

## Department of offender rehabilitation, liability

**Number:** AGO 78-35

**Date:** January 22, 1998

**Subject:**  
Department of offender rehabilitation, liability

### DEPARTMENT OF OFFENDER REHABILITATION--CONTINUED APPLICABILITY OF STATE INSTITUTIONS CLAIMS FUND TO DEPARTMENT

To: Louie L. Wainwright, Secretary, Department of Offender Rehabilitation,  
Tallahassee

Prepared by: William C. Sherrill, Jr., Chief Trial Counsel

#### QUESTION:

Does Ch. 77-120, Laws of Florida, change the conclusion of AGO 077-12 regarding the applicability of s. 402.181, F. S., to the Department of Offender Rehabilitation?

#### SUMMARY:

Section 402.181, F. S., continues to be applicable to the Department of Offender Rehabilitation created by Ch. 75-49, Laws of Florida, and claims against the Department of Offender Rehabilitation arising from property damages and direct medical expenses for injuries caused by escapees or inmates committed to the custody of the Department of Offender Rehabilitation may be processed and paid.

In AGO 077-12, I concluded that s. 402.181, F. S., was not applicable to the Department of Offender Rehabilitation because Ch. 75-49, Laws of Florida, which created the Department of Offender Rehabilitation, made no reference to s. 402.181, F. S. I further noted in AGO 077-12 that:

"Furthermore, while s. 6 of Ch. 75-49 provides that the Division of Statutory Revision and Indexing of the Joint Legislative Management Committee shall prepare reviser's bills to clarify the Florida Statutes so as to reflect the changes made by Ch. 75-49, the Legislature has not yet amended s. 402.181 to include institutions under the Department of Offender Rehabilitation, and in its discretion may or may not do so in the future. Accordingly, there is no basis on which to conclude that s. 402.181 was made applicable to the Department of Offender Rehabilitation by Ch. 75-49."

Subsequent to the writing of AGO 077-12, the 1977 Legislature met and enacted a reviser's bill, Ch. 77-120, Laws of Florida, which provided in s. 9 the following amendment to s. 402.181(1), F. S.:

"402.181 State Institutions Claims Fund.--

(1) There is created a State Institutions Claims Fund, available for the purpose of making restitution for property damages and direct medical expenses for injuries caused by escapees or inmates of state institutions under the Department of Health and Rehabilitative Services or the Department of Offender Rehabilitation. There shall be a separate fund in the State Treasury which shall be the depository of all funds used for this purpose by all institutions under the supervision and control of the Department of Health and Rehabilitative Services and the Department of Offender Rehabilitation."

With the enactment of the reviser's bill, Ch. 77-120, Laws of Florida, it is now clear that the Legislature's intent was that the newly created Department of Offender Rehabilitation continue to be covered under the provisions of s. 402.181, F. S., with respect to payment of claims for damages caused by escaping inmates. It is noted that s. 2 of Ch. 75-49, Laws of Florida, which created the Department of Offender Rehabilitation, transferred all powers, duties, and functions of the Division of Corrections of the Department of Health and Rehabilitative Services by type four transfer to the Department of Offender Rehabilitation. While it was not entirely clear when AGO 077-12 was issued that the Legislature intended that such type four transfer also have the effect of continuing the coverage of payment for damages caused by inmates committed to the custody of the new Department of Offender Rehabilitation, it is now apparent that the amendment of s. 402.181 by reviser's Bill, Ch. 77-120, was intended by the Legislature to confirm that the newly created Department of Offender Rehabilitation has been covered by the provisions of s. 402.181 since its creation by Ch. 75-49.

It is therefore my opinion that s. 402.181, F. S., continued to be applicable to the Department of Offender Rehabilitation created by Ch. 75-49, Laws of Florida, and claims against the Department of Offender Rehabilitation arising from property damages and direct medical expenses for injuries caused by escapees or inmates committed to the custody of the Department of Offender Rehabilitation may be processed and paid.