

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/CS/SB 488

INTRODUCER: Judiciary Committee, Criminal Justice Committee, and Senator Fasano

SUBJECT: Sexual Offenses

DATE: April 14, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	O'Connor	Maclure	JU	Fav/CS
3.			HR	
4.			BC	
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 addresses several issues relating to sexual violence and the legal proceedings relating to such offenses.

The bill amends the Evidence Code to expand the admissibility of collateral crime or “similar fact” evidence in criminal prosecutions of child molestation. It creates admissibility for similar fact evidence in the Evidence Code in the prosecution of sexual offenses. The definition of child molestation is expanded and sexual offense is defined.

The bill prohibits a court from granting a request of a defendant in a criminal proceeding for permission to duplicate or copy material depicting sexual performance by a child or child pornography as long as the state attorney makes the material reasonably available to the defendant for inspection.

The bill requires licensed facilities providing emergency room services to gather forensic medical evidence from victims who have reported a sexual battery to a law enforcement agency or upon their request for purposes of filing a report in the future. It requires law enforcement to provide transportation for the victim of an alleged sexual battery to medical treatment, a forensic

examination, and a certified rape crisis center, as appropriate. The bill provides that, prior to the investigating officer filing his or her final report, the victim shall be permitted to review it and provide a statement as to the accuracy of the report.

The bill also extends the statute of limitations for video voyeurism beyond the applicable two- and three-year limits to authorize commencement of prosecutions within one year from either the date upon which the victim learns of the existence of the video recording or from the date the recording is confiscated by law enforcement, whichever occurs first.

The bill adds crimes to the list of offenses for which an additional \$151 dollar surcharge will be assessed against a defendant in order to fund the Rape Crisis Program Trust Fund.

Further, the bill requires the court, upon a victim's request, to order a defendant to undergo HIV and hepatitis testing within 48 hours of the filing of an indictment or information or, if later, within 48 hours after the victim's request. The court is required to order testing pursuant to the victim's request under this provision when the defendant is charged with: 1) a specified sexual offense and the victim is a minor, or an elderly person or disabled adult, regardless of whether it involved the transmission of body fluids; or 2) a specified crime that involves the transmission of body fluids from one person to another. Follow-up testing is also required as determined by a physician.

The bill also provides that victims of sexual violence may receive monetary relocation assistance from the Department of Legal Affairs, and that public schools must include Internet safety within health education curriculum.

Finally, the bill provides that the court may set any appropriate conditions on the taking of testimony by children, including the use of a registered service or therapy animal in any proceeding involving a sexual offense.

This bill substantially amends the following sections of the Florida Statutes: 90.404, 395.1021, 775.15, 794.052, 794.056, 938.085, 960.003, 960.198, 1003.42, and 92.55. It creates an undesignated section of statute. The bill reenacts sections 20.435(21)(a) and 794.055(3)(b), F.S., to incorporate references to sections of the statutes amended by the bill.

II. Present Situation:

Evidence of Other Crimes Wrongs or Acts

Section 0.404(2)(a), F.S., is the general provision of the Evidence Code regarding the admission of "similar fact" or collateral crime evidence in criminal proceedings. It provides:

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.

Under this provision, evidence of other crimes or actions (also called “collateral crime” or “similar fact” evidence) is admissible when it is relevant to a matter that is at issue in a trial. Such evidence is not admissible, however, if it is only relevant to show a defendant’s propensity to commit such crimes or other wrongful acts.

This section is a codification of the standard of admissibility announced by the Florida Supreme Court in *Williams v. State*.¹ Under this standard, “*relevant* evidence will not be excluded *merely* because it relates to similar facts which point to the commission of a separate crime. The test of admissibility is relevancy. The test of inadmissibility is a lack of relevancy.”²

If the identity of the perpetrator is an issue at trial, then a “fingerprint” type of similarity between the other crimes or wrongs and the charged offense is necessary because without such similarity the evidence is prejudicial to the defendant, but does not necessarily prove the defendant actually committed the crime charged.³ When identity is not disputed, finer points of similarity are not required to establish the relevance of collateral crime evidence to prove other issues such as absence of mistake, plan, opportunity, or preparation.

Additionally, all forms of relevant evidence are scrutinized under s. 90.403, F.S., which precludes the admission of relevant evidence “if its probative value is substantially outweighed by the danger of unfair prejudice” (also known as a “403 balancing test”).

In 2001, the Legislature amended s. 90.404(2), F.S., to add a new paragraph (b) to expand the admissibility of collateral crime evidence in cases involving sexual abuse of children 16 years of age or younger.⁴ Section 90.404(2)(b), F.S., provides:

1. 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.
2. For the purposes of this paragraph, the term “child molestation” means conduct proscribed by s. 794.011, s. 800.04, or s. 847.0135(5) when committed against a person 16 years of age or younger.⁵

The types of conduct proscribed under these statutory sections are the following:

- Sexual battery under s. 794.011, F.S.,
- Lewd or lascivious battery under s. 800.04(4), F.S.,
- Lewd or lascivious molestation under s. 800.04(5), F.S.,

¹ *Williams v. State*, 110 So. 2d 654 (Fla. 1959).

² *Id.* at 659-60.

³ See *State v. Savino*, 567 So.2d 892 (Fla. 1990). “When the purported relevancy of past crimes is to identify the perpetrator of the crime being tried, we have required a close similarity of facts, a unique or ‘fingerprint’ type of information, for the evidence to be relevant.”

⁴ Chapter 2001-221, Laws of Florida.

⁵ Section 847.0135(5), F.S., was added to the offenses in this subparagraph in ch. 2008-172, Laws of Fla.

- Lewd or lascivious conduct under s. 800.04(6), F.S.,
- Lewd or lascivious exhibition under s. 800.04(7), F.S., and
- Lewd or lascivious exhibition via computer transmission under s. 847.0135(5), F.S.

The 2001 addition to s. 90.404(2)(b), F.S., was challenged on due process grounds and upheld by the Florida Supreme Court in *McLean v. State*.⁶ This statutory provision significantly broadened the admissibility of collateral crime evidence in prosecutions of child molestation cases.⁷ The Court noted that the amendments to s. 90.404, F.S., abrogated prior cases with respect to the admission of such evidence.⁸ In upholding the statute, the Court adopted standards to govern admission of such evidence designed to protect the due process rights of the accused. First, the Court required that the evidence of the collateral crime be proven by clear and convincing evidence.⁹ Second, the Court required that the trial court balance the probative value of the evidence against the danger of unfair prejudice, pursuant to s. 90.403, F.S.¹⁰ Third, the Court cautioned that the collateral crime evidence must not become a “feature” of the trial.¹¹ Finally, the Court required that, upon request, the jury be instructed as to the limited purpose for which the evidence may be considered.¹²

Discovery Rules in Criminal Cases

Rule 3.220, Florida Rules of Criminal Procedure, governs the discovery obligations of a prosecutor and defense attorney in criminal cases. The defendant’s election to participate in the process of pretrial discovery triggers a reciprocal obligation for the defendant.

The prosecutor’s discovery obligation requires disclosure of information and material within the state’s possession or control. It also requires that the state allow the defendant to “inspect, copy, test, and photograph” the information and material, including “any tangible papers or objects that were obtained from or belonged to the defendant.”¹³

Treatment of Sexual Assault Victims

Section 395.1021, F.S., requires medical facilities that perform emergency room services to arrange for rendering of appropriate medical attention and treatment of sexual assault victims. The statute requires that this be done in part through medical examinations conducted for the purpose of collecting physical evidence when required by law enforcement personnel.

⁶ *McLean v. State*, 934 So. 2d 1248 (Fla. 2006).

⁷ *See Mendez v. State*, 961 So. 2d 1088, 1090 (Fla. 2007).

⁸ *McLean*, 934 So. 2d at 1259.

⁹ *Id.* at 1256.

¹⁰ In upholding the statute, the Court compared the new provisions to the comparable federal rules of evidence dealing with the same issue and paralleled the federal court analysis in connection with its second requirement that such evidence be subject to the balancing test required under s. 90.403, F.S. *McLean*, at 1259-61 (comparing s. 90.404(2)(b), F.S., and s. 90.403, F.S., with Federal Rules of Evidence 413 relating to sexual assault, 414 relating to child molestation, and 403 relating to balancing probative value against prejudice to the defense).

¹¹ *McLean*, 934 So. 2d at 1251.

¹² *Id.*

¹³ Rule 3.220(b)(1)(F), Fla. R. Crim. P.

Video Voyeurism Statute of Limitations

Section 810.145, F.S., creates the criminal offenses of video voyeurism, video voyeurism dissemination, and commercial video voyeurism dissemination. Depending on the circumstances, the offenses under this section are punishable as a first-degree misdemeanor, third-degree felony or second-degree felony.¹⁴

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. Section 775.15, F.S., provides statutes of limitations for criminal offenses. Under this section, the time limitations period begins to run the day after an offense is committed.¹⁵ An offense is considered committed either when every element of the crime has occurred or, if there is a legislative purpose to prohibit a continuing course of conduct, at the time the course of conduct is terminated.¹⁶ The statute of limitations for a misdemeanor of the first-degree is two years. For second- and third-degree felonies, the statute of limitations period is generally three years.

One of the essential elements of a video voyeurism offense is that it occurs without the victim's knowledge. As a result, the statute of limitations can expire before a victim becomes aware that the crime has occurred.

Rape Crisis Program Trust Fund

The Rape Crisis Program Trust Fund is created in s. 794.056, F.S., within the Department of Health, to provide funds for rape crisis centers in the state. It is funded in part through collections of additional court assessments, which consist of a \$151 surcharge added to amounts paid by persons pleading guilty or no contest to, or found guilty of, specified sex offenses listed in ss. 938.085 and 794.056, F.S.¹⁷

HIV Testing of Person Charged with Certain Crimes

Section 960.003(2)(a), F.S., requires a court to order a defendant to undergo HIV testing upon request of the victim in any case in which the defendant is formally charged with any of the sexual or violent offenses listed in s. 775.0877(a)-(n), F.S., that involved the transmission of body fluids from one person to another.¹⁸

¹⁴ Section 810.145(6), F.S., provides that the offense is generally a first-degree misdemeanor. If, however, the person has a prior conviction, the person is guilty of a third-degree felony. Section 810.145(7), F.S. Also, under s. 810.145(8), F.S., persons over 18 years of age responsible for a child under 16, or who are employed at a private school, and persons 24 years of age who commit the offense against a child under 16, commit a third-degree felony. If persons under subsection (8) have been previously convicted, the offense is a second-degree felony.

¹⁵ Section 775.15(3), F.S.

¹⁶ *Id.*

¹⁷ The sum of \$150 from these surcharges is deposited into the trust fund while \$1 is paid to the clerk of court as a service charge. Section 938.085, F.S.

¹⁸ The offenses are: s. 794.011, F.S., relating to sexual battery; s. 826.04, F.S., relating to incest; s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age; ss. 784.011, 784.07(2)(a), and 784.08(2)(d), F.S., relating to assault; ss. 784.021, 784.07(2)(c), and 784.08(2)(b), F.S., relating to aggravated assault; ss. 784.03, 784.07(2)(b), and 784.08(2)(c), F.S., relating to battery; ss. 784.045, 784.07(2)(d), and 784.08(2)(a), F.S., relating to aggravated battery; s. 827.03(1), F.S., relating to child abuse; s. 827.03(2), F.S., relating to aggravated child abuse; s. 825.102(1), F.S., relating to abuse of an elderly person or disabled adult; s. 825.102(2), F.S., relating to aggravated abuse of an elderly person or disabled adult; s. 827.071, F.S., relating to sexual performance by person less than 18 years of age;

Section 960.003(2)(b), F.S., provides for HIV testing upon request of the victim when the crime involved is a sexual offense under ss. 775.0877(a)-(n) or 825.1025, F.S., and the victim is a minor, disabled adult, or an elderly person regardless of whether the crime involved the transmission of body fluids from one person to another.

Under both sections, the defendant must undergo testing within 48 hours after the court enters an order compelling the testing.

Relocation Assistance

Section 960.198, F.S., authorizes the Department of Legal Affairs to award a one-time payment of up to \$1,500 on a single claim and a maximum lifetime limit of \$3,000 to a victim of domestic violence who needs immediate relocation assistance to escape domestic violence. In order to qualify for assistance:

- There must be proof that an offense of domestic violence was committed;
- It must have been reported to law enforcement;
- The need for assistance must be certified by a domestic violence center within the state; and
- The center's certification must assert that the victim is cooperating with law enforcement officials.¹⁹

Required Instruction

Section 1003.42(2), F.S., requires members of the instructional staff of public schools to teach prescribed courses of study on the following topics related to health and safety:

(n) Comprehensive health education²⁰ that addresses concepts of community health; consumer health; environmental health; family life, including an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy; mental and emotional health; injury prevention and safety; nutrition; personal health; prevention and control of disease; and substance use and abuse.

Service and Therapy Animals

Service animals are trained to accompany and assist disabled individuals, allowing them to enjoy greater independence and self-sufficiency. Florida law defines a service animal as:

an animal that is trained to perform tasks for an individual with a disability. The tasks may include, but are not limited to, guiding a person who is visually impaired or blind,

ss. 796.03, 796.07, and 796.08, F.S., relating to prostitution; or s. 381.0041(11)(b), F.S., relating to donation of blood, plasma, organs, skin, or other human tissue.

¹⁹ Section 960.198(2), F.S.

²⁰ The health education curriculum for students in grades 7 through 12 shall include a teen dating violence and abuse component that includes, but is not limited to, the definition of dating violence and abuse, the warning signs of dating violence and abusive behavior, the characteristics of healthy relationships, measures to prevent and stop dating violence and abuse, and community resources available to victims of dating violence and abuse.

alerting a person who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting a person who is having a seizure, retrieving objects, or performing other special tasks. A service animal is not a pet.²¹

Under the Americans with Disabilities Act of 1990 (ADA),²² a service animal must be allowed everywhere its owner is and cannot be treated as a “pet” for purposes of being allowed to accompany the disabled individual.²³ Most service animals wear an identifying jacket or patch.²⁴

A therapy animal, which is not defined in Florida law, is most commonly a dog, and is specially trained to offer comfort, companionship, and affection. These animals are used in a variety of situations, including courtrooms, nursing homes, hospitals, schools, mental health facilities, and disaster areas. The purpose of using animals as therapeutic companions is to help people relax and feel more comfortable in their environment. To qualify as a therapy animal, the animal must be evaluated and registered with a national organization such as Therapy Dogs International or the Delta Society.²⁵ Unlike service animals, the use of therapy animals is not protected under the ADA.

Currently, Florida law gives the court discretion to enter any order necessary to protect a witness or victim who is under the age of 16 or has a disability affecting his or her functional capacity if mental harm is likely to result from giving testimony.²⁶ This section does not specifically allow therapy animals to accompany a witness or victim in judicial or other proceedings. However, there is growing interest in Florida and around the country in the positive impact that therapeutic animals have on traumatized child witnesses and victims.²⁷ Florida judges have noted that therapy animals can be useful tools in comforting child witnesses and victims, and helping them provide more information to the court on difficult subjects, such as sexual abuse.²⁸

III. Effect of Proposed Changes:

The bill creates an act known as the “Walk in Their Shoes Act.”

²¹ Section 413.08(1)(d), F.S.

²² 42 U.S.C. s. 12102.

²³ Debra S. Hart-Cohen, *Canines in the Courtroom*, AMERICAN BAR ASSOCIATION GENERAL PRACTICE, SOLO, AND SMALL FIRM DIVISION MAGAZINE: ANIMAL LAW (Jul./Aug., 2009), available at http://www.americanbar.org/content/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/caninesincourtroom.html (last visited Apr. 1, 2011).

²⁴ *Id.*

²⁵ *Id.*; see also Therapy Dogs International, www.tdi-dog.org (last visited Apr. 1, 2011); Delta Society, www.deltasociety.org (last visited Apr. 1, 2011).

²⁶ Section 92.55(1), F.S.

²⁷ See Rena Marie Justice, *Pets in the Courtroom: the New “Comfort Item,”* NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE UPDATE (Vol. 20, No. 3, 2007).

²⁸ See Misty Higgins, *Dogs in Court Ease ‘Ruff’ Experience for Kids*, The State Journal (Jan. 26, 2011), available at <http://statejournal.com/story.cfm?func=viewstory&storyid=93311> (last visited Apr. 1, 2011); Jan Pudlow, ‘Low Tech and High-Touch’: Pet Therapy in the Courts as a New Tool for Victims, THE FLORIDA BAR NEWS (Mar. 15, 2010), available at http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/cb53c80c8fabd49d85256b5900678f6c/4d5846d29ef3a5c3852576e000457965!OpenDocument&Highlight=0,pet,therapy,in,courts* (last visited Apr. 1, 2011).

Evidence of Other Crimes Wrongs or Acts

The bill expands the admission of collateral crime evidence in cases involving child molestation by expanding the definition of criminal acts that fall within that classification for purposes of the admission of the evidence. The expansion includes:

- s. 787.025(2)(c), F.S. - Luring or enticing a child;
- s. 794.011, F.S. - Sexual battery;
- s. 794.05, F.S. - Unlawful activity with certain minors;
- s. 796.03, F.S. - Procuring person under 18 for prostitution;
- s. 796.035, F.S. - Selling or buying of minors into sex trafficking or prostitution;
- s. 796.045, F.S. - Sex trafficking;
- s. 827.071, F.S. - Sexual performance by a child;
- s. 847.0145, F.S. - Selling or buying minors; and
- s. 985.701(1), F.S. - Sexual misconduct by a juvenile justice employee.

The bill creates a category of criminal activities called “sexual offenses” under which similar fact evidence may be admitted by a court. Those offenses are:

- s. 787.025(2)(c), F.S. - Luring or enticing a child;
- s. 794.011, F.S. - Sexual battery;
- s. 794.05, F.S. - Unlawful activity with certain minors;
- s. 796.03, F.S. - Procuring person under 18 for prostitution;
- s. 796.035, F.S. - Selling or buying of minors into sex trafficking or prostitution;
- s. 796.045, F.S. - Sex trafficking;
- s. 800.04, F.S. - Lewd or lascivious offenses;
- s. 825.1025(2)(b), F.S. - Lewd or lascivious battery upon an elderly or disabled person;
- s. 827.071, F.S. - Sexual performance by a child;
- s. 847.0135(5), F.S. - Lewd or lascivious exhibition using a computer;
- s. 847.0145, F.S. - Selling or buying minors; and
- s. 985.701(1), F.S. - Sexual misconduct by a juvenile justice employee.

Discovery Rules in Criminal Cases

The bill creates an undesignated section of statute to require a court to deny any request by a defendant to copy, photograph, duplicate, or otherwise reproduce any material that constitutes child pornography as defined in s. 827.071, F.S. (sexual performance by a child), or s. 847.001, F.S. (definitions as used in the chapter on obscenity). Although child pornography is not defined in s. 827.071, F.S., the definition provided in s. 847.001(3), F.S., is “any image depicting a minor engaged in sexual conduct.” The prosecutor must make the material reasonably available to the defendant by providing ample opportunity for the inspection, viewing, and examination by the defendant, defense attorney, or defense expert. The evidence must be kept in a secured or locked-up manner.

Treatment of Sexual Assault Victims

Section 794.052, F.S., is amended to require that a law enforcement officer who is investigating an alleged sexual battery arrange or provide for transportation of the victim to medical treatment if needed, a forensic examination, and advocacy and crisis-intervention services from a certified rape crisis center. The bill provides that, prior to the investigating officer filing his or her final report, the victim shall be permitted to review it and provide a statement as to the accuracy of the report.

The bill amends s. 395.1021(2), F.S., to provide that the “appropriate medical attention and treatment of sexual assault victims” required under this section includes the gathering of forensic medical evidence necessary for investigation and prosecution either when a victim reports a sexual battery to a law enforcement agency, or when the victim requests the evidence to be gathered for a possible future report to law enforcement.

Video Voyeurism Statute of Limitations

The bill amends s. 775.15, F.S., to authorize prosecution for any offense of video voyeurism within one year after the date on which the victim obtained actual knowledge of the existence of the recording, or the date on which the recording is confiscated by a law enforcement agency, whichever occurs first. This is an expansion of the statute of limitations for this crime.

Rape Crisis Program Trust Fund

The bill amends ss. 794.056 and 938.085, F.S., to add new offenses to the list of crimes that will support the financing of the Rape Crisis Program Trust Fund through the additional \$151 surcharge that defendants having committed certain crimes are ordered to pay. These crimes are:

- s. 775.21(6) and (10)(a), (b), and (g), F.S. - Florida Sexual Predators Act;
- s. 787.01(3), F.S. - Kidnapping and listed crimes against a child;
- s. 787.02(3), F.S. - False imprisonment and listed crimes against a child;
- s. 787.025, F.S. - Luring or enticing a child;
- s. 787.06, F.S. - Human trafficking;
- s. 787.07, F.S. - Human smuggling;
- s. 794.05, F.S. - Unlawful sexual activity with certain minors;
- s. 794.08, F.S. - Female genital mutilation;
- s. 796.03, F.S. - Procuring a person under 18 for prostitution;
- s. 796.035, F.S. - Selling or buying minors into sex trafficking;
- s. 796.04, F.S. - Forcing or compelling another to become a prostitute;
- s. 796.045, F.S. - Sex trafficking;
- s. 796.05, F.S. - Deriving support from proceeds of prostitution;
- s. 796.06, F.S. - Renting space to be used for lewdness, assignation, or prostitution;
- s. 796.07(2)(a)-(d) and (i), F.S. – Prostitution;
- s. 800.03, F.S. - Exposure of sexual organs;
- s. 800.04, F.S. - Lewd or lascivious crimes;
- s. 810.14, F.S. - Voyeurism;
- s. 810.145, F.S. - Video voyeurism;

- s. 812.135, F.S. - Home invasion robbery;
- s. 817.025, F.S. - Home or private business invasion by false impersonation;
- s. 825.102, F.S. - Abuse or aggravated abuse of an elderly or disabled person;
- s. 825.1025, F.S. - Lewd and lascivious offenses committed on an elderly or disabled person;
- s. 827.071, F.S. - Sexual performance by a child;
- s. 836.10, F.S. - Written threats to kill or do bodily injury;
- s. 847.0133, F.S. - Furnishing obscenity to a minor;
- s. 847.0135(2), F.S. - Computer pornography child exploitation;
- s. 847.0137, F.S. - Transmission of pornography by electronic device;
- s. 847.0145, F.S. - Selling or buying minors;
- s. 943.0435, F.S. - Sexual offender registration; and
- s. 985.701, F.S. - Employee sexual misconduct with a juvenile offender.

HIV and Hepatitis Testing of Person Charged with Certain Crimes

The bill amends s. 960.003, F.S., to require a court to order a defendant to undergo hepatitis testing in addition to HIV testing. Where the defendant is charged with or alleged by petition for delinquency to have committed any offense enumerated in s. 775.0877(1)(a)-(n), F.S., the victim may request that the court order testing. The testing shall be done within 48 hours of the victim's request. Follow-up HIV testing is provided for in the bill, if medically appropriate, and does not require an additional court order.

Relocation Assistance

The bill extends relocation assistance to a victim of sexual violence who reasonably fears for his or her safety. Under the bill, the need for assistance must be certified by a rape crisis center. Unlike domestic violence cases, where it is common for the victim to reside with the abuser, and relocation concerns are typical after domestic violence has been reported, offenses involving sexual violence occur in more diverse and varied surroundings and circumstances. Therefore, the extent to which acts of sexual violence occur under circumstances where the victim would seek relocation is unknown.

Required Instruction

The bill adds Internet safety to the list of topics that must be covered in school curriculum under s. 1003.42(2)(n), F.S.

Service and Therapy Animals

The bill amends s. 92.55, F.S., to provide that the court may set any appropriate conditions on the taking of testimony by children, including the use of a registered service or therapy animal in any proceeding involving a sexual offense.

Effective Date

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Criminal Proceedings in Cases Involving Child Molestation

The Florida Supreme Court has held that the authority granted to it under article V, section 2, of the Florida Constitution to adopt rules of practice and procedure is exclusively its own. Since that time, the Legislature has passed acts that the Court has declared impermissibly procedural.

In 2008, in the case of *Massey v. David*, the Supreme Court reviewed a statute that conditioned the award of expert witness fees as taxable costs upon a requirement that the expert witness furnish the opposing party with a written report within a certain number of days. In *Massey*, the Supreme Court articulated how statutes containing a mixture of substance and procedure are analyzed in order to determine their constitutional validity in view of the Supreme Court's procedural rulemaking authority. The Court explained:

Of course, statutes at times may not appear to fall exclusively into either a procedural or substantive classification. We have held that where a statute contains some procedural aspects, but those provisions are so intimately intertwined with the substantive rights created by the statute, that statute will not impermissibly intrude on the practice and procedure of the courts in a constitutional sense, causing a constitutional challenge to fail. If a statute is clearly substantive and "operates in an area of legitimate legislative concern," this Court will not hold that it constitutes an unconstitutional encroachment on the judicial branch. However, where a statute does not basically convey substantive rights, the procedural aspects of the statute cannot be deemed "incidental," and that statute is unconstitutional. (emphasis added).²⁹

It is unclear when a statute "impermissibly" intrudes on the practice and procedure of the courts or when legislation is within a "legitimate area of legislative concern." In *Massey*, the Court found that the statute's requirement of a report submitted to the opposing party

²⁹ 979 So. 2d 931, 937 (Fla. 2008) (citations omitted).

conflicted with the lack of such a provision in the court rule, and the statute was invalidated.

Florida Rule of Criminal Procedure 3.220(b), relating to discovery in criminal cases, mandates that the state must “disclose to the defendant and permit the defendant to inspect, copy, test, and photograph . . . any tangible papers or objects that were obtained from or belong to the defendant.”

The bill’s provision prohibiting the court from granting a defendant’s request to copy a particular type of evidence conflicts with the mandate of Rule 3.220 and could subject it to a court challenge on the basis that this provision invades the Supreme Court’s exclusive authority to adopt rules of practice and procedure.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Defendants whose crimes are among those newly enumerated to require the assessment of increased costs will be responsible for an additional \$151 surcharge.

C. Government Sector Impact:

The addition of more crimes to include the payment of costs on the part of the defendant to be contributed to the Rape Crisis Program Trust Fund will increase funding for the trust fund. The extent of its positive fiscal impact on the trust fund is indeterminate at this time.

The expansion of financial relocation assistance to victims of sexual violence will likely have a negative fiscal impact on state government, but the amount of the impact will depend on the number of sexual violence victims who will seek and be granted relocation assistance. The frequency of that occurrence is unknown, although it is expected to be a small number of instances in comparison to the number of overall sexual offenses reported.

The Office of the State Courts Administrator reports that the bill will likely result in “a substantial increase in the number of pretrial hearings in cases where the defendant is charged with a sexually-related crime and the State has evidence that the defendant committed other sexually-related crimes.”³⁰ The fiscal impact of such an increase is indeterminate.³¹

³⁰ Office of the State Courts Administrator, *Senate Bill 488 Judicial Impact Statement* (Feb. 3, 2011) (on file with the Senate Committee on Judiciary).

³¹ *Id.*

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/CS by Judiciary on April 12, 2011:

The committee substitute provides that the court may set any appropriate conditions on the taking of testimony by children, including the use of a registered service or therapy animal in any proceeding involving a sexual offense.

CS by Criminal Justice on March 28, 2011:

- The bill expands the definition of child molestation, for purposes of the admission of similar fact evidence, to include nine additional crimes.
- The bill deletes the crimes of stalking, kidnapping, and false imprisonment from the definition of a “sexual offense” (previously called crimes “of a sexual nature” in the bill) as crimes that may be admitted as similar fact evidence. Sexual battery, lewd or lascivious offenses, and lewd or lascivious exhibition using a computer are added to the definition of sexual offenses for this purpose.
- The law enforcement agency or state attorney holding evidence in a child pornography case must keep it in a locked, secure manner.
- The language of the bill now clarifies that the statute of limitations for the prosecution of video voyeurism is expanded by the bill.
- A law enforcement officer who is investigating an alleged sexual battery is required by the bill to provide certain transportation for the victim’s treatment, the gathering of forensic evidence, or other services as needed.
- The bill amends the crimes for which a defendant must be ordered to pay a surcharge to the Rape Crisis Service Trust Fund to include: kidnapping and listed crimes against a child, false imprisonment and listed crimes against a child, furnishing obscenity to a minor, and employee sexual misconduct with a juvenile offender.
- Under the provisions of the bill, a defendant charged with certain offenses must undergo hepatitis testing. The testing for both HIV (required by current law) and hepatitis shall be done within 48 hours of the victim’s request.

B. Amendments:

None.