

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 439 Department of Legal Affairs

SPONSOR(S): Criminal Justice Subcommittee

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1362

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Patton	Cunningham

SUMMARY ANALYSIS

The Office of the Attorney General (Department) serves as the people's law firm. Led by the Attorney General, the Department provides a wide variety of legal services, including protecting Florida consumers in cases of Medicaid fraud, defending the state in civil litigation cases and representing the people of Florida when criminals appeal their convictions in state and federal courts.

This bill makes several changes to a variety of statutes affecting the Department. For example, the bill:

- Expands the jurisdiction of the Office of Statewide Prosecution to include violations of ch. 787, F.S. (kidnapping, false imprisonment, and human trafficking), that were facilitated by or connected to the use of the Internet;
- Authorizes the Department to spend no more than \$20,000 annually to:
 - Purchase and distribute promotional materials or items that serve to advance with dignity and integrity the good will of this 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 nationalities, or other agencies are in attendance;
- Allows funds currently awarded to persons who report Medicaid Fraud to also be used to fund the Department's Medicaid Fraud Unit;
- Expands the definition of the term "crime" for purposes of victim assistance awards;
- Prohibits victim assistance awards for "catastrophic injury" from being reduced;
- Authorizes the Department to award a lifetime maximum of \$1,000 on all victim assistance claims relating to elderly persons and disabled adults who suffer a property loss that causes a substantial diminution in their quality of life; and
- Creates a separate statute (s. 960.196, F.S.) that addresses relocation assistance for victims of human trafficking.

The bill contains provisions that will have both a positive and negative fiscal impact on the Department. See Fiscal Analysis section.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Office of the Attorney General (Department) serves as the people's law firm. Led by the Attorney General, the Department provides a wide variety of legal services, including protecting Florida consumers in cases of Medicaid fraud, defending the state in civil litigation cases and representing the people of Florida when criminals appeal their convictions in state and federal courts.¹

This bill makes several changes to a variety of statutes affecting the Department. A detailed description of these changes follows.

Office of Statewide Prosecution Jurisdiction

The Office of Statewide Prosecution (OSP), housed within the Department, works regularly with state and federal counterparts to investigate and prosecute complex, often large scale, organized criminal activity.² In order for the Statewide Prosecutor to have jurisdiction over a case, the crime must have occurred in more than one judicial circuit or be part of a conspiracy affecting more than one judicial circuit, and it must be one of the offenses³ enumerated in s. 16.56(1)(a), F.S.⁴

In 2007, the Legislature recognized the multi-jurisdictional nature of the Internet and gave the OSP jurisdiction to investigate and prosecute any crime enumerated in s. 16.56 (1)(a), F.S., that was facilitated by or connected to the use of the Internet.⁵ Since this legislation was enacted, violations of ch. 787, F.S. (relating to kidnapping, false imprisonment, and human trafficking) were added to the list of offenses that the OSP had jurisdiction over.⁶ However, in what was likely an oversight, the OSP was not given jurisdiction over violations of ch. 787, F.S., that were facilitated by or connected to the use of the Internet.

Effect of the Bill

The bill expands the jurisdiction of the OSP to include violations of ch. 787, F.S., that were facilitated by or connected to the use of the Internet.

Spending Authority

Currently, the Department does not have specific statutory authority to spend funds on promotional materials or other similar items.

Effect of the Bill

The bill creates s. 16.62, F.S., to authorize the Department to spend no more than \$20,000 annually to:

- Purchase and distribute promotional materials or items that serve to advance with dignity and integrity the good will of this 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 nationalities, or other agencies are in attendance.

¹ Florida Office of the Attorney General, *The Role and Function of the Attorney General*, <http://myfloridalegal.com/pages.nsf/Main/F06F66DA272F37C885256CCB0051916F> (last visited February 24, 2015).

² Florida Office of the Attorney General, *Office of Statewide Prosecution*, <http://myfloridalegal.com/pages.nsf/Main/D243EF87774E965185256CC600785693> (last visited February 24, 2015).

³ These offense include bribery; burglary; usury; extortion; gambling; kidnapping; theft; murder; prostitution; perjury; robbery; home-invasion robbery; narcotics violations; racketeering; anti-fencing violations; antitrust violations; crimes involving fraud and deceit; certain computer-related crimes; violations of the Florida Drug and Cosmetic Act; violations of the Florida Motor Fuel Tax Relief Act of 2004; Medicaid fraud; crimes involving voter registration, voting, or candidate or issue petition activities; violations of the Florida Money Laundering Act; violations of the Florida Securities and Investor Protection Act; human trafficking; and attempts, solicitations, or conspiracies to commit these offenses.

⁴ FLA. CONST. art. IV, s. 4. s. 16.56, F.S.

⁵ Chapter 2007-143, Laws of Florida; s. 16.56(1)(b), F.S.

⁶ Chapter 2012-97, Laws of Florida.

Medicaid Fraud Reporting Rewards

Medicaid Fraud Reporting Rewards

The Department's Medicaid Fraud Control Unit investigates and prosecutes fraud involving providers that intentionally defraud the state's Medicaid program.⁷ This involves investigating a wide range of misconduct originating primarily from fraudulent billing schemes, which usually involve doctors, dentists, clinics and other health care providers billing for services never performed; over billing for services provided; or billing for tests, services and products that are medically unnecessary.⁸

Section 409.9203, F.S., specifies that a person who furnishes original information relating to Medicaid fraud and reports a violation of the state's Medicaid fraud laws is eligible for a reward,⁹ subject to the availability of funds, if the information and report:

- Is made to the Department, the Agency for Health Care Administration, the Department of Health, or the Department of Law Enforcement;
- Relates to criminal fraud upon Medicaid funds or a criminal violation of Medicaid laws by another person; and
- Leads to a recovery of a fine, penalty, or forfeiture of property.¹⁰

The reward is paid from the Operating Trust Fund from moneys collected pursuant to the Florida False Claims Act (FFCA).

Florida False Claims Act

The FFCA authorizes private individuals to bring "qui tam" suits in the name of the state against persons or entities who have defrauded the state in contracting or other matters.¹¹ As an incentive to bring these suits, successful plaintiffs, sometimes called whistleblowers, are permitted to share in the damages recovered.¹² The FFCA also allows the state entity injured by the submission of a false or fraudulent claim to be awarded an amount not to exceed its compensatory damages.¹³

If an FFCA action was based on a claim of funds from the state Medicaid program, 10% of the proceeds that remain after the plaintiff and the state entity have been issued their awards must be deposited into the Operating Trust Fund. Currently, 100% of these funds are used to fund rewards for persons who report Medicaid fraud pursuant to s. 409.9203, F.S.¹⁴

Effect of the Bill

The bill requires the 10% of funds that are deposited into the Operating Trust Fund pursuant to the FFCA to be allocated as follows:

- 50% to fund rewards for reporting Medicaid Fraud; and
- 50% to fund Medicaid Fraud Unit investigations of potential violations of the FFCA and any related civil actions.

This increases the funding available to the Department's Medicaid Fraud Unit, but decreases funding available to those who report Medicaid fraud.

Florida Deceptive and Unfair Trade Practices Act

Florida's Deceptive and Unfair Trade Practices Act (FDUTPA)¹⁵ gives consumers legal protection against commercial wrongdoing. Patterned after the Federal Trade Commission Act,¹⁶ FDUTPA

⁷ Florida Office of the Attorney General, *Medicaid Fraud Control Unit*, <http://myfloridalegal.com/pages.nsf/Main/ebc480598bbf32d885256cc6005b54d1> (last visited February 24, 2015).

⁸ *Id.* Also see, ss. 409.920 and 409.9201, F.S.

⁹ The reward may not exceed the lesser of 25 percent of the amount recovered or \$500,000 in a single case. s. 409.9203(2), F.S.

¹⁰ s. 409.9203(1), F.S.

¹¹ The Florida Bar Journal, *Florida Updates Qui Tam Whistleblower Statute*, Ryon M. McCabe and Robert C. Glass, http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/22dfadebad8fecfc85257c6e00552de7!OpenDocument&Highlight=0,* (last visited February 24, 2015).

¹² *Id.*

¹³ s. 68.085(3), F.S.

¹⁴ *Id.*

¹⁵ ss. 501.201-213, F.S.

prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.¹⁷ It enables consumers to recover actual damages, permits recovery of reasonable attorneys' fees and costs by the prevailing party, and also provides for declaratory judgments and injunctive relief. It also gives equitable remedies to state enforcement authorities,¹⁸ who may bring suit "on behalf of one or more consumers."¹⁹

In construing FDUTPA's provisions, due consideration and great weight are given to the interpretations of the Federal Trade Commission and the federal courts relating to the analogous provision of the Federal Trade Commission Act, as of July 1, 2013.²⁰

Effect of the Bill

The bill updates ss. 501.203 and 501.204, F.S., to refer to the Federal Trade Commission Act rules and regulations as of July 1, 2015.

Victim Assistance

The Department's Division of Victim Services serves as an advocate for crime victims and administers a compensation program to ensure financial assistance for innocent victims of crime.²¹ Currently, injured crime victims may be eligible for financial assistance for medical care, lost income, funeral expenses, and other out-of-pocket expenses directly related to the injury.²² Payment is made from the Crime Compensation Trust Fund.²³ The Department may adopt rules establishing compensation award limits, however, compensation awards generally may not exceed:

- \$10,000 for treatment;
- \$10,000 for continuing or periodic mental health care of a minor victim whose normal emotional development is adversely affected by being the victim of a crime;
- A total of \$25,000 for all compensable costs; or
- \$50,000 when the OAG makes a written finding that the victim has suffered a catastrophic injury as a direct result of the crime.²⁴

Definitions

As noted above, a person must first be a victim of a crime to be eligible for victim assistance.²⁵ Section 960.03(3), F.S., defines the term "crime" for victim assistance purposes, in part, as:

- A felony or misdemeanor offense committed by an adult or a juvenile which results in physical injury or death, or a felony or misdemeanor offense of child abuse committed by an adult or a juvenile which results in a mental injury,²⁶ as defined in s. 827.03, F.S., to a person younger than 18 years of age who was not physically injured by the criminal act; or²⁷
- A violation of s. 316.193, F.S., (DUI); s. 316.027(1), F.S. (leaving the scene of a crash involving death of bodily injury); s. 327.35(1), F.S. (BUI); s. 782.071(1)(b), F.S. (vehicular homicide); or s.

¹⁶ 15 U.S.C. §§ 41-58 (2013).

¹⁷ s. 501.204, F.S.

¹⁸ The Department is an enforcing authority of FDUTPA. As such, the Department is authorized to investigate and file civil actions against persons who engage in unfair methods of competition, unfair, unconscionable or deceptive trade practices, including, but not limited to, pyramid schemes, misleading franchise or business opportunities, travel scams, fraudulent telemarketing, and false or misleading advertising. Florida Office of the Attorney General, *Consumer Protection Division*, <http://myfloridalegal.com/pages.nsf/Main/7003247af328dc9e85256cc6006fba91> (last visited on February 25, 2015).

¹⁹ The Florida Bar Journal, *The Unexplored Territory of Unfairness in Florida's Deceptive and Unfair Trade Practices Act*, David J. Federbush, <https://www.floridabar.org/divcom/jn/jnjournal01.nsf/Author/F9BE91D3215162C685256ADB005D6262> (last visited on February 25, 2015).

²⁰ ss. 501.203(3) and 501.204, F.S.

²¹ Florida Office of the Attorney General, *Division of Victims Services*, <http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument> (last visited on February 25, 2015).

²² *Id.*

²³ s. 960.21, F.S.

²⁴ s. 960.13, F.S.

²⁵ ss. 960.065 and 960.03(14) and (3), F.S.

²⁶ The mental injury to the minor must be verified by a psychologist licensed under ch. 490, F.S., by a physician licensed in this state under chs. 458 or 459, F.S., who has completed an accredited residency in psychiatry, or by a physician who has obtained certification as an expert witness pursuant to s. 458.3175, F.S.

²⁷ The term also includes a criminal act that is committed within this state but that falls exclusively within federal jurisdiction.

860.13(1)(a), F.S. (operating an aircraft under the influence); which results in physical injury or death; however, an act involving the operation of a motor vehicle, boat, or aircraft which results in injury or death does not constitute a crime for the purpose of this chapter unless the injury or death was intentionally inflicted through the use of the vehicle, boat, or aircraft.

Section 960.03, F.S., also defines the term “disabled adult” as a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability or organic brain damage or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

Effect of the Bill

The bill expands the definition of the term “crime” to include:

- A forcible felony committed by an adult or juvenile which directly results in psychiatric or psychological injury;²⁸ and
- Violations of s. 316.1935, F.S. (fleeing or eluding a law enforcement officer), which results in physical injury or death.

The term is also amended to include an act involving the operation of a motor vehicle, boat, or aircraft which results in another person’s injury or death that is intentionally inflicted through the use of the vehicle, boat, or aircraft.

The bill also amends the definition of the term “disabled adult” to include persons over 18 years of age:

- Who suffer from a condition of physical or mental incapacitation due to mental illness; and
- Who have one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

Awards

Currently, victim assistance awards, *except awards for loss of support*, are reduced by the amount of any payments or services received or to be received by the claimant as a result of the injury or death:

- From or on behalf of the person who committed the crime; provided, however, that a restitution award ordered by a court to be paid to the claimant by the person who committed the crime shall not reduce any award made pursuant to this chapter unless it appears to the department that the claimant will be unjustly enriched thereby;
- From any other public or private source or provider, including, but not limited to, an award of workers’ compensation pursuant to ch. 440, F.S.;
- From agencies mandated by other Florida statutes to provide or pay for services, except as provided in s. 960.28, F.S.; or
- From an emergency award under s. 960.12, F.S.²⁹

Effect of the Bill

The bill prohibits awards for loss of support *and awards for catastrophic injury* from being reduced pursuant to the above provisions. “Catastrophic injury” is defined as a permanent impairment constituted by:

- Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;
- Amputation of an arm, a hand, a foot, or a leg;
- Severe brain or closed-head injury as evidenced by:
 - Severe sensory or motor disturbances;
 - Severe communication disturbances;
 - Severe complex integrated disturbances of cerebral function;
 - Severe episodic neurological disorders; or

²⁸ This change conforms with the current definition of “victim,” which includes “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 does not otherwise sustain a personal physical injury or death.” s. 960.03(14)(d), F.S.

²⁹ s. 960.13(6), F.S.

- Other severe brain and closed-head injury conditions at least as severe in nature as any condition described in subparagraphs 1.-4.;
- Second-degree or third-degree burns on 25 percent or more of the total body surface or third-degree burns on 5 percent or more of the face and hands;
- Total or industrial blindness; or
- Any other injury that would otherwise qualify under ch. 960, F.S., and that is of a nature and severity that would qualify an employee to receive disability income benefits under Title II or supplemental security income benefits under Title XVI of the federal Social Security Act as the Social Security Act existed on July 1, 1992, without regard to any time limitations provided under that act.³⁰

Awards to Elderly Persons or Disabled Adults

As noted above, s. 960.13, F.S., establishes criteria and limits for victim compensation awards. Section 960.195, F.S., creates separate criteria and limits for awards to elderly persons and disabled adults who suffer a property loss that causes a substantial diminution in their quality of life. Under this section, the Department is authorized to award a maximum of \$500 to such elderly persons or disabled adults 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 of the criminal or delinquent act;
- 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.³¹

Effect of the Bill

The bill specifies that the Department is authorized to award a maximum of \$500 *on any one claim, and a lifetime maximum of \$1,000 on all claims* relating to elderly persons and disabled adults who suffer a property loss that causes a substantial diminution in their quality of life.

The bill requires the criminal or delinquent act be reported to law enforcement authorities within 72 hours, *unless the Department, for good cause shown, finds the delay to have been justified*, and

The bill also removes the requirement that the victim cooperate with law enforcement authorities in the investigation of the criminal or delinquent act. However, the bill authorizes the Department to reduce an award upon finding that any claimant or award recipient has not duly cooperated with the state attorney, all law enforcement agencies, and the Department.

Relocation Assistance

Prior to 2014, s. 960.199, F.S., provided relocation assistance to victims of sexual battery. In 2014, legislation was passed that expanded the statute to include victims of human trafficking.³² Under the relocation assistance program, a victim of sexual battery³³ or human trafficking³⁴ who needs relocation assistance and meets the statutory criteria may receive a one-time payment not exceeding \$1,500 on any one claim (a lifetime maximum of \$3,000).³⁵

In order for a relocation assistance award to be granted to a sexual battery or human trafficking victim:

- There must be proof that a sexual battery offense or human trafficking offense, as described in s. 787.06(3)(b), (d), (f), or (g), was committed.

³⁰ s. 960.03(1), F.S.

³¹ s. 960.195, F.S.

³² Chapter 2014-160, Laws of Florida.

³³ As defined in s. 794.011, F.S.

³⁴ As described in s. 787.06(3)(b), (d), (f), or (g), F.S.

³⁵ s. 960.199(1), F.S.

- The offense must be reported to the proper authorities.
- The victim's need for assistance must be certified by a certified rape crisis center in this state or by the state attorney or statewide prosecutor having jurisdiction over the offense. A victim of human trafficking's need for assistance may also be certified by a certified domestic violence center in this state.
- The center's certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan. If the victim seeking relocation assistance is a victim of a human trafficking offense, the certified rape crisis or certified domestic violence center's certification must include, if applicable, approval of the state attorney or statewide prosecutor attesting that the victim is cooperating with law enforcement officials.
- The act of sexual battery or human trafficking must be committed in the victim's place of residence or in a location that would lead the victim to reasonably fear for his or her continued safety in the place of residence.³⁶

Relocation payments for a sexual battery or human trafficking claim must be denied if the Department has previously approved or paid out a domestic violence relocation claim under s. 960.198, F.S., to the same victim regarding the same incident.³⁷

Effect of the Bill

The bill creates a separate statute (s. 960.196, F.S.) that addresses relocation assistance for victims of human trafficking. The eligibility criteria (described above) largely remain the same, but there are some differences. For example, the new section requires:

- Victims of human trafficking to need urgent assistance to escape from an unsafe environment directly related to the human trafficking offense.
- The offense to be reported to the proper authorities and the claim filed within 1 year (or 2 years with good cause) after the date of the last human trafficking offense. In a case that exceeds the 2-year requirement due to an active and ongoing investigation, a state attorney, statewide prosecutor, or federal prosecutor may certify in writing 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.

The bill also makes conforming changes to ss. 960.198 and 960.199, F.S., relating to relocation assistance for victims of domestic violence and sexual battery.

B. SECTION DIRECTORY:

Section 1. Amends s. 16.56, F.S., relating to Office of Statewide prosecution.

Section 2. Creates s. 16.62, F.S., relating to authority of the Department of Legal Affairs to expend funds on promotional materials and good will.

Section 3. Amends s. 409.9203, F.S., relating to rewards for reporting Medicaid fraud.

Section 4. Amends s. 501.203, F.S., relating to definitions.

Section 5. Amends s. 501.204, F.S., relating to unlawful acts and practices.

Section 6. Amends s. 960.03, F.S., relating to definitions; ss. 960.01-960.28.

Section 7. Amends s. 960.13, F.S., relating to awards.

Section 8. Amends s. 960.195, F.S., relating to awards to elderly persons or disabled adults for property loss.

³⁶ s. 960.199(2), F.S.

³⁷ s. 960.199(3), F.S.

Section 9. Creates s. 960.196, F.S., relating to relocation assistance for victims of human trafficking.

Section 10. Amends s. 960.198, F.S., relating to relocation assistance for victims of domestic violence.

Section 11. Amends s. 960.199, F.S., relating to relocation assistance for victim of sexual battery or human trafficking.

Section 12. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

If an FFCA action was based on a claim of funds from the state Medicaid program, 10% of the proceeds that remain after the plaintiff and the state entity have been issued their awards must be deposited into the Operating Trust Fund. Currently 100% of these funds are used to fund rewards for persons who report Medicaid fraud pursuant to s. 409.9203, F.S.

The bill requires the 10% of funds that are deposited into the Operating Trust Fund pursuant to the Florida False Claims Act to be allocated as follows:

- 50% to fund rewards for reporting Medicaid Fraud; and
- 50% to fund Medicaid Fraud Unit investigations of potential violations of the FFCA and any related civil actions.

This increases the funding available to the Department's Medicaid Fraud Unit.

2. Expenditures:

The bill expands the definitions of "crime" and "elderly person or disabled adult" for purposes of victim assistance awards. The bill also prohibits the Department from reducing awards for catastrophic injury. This may have a negative fiscal impact on the Department.

The bill also requires victims of human trafficking to meet additional requirements before being eligible for relocation assistance, and limits victim assistance awards for elderly persons and disabled adults who suffer a property loss that causes a substantial diminution in their quality of life to a lifetime maximum of \$1,000. These provisions may have a positive fiscal impact on the Department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 409.9203, F.S., specifies that a person who furnishes original information relating to Medicaid fraud and reports a violation of the state's Medicaid fraud laws is eligible for a reward, *subject to the availability of funds*. Because the bill decreases funding available to those who report Medicaid fraud, fewer people may receive such awards.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES