

Council Substitute for House Bill No. 989

An act relating to crime victims; amending s. 960.001, F.S.; providing that alleged victims of sexual offenses shall not be required to submit to a polygraph or other truth-telling examination as a condition of proceeding with the investigation of such an offense; providing that refusal of the alleged victim to submit to such examination does not preclude investigation, charging, or prosecution of the alleged offense; providing for the presence of victim advocates during forensic medical examinations; amending s. 960.003, F.S.; requiring that HIV testing of certain defendants be ordered within a specified period; amending s. 960.03, F.S.; revising the definition of “crime” for specified purposes; amending s. 960.28, F.S.; revising provisions relating to payment of initial forensic examinations of alleged victims of certain sexual offenses; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (t) and (u) are added to subsection (1) of section 960.001, Florida Statutes, to read:

960.001 Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.—

(1) The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Parole Commission, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff’s department, police department, or other law enforcement agency as defined in s. 943.10(4) shall develop and implement guidelines for the use of their respective agencies, which guidelines are consistent with the purposes of this act and s. 16(b), Art. I of the State Constitution and are designed to implement the provisions of s. 16(b), Art. I of the State Constitution and to achieve the following objectives:

(t) Use of a polygraph examination or other truth-telling device with victim.—No law enforcement officer, prosecuting attorney, or other government official shall ask or require an adult, youth, or child victim of an alleged sexual battery as defined in chapter 794 or other sexual offense to submit to a polygraph examination or other truth-telling device as a condition of proceeding with the investigation of such an offense. The refusal of a victim to submit to such an examination shall not prevent the investigation, charging, or prosecution of the offense.

(u) Presence of victim advocates during forensic medical examination.—At the request of the victim or the victim’s parent, guardian, or lawful representative, a victim advocate from a certified rape crisis center shall be permitted to attend any forensic medical examination.

Section 2. Subsection (2) of section 960.003, Florida Statutes, is amended to read:

960.003 ~~HIV Human immunodeficiency virus~~ testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.—

(2) TESTING OF PERSON CHARGED WITH OR ALLEGED BY PETITION FOR DELINQUENCY TO HAVE COMMITTED CERTAIN OFFENSES.—

(a) In any case in which a person has been charged by information or indictment with or alleged by petition for delinquency to have committed any offense enumerated in s. 775.0877(1)(a)-(n), which involves the transmission of body fluids from one person to another, upon request of the victim or the victim's legal guardian, or of the parent or legal guardian of the victim if the victim is a minor, the court shall order such person to undergo HIV testing within 48 hours of the court order.

(b) However, when a victim of any sexual offense enumerated in s. 775.0877(1)(a)-(n) is under the age of 18 at the time the offense was committed or when a victim of any sexual offense enumerated in s. 775.0877(1)(a)-(n) or s. 825.1025 is a disabled adult or elderly person as defined in s. 825.1025 regardless of whether the offense involves the transmission of bodily fluids from one person to another, then upon the request of the victim or the victim's legal guardian, or of the parent or legal guardian, the court shall order such person to undergo HIV testing within 48 hours of the court order. The testing shall be performed under the direction of the Department of Health in accordance with s. 381.004. The results of an HIV test performed on a defendant or juvenile offender pursuant to this subsection shall not be admissible in any criminal or juvenile proceeding arising out of the alleged offense.

Section 3. Subsection (3) of section 960.03, Florida Statutes, is amended to read:

960.03 Definitions; ss. 960.01-960.28.—As used in ss. 960.01-960.28, unless the context otherwise requires, the term:

(3) "Crime" means:

(a) A felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death. The term also includes any such criminal act which is committed within this state but which falls exclusively within federal jurisdiction.

(b) A violation of s. 316.193, s. 316.027(1), s. 327.35(1), s. 782.071(1)(b), or s. 860.13(1)(a) which results in physical injury or death; however, no other act involving the operation of a motor vehicle, boat, or aircraft which results in injury or death shall constitute a crime for the purpose of this chapter unless the injury or death was intentionally inflicted through the use of such vehicle, boat, or aircraft or unless such vehicle, boat, or aircraft is an implement of a crime to which this act applies.

(c) A criminal act committed outside of this state against a resident of this state which would have been compensable if it had occurred in this state

and which occurred in a jurisdiction state that does not have an eligible crime victim compensation program as the term is defined in the federal Victims of Crime Act of 1984.

~~(d) An act of mass violence or an act of international terrorism, as defined in 18 U.S.C. s. 2331, which is committed outside of the territorial boundaries of the United States upon a resident of this state, when such act results in physical injury or death and the person is not eligible for compensation under Title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.~~

Section 4. Subsection (2) of section 960.28, Florida Statutes, is amended to read:

960.28 Payment for victims' initial forensic physical examinations.—

(2) The Crime Victims' Services Office of the department shall pay for medical expenses connected with an initial forensic physical examination of a victim of sexual battery as defined in ~~who reports a violation of chapter 794 or a lewd or lascivious offense as defined in chapter 800 to a law enforcement officer.~~ Such payment shall be made 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. The payment shall be made only out of moneys allocated to the Crime Victims' Services Office for the purposes of this section, and the payment may not exceed \$500 ~~\$250~~ with respect to any violation. ~~Payment may not be made for an initial forensic physical examination unless the law enforcement officer certifies in writing that the initial forensic physical examination is needed to aid in the investigation of an alleged sexual offense and that the claimant is the alleged victim of the offense.~~ The department shall develop and maintain separate protocols for the initial forensic physical examination of adults and children. Payment under this section is limited to medical expenses connected with the initial forensic physical examination, and payment may be made to a medical provider using an examiner qualified under part I of chapter 464, excluding s. 464.003(5); chapter 458; or chapter 459. Payment made to the medical provider by the department shall be considered by the provider as payment in full for the initial forensic physical examination associated with the collection of evidence. The victim may not be required to pay, directly or indirectly, the cost of an initial forensic physical examination performed in accordance with this section.

Section 5. This act shall take effect July 1, 2007.

Approved by the Governor June 13, 2007.

Filed in Office Secretary of State June 13, 2007.