

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 Committee on Appropriations

BILL: SB 1362

INTRODUCER: Senator Simmons

SUBJECT: Department of Legal Affairs

DATE: April 15, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Caldwell</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	Pre-meeting

I. Summary:

SB 1362 makes changes to laws enforced by or governing the Department of Legal Affairs, also known as the Office of the Attorney General, including the Office of Statewide Prosecution.

The bill:

- Revises the list of offenses that are considered to be multi-circuit crimes that may be investigated and prosecuted by the Office of Statewide Prosecution to include kidnapping, false imprisonment, luring or enticing a child, custody offenses, human trafficking, and human smuggling if commission of the offense was facilitated by or connected to use of the Internet.
- Provides authority to purchase promotional materials and basic refreshments for public training and information sessions.
- Allows the Medicaid Fraud unit to use a percentage of the recovered funds to fund investigations and enforcement actions.
- Updates references of federal consumer protection laws that are incorporated into the statutes.
- Revises Victim Assistance awards criteria to:
 - Provide for maximum lifetime amounts;
 - Expand definitions to broaden coverage for elderly persons or disabled adults who suffer a property loss; and
 - Provide for relocation assistance for human trafficking victims.
- Makes necessary conforming and technical changes.

The Department of Legal Affairs indicates that the bill does not have a fiscal impact on general revenue funds or trust fund revenues. Within existing funds, the bill apportions some revenues that are currently deposited in the department's Operating Trust Fund for use by the Medicaid

Fraud Control Unit and removes a requirement for reduction of awards for catastrophic loss under some circumstances.

This bill provides an effective date of July 1, 2015.

II. Present Situation:

For discussion of the provisions of ss. 16.56, 409.9203, 501.203, 501.204, 960.03, 960.13, 960.195, 960.198, and 960.199, F.S., that are amended and ss. 16.62 and 960.196, F.S., that are created by the bill, see the “Effect of Proposed Changes” section of this analysis.

III. Effect of Proposed Changes:

Attorney General

Section 1: Section 16.56, F.S., creates the Office of Statewide Prosecution as a separate budget entity within the Department of Legal Affairs and provides for its authority and duties to investigate and prosecute specified offenses. In general, the Office of Statewide Prosecution has jurisdiction only when one of the specified offenses occurs in two or more judicial circuits as part of a related transaction or when the offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. However, all of the offenses except offenses in ch. 787, F.S. (kidnapping, false imprisonment, luring or enticing a child, custody offenses, human trafficking, and human smuggling) are considered to be committed in every judicial circuit when they are facilitated by or connected to the use of the Internet.

The bill amends s. 16.56, F.S., to provide that offenses in ch. 787, F.S., are considered to be committed in every judicial circuit when the offense is facilitated by or connected to the use of the Internet.

Section 2 creates s. 16.62, F.S., to authorize the department to expend not more than \$20,000 annually to:

- Purchase and distribute promotional materials or items that serve to advance with dignity and integrity the goodwill of the state and the department; and
- Provide basic refreshments at official functions, seminars, or meetings of the department in which dignitaries or representatives from the federal government, other states, or nations, or other agencies are in attendance.

This authorization is in addition to any expenditures separately authorized by law.

Section 3 amends s. 409.9203, F.S., which relates to the department’s Medicaid Fraud Control Unit. The Medicaid Fraud Control Unit investigates violations s. 409.920, F.S., which prohibits Medicaid provider fraud. As part of the Medicaid fraud control program, s. 409.9203, F.S., provides for rewards to persons who report a violation of the state’s Medicaid fraud laws.

The Florida False Claims Act¹ provides for civil actions to address false claims against the state. These actions may be brought by the state or by a private person on behalf of the state.

¹ Sections 68.081-68.092, F.S.

Section 68.085, F.S., provides for the distribution of funds for actions brought under the False Claim Act. It also provides for the disposition of any funds that remain after required distributions are made: 90 percent of the remaining funds is deposited in the General Revenue Fund, and 10 percent is deposited into the department's Operating Trust Fund to reward persons who report and provide information relating to Medicaid fraud.

The bill amends s. 409.9203, F.S., to direct that half of the proceeds deposited into the Operating Trust Fund pursuant to s. 68.085, F.S., must be used by the Medicaid Fraud Control Unit to fund investigations of potential violations of the False Claims Acts. The other half is still allocated for payment of rewards to persons who report Medicaid fraud.

Consumer Protection

The Florida Deceptive and Unfair Trade Practices Act² provides for the protection of Florida's consumers. Section 501.203 provides that enforcement extends not only to violations of the act and related rules, but also to the following as they exist on July 1, 2013:

- Rules of the Federal Trade Commission (FTC);
- Standards of unfairness and deception set forth and interpreted by the FTC or the federal courts; and
- Any law, statute, rule regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.

In addition, s. 501.204(1), F.S., provides that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. Section 501.204(2), F.S., specifically directs that the interpretations of the FTC and federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act³ as of July 1, 2013, are to be given due consideration and great weight in construing the state law.

Sections 4 and 5 amend ss. 501.203 and 501.204, F.S., to update the date of federal law that may be used to protect Florida consumers from July 1, 2013, to July 1, 2015.

Victim Assistance

The provisions of ss. 960.01 - 960.28, F.S., are known as the "Florida Crimes Compensation Act." Section 960.03, F.S., provides for definitions, including the terms "crime" and "disabled adult." Victims who suffer personal physical injury or death as a direct result of a crime are eligible for awards.

Section 6 amends s. 960.03(3), F.S., to make the following changes to the definition of "crime" for purposes of the Florida Crimes Compensation Act:

- Adds "a forcible felony committed by an adult or juvenile which directly results in psychiatric or psychological injury;"

² Sections 501.201 – 501.213, F.S.

³ This provision is codified as 15 U.S.C. s. 45(a)(1).

- Adds s. 316.027(2), F.S. (willful failure of a vehicle driver involved in a crash that results in injury to a person other than serious bodily injury to immediately stop at the scene and remain to give information and render aid);
- Adds s. 316.1935, F.S. (fleeing or attempting to elude a law enforcement officer);
- Clarifies that an act involving the operation of a motor vehicle, boat, or aircraft which results in injury or death is included in the definition only when another person's injury or death is intentionally inflicted through the use of the vehicle, boat, or aircraft.

In addition, the definition of "disabled adult" is expanded to include adults who suffer from mental illness or from one or more physical limitations that restrict the person's ability to perform the normal activities of daily living. The amendment also clarifies that the definition includes persons who have only one mental limitation that restricts their ability to perform the normal activities of daily living.

Section 7 amends s. 960.13, F.S., which provides for awards of compensation to victims of crime. The department is authorized to make an award only if it finds that:

- A crime was committed;
- The crime directly resulted in personal injury, psychiatric or psychological injury, or death to the victim or intervenor; and
- The crime was promptly reported to the proper authorities.

Any award, except an award for loss of support, must be reduced by the amount of any payments or services received or to be received from certain sources as a result of the injury or death. The amendment to s. 960.13(6), F.S., adds an exception for awards for catastrophic injury.

Section 8 amends s. 960.195, F.S., which provides for awards to elderly persons or disabled adults for property loss that causes a substantial diminution of their quality of life. The statute currently provides that department may award a maximum of \$500 when:

- There is proof that a criminal or delinquent act was committed,
- The criminal or delinquent act is reported to law enforcement authorities within 72 hours,
- The victim cooperates with law enforcement authorities in the investigation,
- There is proof that the tangible personal property in question belonged to the claimant,
- The claimant did not contribute to the criminal or delinquent act,
- There is no other source of reimbursement or indemnification available to the claimant, and
- The claimant would not be able to replace the tangible personal property in question without incurring a serious financial hardship.

This statute is amended to remove cooperation with law enforcement as an act that supports an award of compensation. Rather, the department is given authority to deny, reduce, or withdraw any award if it finds that a claimant or award recipient has not cooperated with the state attorney, all law enforcement agencies, and the department. The statute is also amended to limit the amount of the award for any claim to \$500, with a lifetime cap of \$1,000 in awards for all claims. In addition, the department is given flexibility to waive the requirement that the crime have been reported within 72 hours if it finds that the delay was justified by good cause.

Section 9 creates s. 960.196, F.S., relating to relocation assistance for victims of human trafficking. This new section authorizes the department to award a one-time payment of up to \$1,500 for any one claim and a lifetime maximum of \$3,000 to a victim of human trafficking who needs urgent assistance to escape from an unsafe environment directly related to the human trafficking offense. For the victim to be awarded the compensation:

- There must be proof that a human trafficking offense⁴ was committed.
- The crime must be reported to the proper authorities and the claim must be filed within one year, or two years with good cause, after the date of the last human trafficking offense.⁵
 - A certified domestic violence or rape crisis center in the state must certify the victim's need to escape from an unsafe environment. The center must assert in its certification that the victim is cooperating with the proper authorities and must include documentation that the victim has developed a safety plan.
 - A state attorney, statewide prosecutor, or federal prosecutor may certify in writing that a human trafficking victim's need to relocate from an unsafe environment due to the threat of future violence which is directly related to the human trafficking offense in a case that exceeds the two-year requirement.

The department must deny relocation payments for a human trafficking claim if it has previously approved or paid out a domestic violence or sexual battery relocation claim under s. 960.198, F.S., or s. 960.199, F.S.

Section 10 amends s. 960.198, F.S., which provides authority for the department to award payments for relocation assistance to victims of domestic violence who need immediate assistance to escape from a domestic violence environment. The statute provides that relocation payments for domestic violence must be denied if the same victim already received a relocation award for the same incident as a sexual battery victim pursuant to s. 960.199, F.S. The amendment adds the same prohibition relating to prior relocation assistance awards for victims of human trafficking.

Section 11 amends s. 960.199, F.S., to remove references to relocation assistance for victims of human trafficking. The statute currently applies to relocation assistance for victims of sexual battery and human trafficking, but the bill creates s. 960.196, F.S., to specifically address human trafficking.

Section 12 provides that the act takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁴ See s. 787.06(3)(b), (d), (f), or (g), F.S.

⁵ *Id.*

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under SB 1362, if awards for victim assistance benefits are capped, citizens are limited in the amount of lifetime awards that they may receive.

C. Government Sector Impact:

The Department of Legal Affairs indicates that the bill will not affect general revenue funds or trust fund revenues. The exclusion of awards for “catastrophic loss” from types of awards that must be reduced by the amount of services received from certain sources will have “very limited impact” on the victim’s compensation fund. Also, the bill directs that half of the revenues currently deposited in the department’s Operating Trust Fund for making awards be used to fund investigations and prosecutions by the Medicaid Fraud Control Unit. Amounts awarded from the Operating Trust Fund have historically been significantly less than half of the amount that is deposited for this purpose.

VI. Technical Deficiencies:

Section 3 of the bill, which amends s. 409.9203, F.S., does not clearly express the apparent intent to equally split the funds that are deposited into the department’s Operating Trust Fund from funds remaining after distributions pursuant to the False Claims Act.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 16.56, 409.9203, 501.203, 501.204, 960.03, 960.13, 960.195, 960.198, and 960.199.

The bill creates the following sections of the Florida Statutes: 16.62 and 960.196.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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