

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1577 Crime Victim Compensation Claims

**SPONSOR(S):** Alvarez

**TIED BILLS:** IDEN./SIM. BILLS: SB 1104

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N	Leshko	Hall
2) Justice Appropriations Subcommittee	14 Y, 0 N	Saag	Keith
3) Judiciary Committee			

### SUMMARY ANALYSIS

The Department of Legal Affairs (Department) administers the Crime Victim Compensation Program, which provides monetary compensation for specified economic losses suffered and specified services which may be needed by a victim as a result of a crime. A crime victim compensation claim may be filed by: a victim; an intervenor; a surviving spouse, parent or guardian, sibling, or child of a deceased victim or intervenor; or any other person who is dependent for his or her principal support upon a deceased victim or intervenor. The Department's Crime Victims' Services Office investigates all claims for awards. An award may only be made if the Department finds: that a crime was committed; such crime directly resulted in personal injury to, psychiatric or psychological injury to, or death of, the victim or intervenor; such crime was promptly reported to the proper authorities; and the claimant cooperated with the state attorney, law enforcement, and the Department.

Under s. 960.07, F.S., the deadline for a crime victim to file a claim for compensation begins to run upon the occurrence of the crime upon which the claim is based; the death of the victim or intervenor; or the determination that the death of the victim or intervenor was a result of the crime, whichever occurs latest in time. The deadline is also determined by the date on which the crime occurred as follows:

- If the crime occurred before October 1, 2019, the application must be filed within one year. The Department may extend the application window for such a claim by two years for good cause.
- If the crime occurred on or after October 1, 2019, the application must be filed within three years. The Department may extend the application window for such a claim by five years for good cause.

Under the Federal Victims of Crime Act (VOCA), the federal government annually grants funds from the Crime Victims Fund to eligible state crime victim compensation programs meeting certain requirements. The 2022 Federal Consolidated Appropriations Act (Act) allocated funding for processing sexual assault kits (SAK) and DNA evidence backlogs.

A delay in SAK testing may cause an applicant to delay filing a claim as, in some instances, without the test results there is insufficient proof that a crime was committed. The Act amended VOCA to add an additional requirement that state crime victim compensation programs waive application deadlines due to a delay in testing or DNA profile matching from a SAK. However, s. 960.07, F.S., does not currently authorize the Department to waive application deadlines due to a delay in testing or DNA profile matching from a SAK.

HB 1577 amends s. 960.07, F.S., to authorize the Department to waive any application deadline for the filing of a victim compensation claim if it is shown that the delay in filing an application occurred because of a delay in the testing of, or a delay in the DNA matching from, a SAK or biological material collected as evidence related to a sexual offense.

The bill may have a positive fiscal impact on the Crimes Compensation Trust Fund by ensuring the program meets federal eligibility requirements to receive federal grant funding. However, the positive fiscal impact may be offset if additional awards of compensation are made to applicants as authorized by the bill.

The bill provides an effective date of July 1, 2023.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives .**

**STORAGE NAME:** h1577c.JUA

**DATE:** 3/27/2023

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Crime Victim Compensation Claims

The Department of Legal Affairs (Department) administers the Crime Victim Compensation Program, which provides monetary compensation for: economic losses incurred, such as wage loss, disability, or loss of support; treatment costs, such as medical, mental health, or grief counseling; and/or funeral costs.<sup>1</sup> Under s. 960.065, F.S., a claim for compensation may be filed by:

- A victim.<sup>2</sup>
- An intervenor.<sup>3</sup>
- A surviving spouse, parent or guardian, sibling, or child of a deceased victim or intervenor.
- Any other person who is dependent for his or her principal support upon a deceased victim or intervenor.<sup>4</sup>

If such a person is a minor or mentally incompetent, his or her parent or guardian or other individual authorized to administer his or her estate may file the claim on the person's behalf.<sup>5</sup>

The Department's Crime Victims' Services Office investigates all claims for compensation.<sup>6</sup> An award may only be made if the Department finds:

- That a crime was committed;
- Such crime directly resulted in personal injury to, psychiatric or psychological injury to, or death of, the victim or intervenor;
- Such crime was promptly reported to the proper authorities;<sup>7, 8</sup> and
- The claimant cooperated with the state attorney, law enforcement, and the Department.<sup>9</sup>

Claimants are required to provide documentation that proves a compensable crime occurred.

Acceptable documentation includes:

- A law enforcement report;
- An affidavit charging an individual with a crime filed by law enforcement;
- An information report charging an individual with a crime filed by a state attorney;
- An indictment by a grand jury;
- Written communication from any federal law enforcement agency;
- A cybercrime investigator certification; or

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<sup>1</sup> Florida Attorney General, *Victim Compensation Brochure*, [http://myfloridalegal.com/webfiles.nsf/WF/MRAY-8CVP5T/\\$file/BVCVictimCompensationBrochure.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MRAY-8CVP5T/$file/BVCVictimCompensationBrochure.pdf) (last visited Mar. 22, 2023).

<sup>2</sup> "Victim" means: 1) A person who suffers personal physical injury or death as a direct result of a crime; 2) 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; 3) 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 as defined by s. 827.03, F.S., but who was not physically injured; 4) A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who did not otherwise sustain a personal physical injury or death; or 5) An emergency responder, as defined in and solely for the purposes of s. 960.194, F.S., who is killed answering a call for service in the line of duty. S. 960.03(14), F.S.

<sup>3</sup> "Intervenor" means any person who goes to the aid of another and suffers bodily injury or death as a direct result of acting, not recklessly, to prevent the commission of a crime, to lawfully apprehend a person reasonably suspected of having committed a crime, or to aid the victim of a crime. S. 960.03(9), F.S.

<sup>4</sup> S. 960.065(1), F.S.

<sup>5</sup> S. 960.07(1), F.S.

<sup>6</sup> S. 960.05(2)(l), F.S.

<sup>7</sup> S. 960.13(1)(a), F.S.

<sup>8</sup> The crime must be reported within 72 hours after the occurrence of the crime if the crime occurred before October 1, 2019, or within 120 hours or 5 days after the occurrence of the crime if the crime occurred on or after October 1, 2019. S. 960.13(1)(b), F.S.

<sup>9</sup> S. 960.13(1)(b), F.S.

- A law enforcement information reporting form.<sup>10</sup>

### Claim Filing Deadlines

Under s. 960.07, F.S., the current deadlines and other requirements relating to a claim for compensation are the following:

Crime	Filing Deadline	Deadline Triggering Event (the latest event applies)	Extension for Good Cause
Crime occurred before October 1, 2019	Within 1 year	<ul style="list-style-type: none"> <li>• The occurrence of the crime upon which the claim is based;</li> <li>• The death of the victim or intervenor; or</li> <li>• The death of the victim or intervenor is determined to be a result of the crime, and the crime occurred after June 30, 1994.</li> </ul>	2 years
Crime occurred on or after October 1, 2019	Within 3 years	<ul style="list-style-type: none"> <li>• The occurrence of the crime upon which the claim is based;</li> <li>• The death of the victim or intervenor; or</li> <li>• The death of the victim or intervenor is determined to be a result of the crime.</li> </ul>	5 years
Victim or intervenor was under the age of 18 at the time of the crime and crime occurred before October 1, 2019	1 year	Reaching the age of 18	1 year
Victim or intervenor was under the age of 18 at the time of the crime and crime occurred on or after October 1, 2019	3 years	Reaching the age of 18	2 years

Additionally, notwithstanding other deadline requirements, a victim of a sexually violent offense<sup>11</sup> may file a claim for compensation for counseling or other mental health services within:<sup>12</sup>

Crime	Filing Deadline	Deadline Triggering Event
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<sup>10</sup> *Supra* note 5.

<sup>11</sup> "Sexually violent offense" means: murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a)2., F.S.; kidnapping or false imprisonment of a child under the age of 13 and, in the course of that offense, committing sexual battery or a lewd, lascivious, or indecent assault or act upon or in the presence of the child; sexual battery in violation of s. 794.011, F.S.; lewd, lascivious, or indecent assault or act upon or in the presence of a child in violation of s. 800.04, F.S. or s. 847.0135(5), F.S.; an attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, F.S., of a sexually violent offense; any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense as listed or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense; any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings, has been determined beyond a reasonable doubt to have been sexually motivated; or a criminal offense in which the state attorney refers a person to the Department of Children and Families for civil commitment proceedings pursuant to s. 394.9125, F.S. S. 394.912(9), F.S.

<sup>12</sup> S. 960.07(4), F.S.

Crime occurred before October 1, 2019	Within 1 year	The filing by the state attorney to find the offender a sexually violent predator <sup>13</sup> and to involuntarily civilly commit the offender who perpetrated the sexually violent offense.
Crime occurred on or after October 1, 2019	Within 3 years	

A filed claim may be temporarily deferred if a criminal prosecution or delinquency petition is pending upon the same alleged crime until such time as a trial verdict or delinquency adjudication has been rendered.<sup>14</sup>

### *Award Funding*

Claims are compensated from moneys in the Crimes Compensation Trust Fund (Fund).<sup>15</sup> The Fund consists of moneys appropriated by the Legislature, recovered on behalf of the Department by subrogation or restitution, and received from the federal government, court costs, fines, or any other public or private source.<sup>16</sup>

### Federal Victims of Crime Act (VOCA)

Under VOCA, the federal government annually grants funds from the Crime Victims Fund<sup>17</sup> to eligible state crime victim compensation programs.<sup>18</sup> A state crime victim compensation program is eligible to receive funds if the program meets certain requirements.<sup>19</sup>

The 2022 Federal Consolidated Appropriations Act (Act) allocated funding for processing sexual assault kits (SAK) and DNA evidence backlogs. The Act amended VOCA to add the following additional requirement that state crime victim compensation programs must meet in order to be eligible to receive grant funding from VOCA:

- The program must provide a waiver for any application filing deadline imposed by the program for a crime victim if the victim is otherwise eligible for compensation and the delay in filing the application was a result of a delay in the testing of, or a delay in the DNA profile matching from, a SAK or biological material collected as evidence related to a sexual offense.
- The program may not require the victim to undergo an appeal process to have his or her application considered for a filing deadline waiver.<sup>20, 21</sup>

### Forensic Physical Exams and Sexual Assault Kits

In Florida, a victim of certain sexual offenses may have a forensic physical examination conducted by a healthcare provider for free, regardless of whether the victim reports the offense to law enforcement.<sup>22</sup> A sexual assault kit (SAK), sometimes referred to as a “rape kit,” is a medical kit used to collect evidence from a sexual assault victim’s body and clothing during a forensic physical examination. A SAK typically contains standardized items including swabs, tubes, glass slides, containers, and plastic bags used to collect and preserve bodily fluids, hair, and fibers that may contain the perpetrator’s DNA or other forensic evidence.<sup>23</sup> SAKs are submitted by law enforcement agencies to crime laboratories for

<sup>13</sup> S. 394.914, F.S.

<sup>14</sup> S. 960.07(6), F.S.

<sup>15</sup> S. 960.21, F.S.

<sup>16</sup> S. 960.21(2), F.S.

<sup>17</sup> 34 U.S.C. § 20101.

<sup>18</sup> 34 U.S.C. § 20102(1-3). Not more than 5 percent of grant money may be used for training purposes and administration of the state crime victim compensation program. 34 U.S.C. § 20102(4).

<sup>19</sup> 34 U.S.C. § 20102(b).

<sup>20</sup> H.R. 2471, 117th Cong. (2022) (enacted); 34 U.S.C. § 20102(b), F.S.

<sup>21</sup> These provisions regarding an application waiver must be included in the state victim compensation program no later than three years after March 15, 2022. 34 U.S.C. § 20102(b)(9).

<sup>22</sup> S. 960.28, F.S.

<sup>23</sup> The White House, Office of the Press Secretary, *Fact Sheet: Investments to Reduce The National Rape Kit Backlog And Combat Violence Against Women*, (Mar. 16, 2015) <https://obamawhitehouse.archives.gov/the-press-office/2015/03/16/fact-sheet-investments-reduce-national-rape-kit-backlog-and-combat-viole> (last visited Mar. 22, 2023).

DNA analysis and resulting DNA profiles are uploaded to local, state, and federal DNA databases to determine whether a match identifying the perpetrator can be made.

### *Previous SAK Backlog*

Investigative reporting in the 2000's revealed that large cities like New York and Los Angeles, among others held large numbers of SAKs that were never submitted to a laboratory for DNA testing.<sup>24</sup> Florida was among the states with a significant SAK backlog. In response, in 2015, the Legislature allocated \$300,000 to the Florida Department of Law Enforcement (FDLE) to conduct a statewide assessment of untested SAKs, including those that were not yet submitted for analysis.

In January 2016, FDLE reported its findings and began a three-year plan to remedy the backlog of untested SAKs. In September 2019, FDLE completed the three-year project, having processed 8,023 untested SAKs submitted by local law enforcement agencies to an FDLE laboratory.

Prior to 2016, Florida did not set statewide standards or expectations for submitting SAKs, and the decision to submit a SAK rested solely with local law enforcement agencies. To prevent a further backlog of untested SAKs, in 2016, the Legislature created standardized protocols for collecting, testing, storing, and ultimately destroying SAKs.<sup>25</sup>

A delay in SAK testing may cause an applicant to delay filing a claim as, in some instances, without the test results there is insufficient proof that a crime was committed. However, s. 960.07, F.S., does not currently authorize the Department to waive application deadlines due to a delay in testing or DNA profile matching from a SAK.

### **Effect of Proposed Changes**

HB 1577 amends s. 960.07, F.S., to authorize the Department to waive any application deadline for the filing of a victim compensation claim if it is shown that the delay in filing the application occurred because of a delay in the testing of, or a delay in the DNA matching from, a SAK or biological material collected as evidence related to a sexual offense.

The bill provides an effective date of July 1, 2023.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 960.07, F.S., relating to filing of claims for compensation.

**Section 2:** Provides an effective date of July 1, 2023.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

See Fiscal Notes.

##### **2. Expenditures:**

See Fiscal Notes.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

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<sup>24</sup> Madeleine Carlisle, *A New System to Ensure Sexual-Assault Cases Aren't Forgotten*, The Atlantic, (Apr. 7, 2019) <https://www.theatlantic.com/politics/archive/2019/04/many-states-are-adopting-rape-kit-tracking-systems/586531/> (last visited Mar. 22, 2023).

<sup>25</sup> Ch. 2016-72, Laws of Fla.

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None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate positive fiscal impact on the Crimes Compensation Trust Fund as it will ensure that the Department's Crime Victim Compensation Program remains in compliance with the federal eligibility requirements to receive federal grant funding for the Program. However, any positive fiscal impact may be offset as the bill may allow more victims to file applications for compensation, which may result in additional compensation claims being awarded.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.