the victim of domestic violence *or* sexual 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 or 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 domestic violence or sexual violence;
- Make the employee's home secure from the perpetrator of the domestic violence or sexual violence or to seek new housing to escape the perpetrator; or
- Seek legal assistance to address issues arising from the act of domestic violence or sexual violence and to attend and prepare for court-related proceedings arising from the act of domestic violence or sexual violence.

The bill makes information contained in records documenting an act of sexual violence confidential and exempt from Florida's public records laws.

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 public records, unless they are specifically exempted from Florida's public records law. Accordingly, a companion bill, SB 2574, 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.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

A bill enacting an exemption or substantially amending an existing exemption¹¹ may not contain other substantive provisions.¹² Contrary to this constitutional mandate, this bill includes a provision that makes records documenting an act of sexual violence submitted by a public employee confidential and exempt from public disclosure. A companion bill, SB 2574, has been filed to provide the public records exemption needed to keep confidential and exempt the information covered by this bill.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Employers who employ 50 or more employees will be required to grant leave to employees who are victims of sexual violence for specified purposes. The leave may be paid or unpaid. An employer may not discharge an employee solely due to absences authorized under this bill. The employee may sue in circuit court for violation of this act.

C. Government Sector Impact:

Employers will be required to grant leave to employees who are victims of sexual violence, but the bill is likely to have minimal fiscal impact, especially because many state agencies already have policies consistent with the bill.¹³

There may be minimal costs of complying with the confidentiality and exemption requirements of this bill; however, these costs are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹¹ Pursuant to s. 119.15 (4)(b), F.S., an existing exemption is considered substantially amended if the exemption is expanded to cover additional records.

¹² Fla. Const. art. I, s. 24(c).

¹³ See, e.g., Department of Children and Families, *Staff Analysis and Economic Impact, Senate Bill Number 994* (January 9, 2008).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

Barcode # 179530 by Children, Families and Elder Affairs on March 12, 2008:

Removes the provision making records documenting an act of sexual violence and submitted by a public employee confidential and exempt from disclosure, because this provision is the subject of a separate, linked bill (SB 2574).

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