

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: PCS/SB 1068 (123664)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senator Bean

SUBJECT: Crime Victim Assistance

DATE: April 17, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Storch</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Dale</u>	<u>Jameson</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	<u>Dale</u>	<u>Kynoch</u>	<u>AP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1068 expands the definition of the term “crime” for the purposes of providing assistance to a victim of a crime to include a violation of lewd or lascivious conduct, as described in section 800.04, Florida Statutes. The bill adds osteopathic physicians who hold an expert witness certificate pursuant to section 459.066, Florida Statutes to the list of eligible expert witnesses who may verify a mental injury to a minor for purposes of section 800.04, Florida Statutes.

The bill further specifies that intentionally touching of a person 16 or 17 years of age in a lewd or lascivious manner, or forcing or enticing a person 16 or 17 years of age to touch the actor, when such act is without the person’s consent and directly results in psychiatric or psychological injury, is considered a crime for the purposes of providing assistance to a victim of a crime.

The bill also increases the maximum payment from \$500 to \$1000 that can be made for a victim of sexual battery or a lewd or lascivious offense to obtain an initial forensic physical examination.

Although the fiscal impact of the bill is indeterminate, the Department of Legal Affairs (DLA) will likely incur costs associated with providing financial assistance to additional crime victims due to the expansion of the definition of crime and the increase to the allowable maximum payment. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

II. Present Situation:

Assistance for Victims of a Crime

Florida law provides extensive assistance to victims of crimes. The Crime Victim's Services Office (Office) within the DLA is tasked with advocating for victims of crimes and informing them of their rights, among other things.¹ Current law defines a victim as:

- A person who suffers personal physical injury or death as a result of a crime;
- A person younger than 18 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime but who was not physically injured;
- A person younger than 18 years of age who was the victim of a felony or misdemeanor offense of child abuse that resulted in a mental injury, but who was not physically injured;
- A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime who does not otherwise sustain a personal physical injury or death; or
- An emergency responder who is killed answering a call for service in the line of duty.²

For the purposes of providing assistance to victims of a crime, the term crime is defined as:

- A felony or misdemeanor offense committed by an adult or a juvenile which results in a physical injury or death;
- A forcible felony committed by an adult or juvenile which directly results in psychiatric or psychological injury;
- A felony or misdemeanor offense of child abuse committed by an adult or a juvenile which results in a mental injury to a person younger than 18 years of age who was not physically injured by the criminal act;
- A violation of certain enumerated offenses³ that results in physical injury or death;
- An act involving the operation of a motor vehicle, boat, or aircraft that results in another person's injury or death that is intentionally inflicted through the use of the vehicle, boat, or aircraft;
- A criminal act committed outside the state against a resident of the state which would have been compensable if it had occurred in the state and which occurred in a jurisdiction that does not have an eligible crime victim compensation program;
- A violation of an enumerated offense⁴ related to online sexual exploitation and child pornography;
- A felony or misdemeanor that results in the death of an emergency responder while answering a call for service in the line of duty.⁵

¹ Section 960.05, F.S.

² Section 960.03(14), F.S.

³ See ss. 316.027(2), 316.193, 316.1935, 327.35(1), 327.35(1), 782.071(1)(b), and 860.13(1)(a), F.S.

⁴ See ss. 827.071, 847.0135, 847.0137, and 847.0138, F.S.

⁵ Section 960.03(3)(a)-(f), F.S.

In addition to providing advocacy and assistance to crime victims, the Office also administers a compensation program to ensure financial assistance is provided to victims of a crime. Injured crime victims may be eligible for financial aid for medical care, lost income, mental health services, funeral expenses, and other expenses related to the injury.⁶

Among the types of financial aid a victim of a crime can receive is payment for medical expenses. Specifically, payment is made for a victim of sexual battery as defined in ch. 794, F.S., or a lewd or lascivious offense as defined in ch. 800, F.S., to obtain an initial forensic physical examination. A payment of up to \$500 will be made to cover the victim's examination, regardless of whether or not the victim is covered by health or disability insurance and whether the victim participates in the criminal justice system or cooperates with law enforcement.⁷ The defendant or juvenile offender of the crime for which the victim is obtaining a physical examination must make restitution to the Crimes Compensation Trust Fund⁸ in an amount equal to the compensation paid for the victim's exam.⁹

Lewd or Lascivious Conduct

Section 800.04, F.S., prohibits lewd or lascivious acts on a person under 16 years of age. The terms "lewd" and "lascivious" are synonymous and mean wicked, lustful or unchaste, licentious, or sensual intent on the person committing the act.¹⁰ Current law prohibits a person from committing a lewd or lascivious battery, which is defined as engaging in sexual activity¹¹ with a person 12 years of age or older but less than 16 years of age, or encouraging, forcing, or enticing any person less than 16 years of age to engage in sexual activity.¹² Additionally, intentionally touching in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forcing or enticing a person under 16 years of age to touch the perpetrator in such a manner, is lewd or lascivious molestation and is prohibited.¹³ In all instances of the commission of a lewd or lascivious offense, the victim's consent cannot be used as a defense.¹⁴ The law does not prohibit such conduct for people who are 16 or 17 years of age.

⁶ Florida Office of the Attorney General, *Division of Victim Services*, available at <http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument> (last visited March 29, 2019).

⁷ Section 960.28(2), F.S.

⁸ The DLA is tasked with administering the Crimes Compensation Trust Fund, which is created for the purpose of providing for the payment of all necessary and proper expenses incurred by the operation of the DLA and the payment of claims. Money recovered through restitution is one source of funding for the Crimes Compensation Trust Fund. Section 960.21, F.S.

⁹ Section 960.28(5), F.S.

¹⁰ HG.org Legal Resources, *Statutory Definition of Lewd or Lascivious Conduct and Potential Punishments in Florida*, available at <https://www.hg.org/legal-articles/statutory-definition-of-lewd-or-lascivious-conduct-and-potential-punishments-in-florida-43848> (last visited March 29, 2019).

¹¹ "Sexual activity" means the oral, anal, or vagina penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. However, sexual activity does not include an act done for a bona fide medical purpose. Section 800.04(1)(a), F.S.

¹² Section 800.04(4), F.S.

¹³ Section 800.04(5), F.S.

¹⁴ Section 800.04(2), F.S.

Expert Testimony in Child Abuse Cases and Expert Witness Certificate

Sections 458.3175 and 459.0066, F.S., require an expert witness who is licensed in another jurisdiction to obtain an “expert witness certificate” from the Florida Department of Health (DOH) before that expert witness may testify in medical negligence cases or provide an affidavit in the pre-suit portion of a medical negligence case. The certificate is good for 2 years, and only authorizes the physician to do the following:

- Provide a verified written medical expert opinion;
- Provide expert testimony about the prevailing professional standard of care in connection with medical negligence litigation pending in this state against a physician licensed in Florida; and
- Provide expert testimony in criminal child abuse and neglect cases pursuant to chapter 827, dependency cases pursuant to chapter 39, and cases involving sexual battery of a child pursuant to chapter 794 in this state.¹⁵

In criminal child abuse and neglect cases, s. 827.03(3), F.S., allows expert testimony in child abuse and neglect cases by physicians licensed under chapter 458, F.S., or 459, F.S., or by physicians who have obtained an expert witness certification. To provide expert testimony of mental injury in child abuse and neglect cases, physicians must be licensed under chapter 458, F.S., or 459, F.S., and have completed an accredited residency in psychiatry, or obtained an expert witness certification.

III. Effect of Proposed Changes:

The bill expands the definition of crime for the purposes of providing assistance to a victim of a crime to include a violation of lewd or lascivious conduct, as described in s. 800.04, F.S. The bill adds osteopathic physicians who hold an expert witness certificate pursuant to s. 459.066, F.S. to the list of eligible expert witnesses who may verify a mental injury to a minor for purposes of s. 800.04, F.S.

The bill further specifies that intentionally touching the breasts, genitals, genital area, or buttocks, or the clothing covering those areas, of a person 16 or 17 years of age in a lewd or lascivious manner, or forcing or enticing a person 16 or 17 years of age to touch the actor, when such act is without the person’s consent and directly results in psychiatric or psychological injury, is considered a crime for the purposes of providing assistance to a victim of a crime.

The bill also increases the maximum payment from \$500 to \$1000 that can be made for a victim of sexual battery or a lewd or lascivious offense to obtain an initial forensic physical examination.

The bill is effective July 1, 2019.

¹⁵ Section 459.006(2)(a)-(c), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact of the bill is indeterminate. The bill increases the maximum payment that can be made for the purposes of a victim of a crime of sexual battery or a lewd or lascivious offense to obtain an initial forensic physical examination. In such an instance, the defendant or juvenile offender of the crime for which the victim is obtaining a physical examination must make restitution in the amount equal to the payment made to cover the medical cost. As a result, such defendant or juvenile offender may be ordered by the court to pay more money in restitution.

C. Government Sector Impact:

According to the DLA, during the 2018 calendar year, they received 470 claims related to lewd or lascivious acts. Of these, 233 were denied because the victims were sixteen or seventeen years of age.¹⁶

The bill also increases the allowable payment for medical expenses from a maximum of \$500, to a maximum of \$1,000 per claim.

¹⁶ Email from the Department of Legal Affairs, March 14, 2019 (on file with Senate Criminal and Civil Justice Appropriations Committee).

In fiscal year 2017-18, the DLA approved 4,065 claims for sexual battery examinations for an approximate total cost of \$2,032,500 from the Crimes Compensation Trust Fund.¹⁷ The DLA has indicated that if this proposed legislation were to pass, it plans to pay approximately \$750 per claim for the first few years to assess the impact on the trust fund.

Although the actual fiscal impact of this change is indeterminate, assuming 4,065 claims plus 233 claims (for victims 16 or 17 years of age), at the maximum allowable of \$1,000 per claim, the total estimated impact is \$4,298,000; an increase of \$2,265,500. Payments of \$750 per claim would result in a total estimated impact of \$3,223,500; an increase of \$1,191,000. There would also be a corresponding revenue increase from the U.S. Victim Compensation Grant within the Federal Grants Trust Fund of approximately 40 cents for each dollar spent; however, according to the DLA, federal reimbursement can sometimes take up to 2-3 years.

According to the DLA, many service providers do not send in claims because they are aware that under current law they would be denied based on ineligibility. The DLA advises that it is reasonable to assume that the number of claims will increase over time if this legislation is passed.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill seeks to expand the definition of “crime” for the purposes of providing assistance to victims of enumerated crimes. Specifically, lines 35-41 of the bill describes conduct that is not currently a crime. Therefore, the bill establishes eligibility for assistance to victims of an act that cannot currently be prosecuted.

Section 800.04, F.S., prohibits the commission of a lewd or lascivious offense against a person *less than 16 years of age*. A commission of the offense described in lines 35-41 of the bill is not a crime that can be prosecuted because a lewd or lascivious offense committed against a person *16 or 17 years of age* does not fall within the ambit of s. 800.04, F.S. Therefore, the DLA would be tasked with providing assistance to “victims” of a crime that cannot currently be prosecuted.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 960.03 and 960.28.

¹⁷ Office of Attorney General Pam Bondi Department of Legal Affairs, *Division of Victim Services and Criminal Justice Programs*, pg. 13, (December 20, 2018), available at [http://myfloridalegal.com/webfiles.nsf/WF/MNOS-B7THCX/\\$file/FINAL+ANNUAL+REPORT+2017-18+12-14-18.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-B7THCX/$file/FINAL+ANNUAL+REPORT+2017-18+12-14-18.pdf) (last visited March 29, 2019).

¹⁸ *Supra* note 16

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on April 4, 2019:

The committee substitute adds osteopathic physicians who hold an expert witness certificate to the list of eligible expert witnesses from which a mental illness must be verified.

- B. **Amendments:**

None.