

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Perry, Chair
Senator Brandes, Vice Chair

MEETING DATE: Monday, January 7, 2019
TIME: 2:30—4:00 p.m.
PLACE: *Mallory Horne Committee Room, 37 Senate Building*

MEMBERS: Senator Perry, Chair; Senator Brandes, Vice Chair; Senators Bracy, Flores, and Pizzo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Workshop on Amendment 6, "Rights of Crime Victims" with representatives from the: Florida Department of Corrections Florida Police Chiefs Association Florida Prosecuting Attorneys Association Florida Public Defender Association Florida Sheriffs Association Marsey's Law for Florida State Courts System	Discussed	
Other Related Meeting Documents			

NO. 6
CONSTITUTIONAL REVISION
ARTICLE I, SECTION 16
ARTICLE V, SECTIONS 8 AND 21
ARTICLE XII, NEW SECTION

BALLOT TITLE:

Rights of Crime Victims; Judges

BALLOT SUMMARY:

Creates constitutional rights for victims of crime; requires courts to facilitate victims' rights; authorizes victims to enforce their rights throughout criminal and juvenile justice processes. Requires judges and hearing officers to independently interpret statutes and rules rather than deferring to government agency's interpretation. Raises mandatory retirement age of state justices and judges from seventy to seventy-five years; deletes authorization to complete judicial term if one-half of term has been served by retirement age.

FULL TEXT:

ARTICLE I
DECLARATION OF RIGHTS

SECTION 16. Rights of accused and of victims.—

(a) In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties the trial will take place. Venue for prosecution of crimes committed beyond the

boundaries of the state shall be fixed by law.

(b) To preserve and protect the right of crime victims to achieve justice, ensure a meaningful role throughout the criminal and juvenile justice systems for crime victims, and ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents, every victim is entitled to the following rights, beginning at the time of his or her victimization:

- (1) The right to due process and to be treated with fairness and respect for the victim's dignity.
- (2) The right to be free from intimidation, harassment, and abuse.
- (3) The right, within the judicial process, to be reasonably protected from the accused and any person acting on behalf of the accused. However, nothing contained herein is intended to create a special relationship between the crime victim and any law enforcement agency or office absent a special relationship or duty as defined by Florida law.
- (4) The right to have the safety and welfare of the victim and the victim's family considered when setting bail, including setting pretrial release conditions that protect the safety and welfare of the victim and the victim's family.
- (5) The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim.
- (6) A victim shall have the following specific rights upon request:
 - a. The right to reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary. A victim shall also be provided reasonable, accurate, and timely notice of any release or escape of the defendant or delinquent, and any proceeding during which a right of the victim is implicated.

b. The right to be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.

c. The right to confer with the prosecuting attorney concerning any plea agreements, participation in pretrial diversion programs, release, restitution, sentencing, or any other disposition of the case.

d. The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any presentence investigation or compiling any presentence investigation report, and to have any such information considered in any sentencing recommendations submitted to the court.

e. The right to receive a copy of any presentence report, and any other report or record relevant to the exercise of a victim's right, except for such portions made confidential or exempt by law.

f. The right to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.

g. The right to be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole or early release authority shall extend the right to be heard to any person harmed by the offender.

h. The right to be informed of clemency and expungement procedures, to provide information to the governor, the court, any clemency board, and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made; and to be notified of such decision in advance of any release of the offender.

(7) The rights of the victim, as provided in subparagraph (6)a., subparagraph (6)b., or subparagraph (6)c., that apply to any first appearance proceeding are satisfied by a reasonable attempt by the appropriate agency to notify the victim and convey the victim's views to the court.

(8) The right to the prompt return of the victim's property when no longer needed as evidence in the case.

(9) The right to full and timely restitution in every case and from each convicted offender for all losses suffered, both directly and indirectly, by the victim as a result of the criminal conduct.

(10) The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related postjudgment proceedings.

a. The state attorney may file a good faith demand for a speedy trial and the trial court shall hold a calendar call, with notice, within fifteen days of the filing demand, to schedule a trial to commence on a date at least five days but no more than sixty days after the date of the calendar call unless the trial judge enters an order with specific findings of fact justifying a trial date more than sixty days after the calendar call.

b. All state-level appeals and collateral attacks on any judgment must be complete within two years from the date of appeal in non-capital cases and within five years from the date of appeal in capital cases, unless a court enters an order with specific findings as to why the court was unable to comply with this subparagraph and the circumstances causing the delay. Each year, the chief judge of any district court of appeal or the chief justice of the supreme court shall report on a case-by-case basis to the speaker of the house of representatives and the president of the senate all cases where the court entered an order regarding inability to comply with this subparagraph. The legislature may enact legislation to implement this subparagraph.

(11) The right to be informed of these rights, and to be informed that victims can seek the advice of an attorney with respect to their rights. This information shall be made available to the general public and provided to all crime victims in the form of a

card or by other means intended to effectively advise the victim of their rights under this section.

(c) The victim, the retained attorney of the victim, a lawful representative of the victim, or the office of the state attorney upon request of the victim, may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding the disposition of a victim's right shall be clearly stated on the record.

(d) The granting of the rights enumerated in this section to victims may not be construed to deny or impair any other rights possessed by victims. The provisions of this section apply throughout criminal and juvenile justice processes, are self-executing, and do not require implementing legislation. This section may not be construed to create any cause of action for damages against the state or a political subdivision of the state, or any officer, employee, or agent of the state or its political subdivisions.

(e) As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term "victim" includes the victim's lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim, except upon a showing that the interest of such individual would be in actual or potential conflict with the interests of the victim. The term "victim" does not include the accused. The terms "crime" and "criminal" include delinquent acts and conduct. ~~Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent~~

~~that these rights do not interfere with the constitutional rights of the accused.~~

ARTICLE V JUDICIARY

SECTION 8. Eligibility.—No person shall be eligible for office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. No justice or judge shall serve after attaining the age of ~~seventy-five~~ seventy years except upon temporary assignment ~~or to complete a term, one-half of which has been served.~~ No person is eligible for the office of justice of the supreme court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida. No person is eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, no person is eligible for the office of county court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, a person shall be eligible for election or appointment to the office of county court judge in a county having a population of 40,000 or less if the person is a member in good standing of the bar of Florida.

SECTION 21. Judicial interpretation of statutes and rules.—In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo.

ARTICLE XII SCHEDULE

Eligibility of justices and judges.—The amendment to Section 8 of Article V, which increases the age at which a justice or judge is no longer eligible to serve in judicial office except upon temporary assignment, shall take effect July 1, 2019.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-7-19

Meeting Date

Bill Number (if applicable)

Topic Victim's Rights

Amendment Barcode (if applicable)

Name Bill Cervone

Job Title STATE ATTORNEY - 8 CR

Address 120 W UNIVERSITY AVE
Street

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Gainesville FL 32601
City State Zip

Email cervone@saos.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLA PROSECUTING ATTYS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/7/2019

Meeting Date

Bill Number (if applicable)

Topic Workshop on Amendment 6

Amendment Barcode (if applicable)

Name Jim Pimentel

Job Title General Counsel

Address P.O. Box 727

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Email pimentelj@leoncountyfl.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JEFF BRANDES

24th District

COMMITTEES:

Appropriations Subcommittee on Criminal and Civil Justice, *Chair*
Criminal Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance
Innovation, Industry, and Technology
Rules

JOINT COMMITTEES:

Joint Legislative Auditing Committee, *Alternating Chair*
Joint Legislative Budget Commission

December 18, 2018

Dear Chair Perry,

I am writing to request respectfully that I be excused from the Criminal Justice Committee Meeting on January 7 due to a prior commitment.

If you have any questions regarding this request, please feel free to contact my office, or myself. Thank you for time and consideration of this matter.

Kind Regards,

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Jeff Brandes

REPLY TO:

- 9800 4th Street North, Suite 200, St. Petersburg, Florida 33702 (727) 563-2100
- 416 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 1/7/2019 2:32:54 PM

Ends: 1/7/2019 3:43:17 PM Length: 01:10:24

2:33:03 PM Meeting called to order
2:33:06 PM Roll call
2:33:54 PM Tab 1- Workshop on Amendment 6 - Rights of Crime Victims
2:34:10 PM Chair Perry explains the workshop
2:35:58 PM Speaker Paul Hawkes, Lobbyist for Marsy's Law for Florida
2:41:10 PM Senator Bracy asks a question regarding the amendment
2:41:43 PM Speaker Dorothy Burnsed, Deputy General Counsel, Florida Department of Corrections
2:45:59 PM Senator Bracy asks a question to the speaker regarding the notification process
2:46:31 PM Speaker David Marsey, General Counsel, Florida Police Chiefs Association
2:50:42 PM Speaker Bill Cervone, State Attorney, Eighth Judicial Circuit, Florida Prosecuting Attorney's Assoc.
2:57:39 PM Senator Bracy with a question about an attorney conferring with victims
2:58:07 PM Speaker Bill Cervone answers
2:58:31 PM Speaker Stacy Scott, Public Defender, Eighth Judicial Circuit, Florida Public Defender Assoc.
3:09:58 PM Senator Pizzo with a question regarding the automatic system process
3:18:04 PM Speaker Jim Pimentel, General Counsel, Leon County Sheriff's Office
3:20:29 PM Speaker Judge Clay Roberts, First District Court of Appeal, State Courts System
3:24:15 PM Speaker Judge Mark Mahon, Chief Judge Fourth Judicial Court , State Courts System
3:30:47 PM Senator Pizzo with a question regarding a specific instance applying to interpretation
3:31:44 PM Speaker Paul Hawkes
3:32:45 PM Speaker Bill Cervone regarding the difficulty of implementing notifications
3:34:57 PM Speaker Stacy Scott on the right to take depositions and other suggestions
3:37:17 PM Speaker Paul Hawkes regarding the right to a speedy trial
3:38:57 PM Senator Pizzo with questions regarding speedy trial
3:39:42 PM Speaker Paul Hawkes to answer his question
3:42:27 PM Senator Flores regarding a comparison of how this amendment effected other states
3:42:44 PM Senator Perry thanks the panel for the input
3:43:06 PM Senator Bracy moves we adjourn
3:43:10 PM Meeting adjourned