

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 994

INTRODUCER: Judiciary Committee and Senators Fasano and Crist

SUBJECT: Employee Leave for Victims of Sexual Violence

DATE: April 17, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Jameson</u>	<u>CF</u>	Fav/1 amendment
2.	<u>Earlywine</u>	<u>Cooper</u>	<u>CM</u>	Favorable
3.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	Favorable
4.	<u>Daniell</u>	<u>Maclure</u>	<u>JU</u>	Fav/CS
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill defines “sexual violence” and requires employers to allow an employee to request and take up to three working days of leave if the employee, or a member of the employee’s family or household, is the victim of domestic violence *or sexual violence*, and the leave is sought to seek an injunction for protection or to obtain medical care, victim services, legal assistance, or safe housing.

This bill substantially amends section 741.313, Florida Statutes.

II. Present Situation:

Sexual Violence in Florida

Data from the National Women's Study and the National Violence Against Women Survey estimate that 13.4 percent of adult women in the United States have been victims of a forcible rape sometime during their lifetime.¹ Based on this national data, one report found:

[A]pproximately 11.1% of adult women in Florida have been victims of one or more completed forcible rapes during their lifetime. According to the 2000 Census, there are about 6.4 million women age 18 or older living in Florida. This means that the estimated number of adult women in Florida who have ever been raped is nearly 713,000.²

This is a conservative estimate – in part because research shows that only one in six rapes are reported to law enforcement.³ Additionally, the estimate 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.⁴ It also does not include victims under the age of 18 or victims who are male.⁵

The effects rape has on its victims, such as mental or physical health problems, can last for years or even for a lifetime. For example, victims of rape are more than six times more likely than non-victims to experience posttraumatic stress disorder (PTSD), a mental health disorder that occurs in response to a traumatic event, such as military combat or a violent crime.⁶ This would mean that 220,000 out of the 713,000 adult women who have been forcibly raped in Florida have had PTSD at some point in their life.⁷ Some other problems that often affect rape victims include:

- Depression, experienced by 30 percent of rape victims;
- Suicidal thoughts, experienced by 33 percent of rape victims;
- Suicide attempts, reported by 13 percent of rape victims;
- Marijuana use, reported by 52 percent of rape victims;
- Cocaine use, reported by 15.5 percent of rape victims; and
- Use of hard drugs other than cocaine, reported by 12.1 percent of rape victims.⁸

¹ Kenneth J. Ruggiero and Dean G. Kilpatrick, *Rape in Florida: A Report to the State*, NAT'L VIOLENCE AGAINST WOMEN PREVENTION RESEARCH CTR., 1 (May 15, 2003), available at http://www.fcasv.org/2005_Web/Statistics/OneNineReport.pdf (last visited April 9, 2008).

² *Id.* at 2.

³ *Id.* at 3. The Bureau of Justice Statistics estimates that only 30.7 percent of victims report the crime. Florida Council Against Sexual Violence, *Sexual Assault*, http://www.fcasv.org/2005_Web/RapeisCrime.htm (last visited April 9, 2008).

⁴ Kenneth J. Ruggiero and Dean G. Kilpatrick, *supra* note 1, at 2.

⁵ *Id.* Statistics show that approximately 61 percent of rape cases involve a victim under the age of 18 and that males account for 15 to 35 percent of child sexual abuse victims. See Florida Council Against Sexual Violence, *Statistics*, at 2, http://www.fcasv.org/2005_Web/Statistics.htm (last visited April 9, 2008).

⁶ Kenneth J. Ruggiero and Dean G. Kilpatrick, *supra* note 1, at 10.

⁷ *Id.*

⁸ *Id.* at 10-11.

According to the Florida Council Against Sexual Violence (FCASV),⁹ 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.¹⁰

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 years of age;
- Luring or enticing a child;
- Sexual performance by a child; or
- Any other forcible felony wherein a sexual act is committed or attempted.¹¹

For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.¹²

Employment Protections for Victims of Domestic Violence

One problem that often faces victims of domestic violence is the loss of their job “because they need time off to attend a court hearing, get an injunction for protection, receive assistance from a victim’s advocate, arrange for housing at a battered woman’s shelter, or receive medical or mental health care.”¹³ Currently, 10 states have enacted laws providing victims of domestic violence or sexual assault with protected leave to address these issues.¹⁴

In 2007, the Florida Legislature enacted s. 741.313, F.S.,¹⁵ providing that an employer must permit an employee to request and take up to three 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 violence.¹⁶ Under the section, an employee may use the leave from work to:

- Seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence;¹⁷

⁹ The Florida Council Against Sexual Violence is a “statewide nonprofit organization committed to victims and survivors of sexual violence and the sexual assault crisis programs who serve them.” The FCASV has become a resource to Florida on sexual violence issues by hosting conferences and trainings throughout the state, providing technical assistance to agencies, and providing up-to-date information to the public. See Florida Council Against Sexual Violence, *About Us*, http://www.fcasv.org/2005_Web/AboutUs.htm. (last visited April 9, 2008).

¹⁰ Florida Council Against Sexual Violence, *Employment Protections for Victims of Sexual Violence, SB 994 and HB 489* (2008).

¹¹ Section 784.046(1)(c), F.S.

¹² *Id.*

¹³ Edward H. Trent and Richard N. Margulies, *Employment Protections for Victims of Domestic Violence and Sexual Assault*, METROPOLITAN CORP. COUNS. Vol. 15, No. 11 (Nov. 2007), available at <http://www.akerman.com/documents/EmploymentProtectionsFor%20Victims.pdf> (last visited April 9, 2008).

¹⁴ *Id.* The states that currently have these laws are California, Colorado, Florida, Hawaii, Illinois, Kansas, Maine, North Carolina, Oregon, and Rhode Island.

¹⁵ Chapter 2007-107, s. 1, Laws of Fla.

¹⁶ Section 741.313(2), F.S.

¹⁷ This is the only reference to sexual violence in s. 741.313, F.S., and the statute does not otherwise provide that victims of sexual violence may avail themselves of the statute’s protections.

- Obtain medical care or mental health counseling, for the employee or a member of the employee's household or family, 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 or 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 in addressing the issues arising from the act of domestic violence or to attend and prepare for court-related proceedings arising from the act of domestic violence.¹⁸

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 three months.¹⁹ 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.²⁰

Generally, the personnel records of public employees are public records;²¹ however, an agency's employee's records documenting an act of domestic violence are confidential and exempt from s. 119.07(1), F.S., Florida's public records law.²² 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.²³

Employment Protection for Victims of Sexual Violence

The Federal Family and Medical Leave Act of 1993 (FMLA),²⁴ while not specifically directed toward sexual violence, requires employers to grant employees up to 12 weeks of unpaid leave during any 12-month period for specified family and medical needs.²⁵ The FMLA applies to employees who have been employed (1) for at least 12 months by the employer with respect to whom leave is requested and (2) for at least 1,250 hours of service with such employer during the previous 12-month period.²⁶ Under FMLA, an eligible employee is entitled to leave for the following reasons:

- The birth of a son or daughter, or to care for such son or daughter;
- The placement of a son or daughter with the employee for adoption or foster care;
- To care for the spouse, son, daughter, or parent of the employee;

¹⁸ Section 741.313(2)(b), F.S.

¹⁹ Section 741.313(3), F.S.

²⁰ Section 741.313(4), F.S.

²¹ *Michel v. Douglas*, 464 So. 2d 545, 546 (Fla. 1985).

²² Section 741.313(7), F.S.

²³ *Id.*

²⁴ Family and Medical Leave Act of 1993, Pub. L. 103-3, s. 2, codified in 29 U.S.C. ss. 2601-2654.

²⁵ 29 U.S.C. s. 2612.

²⁶ 29 U.S.C. s. 2611(2)(A).

- Because of a serious health condition²⁷ that makes the employee unable to perform the functions of his or her position; or
- Because of any qualifying exigency in the Armed Forces.²⁸

Under the FMLA, it is unlawful for an employer to interfere with or deny an employee the rights provided under the act. Additionally, an employer may not discharge or discriminate against an employee for exercising his or her rights under the act.²⁹

The Florida Department of Management Services has provided by rule that state 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.³⁰ Additionally, agencies are required to approve up to 30 days of family leave for "non-medical family responsibilities," which would appear to be broad enough to include sexual violence-related issues.³¹ If the employee is granted leave, the employee may request to use accrued leave credits or, if the employee does not so request, the agency may place the employee on leave without pay.³²

Florida law currently prohibits dismissing a person from employment who testifies in a judicial proceeding in response to a subpoena,³³ but provides none of the other protections enumerated in the bill to victims of sexual violence.

III. Effect of Proposed Changes:

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 three 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*;

²⁷ The FMLA defines a "serious health condition" as "an illness, injury, impairment, or physical or mental condition that involves (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment by a health care provider." 29 U.S.C. s. 2611(11).

²⁸ 29 U.S.C. s. 2612(1).

²⁹ 29 U.S.C. s. 2615.

³⁰ Fla. Admin. Code R. 60L-34.0051.

³¹ *Id.* The rule does provide examples of "non-medical family responsibilities," such as caring for aging parents, settling parents' estate, relocating dependent children into schools, and visiting family members in places that require extensive travel time.

³² *Id.*

³³ Section 92.57, F.S.

- 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 defines "sexual violence" with reference to s. 784.046, F.S.,³⁴ and includes "any crime the underlying factual basis of which has been found by a court to include an act of sexual violence."

The bill makes technical and conforming changes.

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:

None.

C. Trust Funds Restrictions:

None.

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.³⁵

³⁴ For the definition of "sexual violence," as found in s. 784.046, F.S., see the Present Situation section of this analysis.

³⁵ See, e.g., Dep't of Children and Families, *Staff Analysis and Economic Impact, Senate Bill Number 994*, 2 (Jan. 9, 2008).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on April 16, 2008:

The committee substitute removes the provision making records documenting an act of sexual violence which are submitted by a public employee, confidential and exempt from disclosure. Such a public records exemption is provided for in CS/SB 2574, which is linked to this bill.

- B. **Amendments:**

None.