

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1530

INTRODUCER: Criminal Justice Committee and Senator Book

SUBJECT: Victims of Sexual Offenses

DATE: April 2, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|-----------------|------------|--------------------|
| 1. | <u>Cellon</u> | <u>Jones</u> | <u>CJ</u> | <u>Fav/CS</u> |
| 2. | <u>Dale</u> | <u>Harkness</u> | <u>ACJ</u> | <u>Pre-meeting</u> |
| 3. | _____ | _____ | <u>AP</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1530 amends s. 27.14, F.S., to provide that a victim of a sexual battery or cyberstalking may petition the Governor for an executive order to disqualify a state attorney and appoint a different state attorney if the victim presents sufficient evidence to show:

- A willful disregard of the evidence; and
- Repeated failure of a state attorney to prosecute a particular crime.

The bill sets forth that the purpose of a Sexual Assault Response Team (SART) is to ensure a coordinated multidisciplinary response to sexual violence. The bill requires all county health departments, or a designee for the department, to participate in the local SART if one exists. If no local SART exists, the certified rape crisis center serving the county may coordinate with community partners to establish a local or a regional team.

The bill provides that local SARTs will be coordinated by the certified rape crisis center serving the county, who will select the SART membership in collaboration with community partners. The SARTs membership should include the members listed in the bill, at a minimum, who must meet at least quarterly. Each SART must create written protocols to govern the SARTs response to sexual assault.

The bill requires each SART to promote and support the use of sexual assault forensic examiners who have received a minimum of 40 hours of specialized training in the provision of trauma-informed medical care and in the collection of evidence for sexual assault victims. The Florida

Council Against Sexual Violence (FCASV) will provide technical assistance relating to the development and implementation of the SARTs. The SARTs will send an annual report to the FCASV that will publish the report on its website.

The bill becomes effective July 1, 2021.

II. Present Situation:

The Offenses of Sexual Battery and Cyberstalking

Sexual battery is defined in s. 794.011(1)(h), F.S., as oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

Generally, it is a second degree felony¹ for a person to commit one of the acts described in s. 794.011(1)(h), F.S., without the victim's consent, where:

- The perpetrator is 18 years of age or older;
- The victim is 18 years of age or older, and
- In the process the perpetrator does not use physical force and violence likely to cause serious personal injury.²

The penalties for committing a sexual battery increase as the circumstances of the criminal act change. For example, a person commits a first degree felony³ when a person 18 years of age or older commits sexual battery upon:

- A person 12 years of age or older but younger than 18 years of age, without that person's consent, and
- In the process does not use physical force and violence likely to cause serious personal injury.⁴

A person commits cyberstalking when he or she engages in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose. A person also commits the offense of cyberstalking if he or she accesses, or attempts to access, the online accounts or Internet-connected home electronic systems of another person without that person's permission, which causes substantial emotional distress to that person and serves no legitimate purpose.⁵

¹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

² Section 775.011(5)(b), F.S.

³ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁴ Section 794.011(5)(a), F.S.

⁵ Section 784.048(1)(d), F.S. Depending on the particular circumstances, cyberstalking ranges from a first degree misdemeanor [See s. 784.048(2), F.S.], punishable by up to 1 year in the county jail and a \$1,000 fine, to a third degree felony [See s. 784.048(3), (4), (5), and (7), F.S.], punishable by up to 5 years imprisonment and a \$5,000 fine [See s. 784.048(3), (4), (5), and (7), F.S.]. Sections 775.082, and 775.083, F.S.

Sexual Battery Victim Services

The Florida Department of Health (DOH) requires that any licensed facility which provides emergency room services shall arrange for the rendering of appropriate medical attention and treatment of victims of sexual assault through:

- Gynecological, psychological, and medical services as are needed by the victim;
- The gathering of forensic medical evidence required for investigation and prosecution from a victim who has reported a sexual battery to a law enforcement agency or who requests that such evidence be gathered for a possible future report; and
- The training of medical support personnel competent to provide the medical services and treatment.⁶

The OAG reimburses medical providers up to \$1,000 for an initial forensic examination.⁷ Additionally, relocation assistance for victims of sexual battery can be provided by the OAG up to \$1,500 on any one claim and a lifetime maximum of \$3,000.⁸

Section 794.052, F.S., requires the law enforcement officer investigating the sexual battery to:

- Provide or arrange for transportation of a victim of sexual battery to an appropriate facility for medical treatment or forensic examination;
- Immediately notify sexual battery victims of their legal rights and remedies;
- Assist them in obtaining any necessary medical treatment resulting from the alleged incident, a forensic examination, and crisis-intervention services from a certified rape crisis center;
- Provide for a review of the officer's final report by a victim and an opportunity for a statement about the report by the victim; and
- Advise sexual battery victims that they can contact a certified rape crisis center about services,⁹ including the presence of a victim advocate from a certified rape crisis center at any forensic medical examination.¹⁰

Services in the aftermath of a sexual battery are generally provided locally by certified Rape Crisis Centers and volunteers. A "Rape Crisis Center" is any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families.¹¹ The Florida Council Against Sexual Violence (FCASV) is a statewide nonprofit organization committed to victims and survivors of sexual violence and the sexual assault crisis programs that serve them. The FCASV certifies Rape Crisis Centers.¹²

Sexual Assault Response Teams

A sexual assault response team (SART) is a community-based team that convenes regularly and coordinates the local response to sexual assault victims. SARTs are often comprised of sexual assault nurse examiners (SANEs), sexual assault victim advocates, law enforcement officials,

⁶ Section 395.1021, F.S.

⁷ Section 960.28(2), F.S.

⁸ Section 960.199(1), F.S.

⁹ Section 794.052, F.S.

¹⁰ See s. 960.001(1)(u), F.S.

¹¹ Section 90.5035(1)(a), F.S.

¹² FCASV, *About FCASV*, available at <https://www.fcasv.org/about-fcasv> (last visited March 16, 2021).

and prosecutors. These teams work to develop a stronger understanding of victimization and the positive effects of trauma-informed training. SARTs support victims, provide expertise for prosecution, and maintain a victim-centered, offender-focused approach to review sexual assault case files.¹³ The FCASV currently coordinates the Statewide SART Advisory Committee.¹⁴

State Attorneys

State Attorneys are constitutional officers. The Florida Constitution provides that “In each judicial circuit a state attorney shall be elected for a term of four years. Except as otherwise provided in this constitution, the state attorney shall be the prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law.”¹⁵

State attorneys are quasi-judicial officers,¹⁶ but the decision to prosecute is an executive function.¹⁷ “Under Florida’s constitution, the decision to charge and prosecute [for a criminal offense] is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute.”¹⁸

State attorneys have subpoena powers to summon witnesses before him or her to testify about matters under investigation.¹⁹ Whenever required by the grand jury, the state attorney must assist them for the purpose of examining witnesses in their presence, or of giving legal advice in any matter before them, and he or she shall prepare bills of indictment.²⁰

The Governor’s Ability to Disqualify a State Attorney

Section 27.14, F.S., provides that if any state attorney is “disqualified” to represent the State in any investigation, case, or matter pending in the courts, or if for “any other good and sufficient reason” the Governor determines that “the ends of justice would be best served” the Governor can either:

¹³ Sexual Assault Kit Initiative and RTI International, *A Multidisciplinary Approach to Cold Case Sexual Assault: Guidance for Establishing an MDT or a SART*, available at <https://www.sakitta.org/toolkit/docs/A-Multidisciplinary-Approach-to-Cold-Case-Sexual-Assault-Guidance-for-Establishing-an-MDT-or-a-SART.pdf> (last visited March 16, 2021).

¹⁴ The Statewide SART Advisory Committee is a statewide group coordinated by the FCASV and comprised of representatives from a broad range of disciplines whose work brings them into contact with rape survivors. The committee works to assess and improve Florida’s response to survivors of sexual violence at the state and local level. FCASV, SART, available at <https://www.fcasv.org/new-statewide-sart-advisory-committee> (last visited March 16, 2021).

¹⁵ Fla. Const. Art. V, Section 17.

¹⁶ See *Office of the State Attorney, Fourth Judicial Circuit of Florida v. Parrotino*, 628 So.2d 1097 (Fla. 1993), discussing prosecutorial immunity, judicial immunity, and separation of powers.

¹⁷ “A state attorney, while being a quasi-judicial officer, also shares some attributes of the executive. A judicial attempt to interfere with the decision whether and how to prosecute violates the executive component of the state attorney’s office. Immunity from suit, on the other hand, arises from the quasi-judicial nature of the office.” *Id.*, note 2.

¹⁸ *State v. Bloom*, 497 So.2d 2, 3 (Fla. 1986); However, “[i]t is not the duty of a State Attorney merely to secure convictions; the State Attorney is required to represent the State, it is his duty to present all of the material facts known to him to the jury; and it is as much his duty to present facts within his knowledge which would be favorable to the defendant as it is to present those facts which are favorable to the State; being an arm of the Court he is charged with the duty of assisting the Court to see that justice is done, and not to assume the role of persecutor.” *Smith v. State*, 95 So.2d 525, 527 (Fla. 1957).

¹⁹ Section 27.04, F.S.

²⁰ Section 27.03, F.S.

- Order an exchange of circuits or of courts between such state attorney and any other state attorney; or
- Order an assignment of any state attorney to discharge the duties of the state attorney with respect to one or more specified investigations, cases, or matters.²¹

The Governor exercises this authority by signing an executive order and filing it with the Department of State.²²

III. Effect of Proposed Changes:

Sexual Assault Response Teams

The bill sets forth that the purpose of the SART is to ensure a coordinated multidisciplinary response to sexual violence. The bill requires county health departments, or a designee for the department, to participate in a local SART if one exists. It specifies that SARTs will be coordinated by the local certified rape crisis center. If no local SART exists, the local certified rape crisis center serving the county may coordinate with community partners to establish a local or regional team. The FCASV must provide technical assistance relating to the development and implementation of the SARTs.

SART membership shall be determined by the certified rape crisis center in collaboration with community partners. Membership may consist of the following members or their designees, at a minimum:

- The director of the local certified rape crisis center;
- A representative from the local county health department;
- The state attorney;
- The chief of police;
- The county sheriff;
- Forensic sexual assault nurse examiners; and
- A representative from local hospital emergency departments.

The SART must develop a written protocol to govern the team's response to sexual assault that includes:

- The role and responsibilities of each team member;
- Procedural issues regarding the immediate crisis and health care and law enforcement responses and follow-up services provided to a victim;
- Procedures for the preservation, secure storage, and destruction of evidence from a sexual assault evidence kit, including length of storage, site of storage, and chain of custody; and
- Procedures for maintaining the confidentiality of the victim regarding the forensic medical examination.

Each SART must meet at least quarterly, or more often if necessary, to ensure a coordinated multidisciplinary response to sexual violence. The SART must also produce an annual report for the jurisdictions covered by the team which includes local statistics on the number of forensic

²¹ See *Austin v. State ex rel. Christian*, 310 So.2d 289 (Fla. 1975). See also *Ayala v. Scott*, 224 So.3d 755 (Fla. 2017).

²² Section 27.14(1), F.S.

medical examinations performed, the number of criminal sexual assaults reported to law enforcement, and the number of criminal sexual assaults prosecuted and the outcome of the prosecutions. The FCASV will publish the reports on its website.

The bill requires each SART to promote and support the use of sexual assault forensic examiners who have received a minimum of 40 hours of specialized training in the provision of trauma-informed medical care and in the collection of evidence for sexual assault victims.

Disqualification of State Attorney

The bill amends s. 27.14, F.S., to provide that a victim of a sexual battery or cyberstalking may petition the Governor for an executive order to disqualify a state attorney and appoint a different state attorney if the victim presents sufficient evidence to show:

- A willful disregard of the evidence; and
- Repeated failure of a state attorney to prosecute a particular crime.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the State Constitution.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 27.14 of the Florida Statutes.

This bill creates section 154.012 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on March 23, 2021:**

The committee substitute:

- Deletes current Section 1 of the bill related to the AG, replacing it with an amendment to s. 27.14, F.S., which creates a mechanism by which the Governor can disqualify a state attorney (and appoint a different state attorney by executive order) if the victim of a sexual battery or cyberstalking petitions the Governor and presents sufficient evidence to show:
 - A willful disregard of the evidence and
 - The repeated failure of a state attorney to prosecute a particular crime.
- Changes a requirement in the bill that every county health department *establish* a local sexual assault response team (SART). The amendment requires the county health departments to *participate* if one (a local SART) exists.
- Specifies that SARTs will be coordinated by the certified rape crisis center serving the county, who will select the SART membership in collaboration with community partners.
- Specifies that if there is no SART in existence, the local certified rape crisis center may coordinate with community partners to establish a local or a regional team.
- Alters SART membership in the bill to include:
 - The director of the local certified rape crisis center;
 - A representative (not necessarily from physician or nursing leadership) from a local hospital emergency department;

- Forensic sexual assault nurse examiners (rather than a forensic sexual assault nurse examiner or a designated health care provider who performs forensic medical examinations and collects evidence); and
- A representative of the local county health department.
- Requires that SARTs submit their annual reports to the FCASV to be published on FCASV's website.
- Deletes Section 3 of the bill related to payment of insurance claims.
- Deletes the sections of the bill related to training of law enforcement.

B. Amendments:

None.