

STORAGE NAME: h0011a.cp
DATE: February 13, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 11
RELATING TO: Victim Assistance
SPONSOR(S): Representative Saunders
STATUTE(S) AFFECTED: Section 960.001, F.S.
COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

“Standing” is a legal term used to describe the requirement that a person have a sufficient interest in the outcome of a controversy to make a claim in court. Certain provisions of Florida Statutes expressly confer standing by allowing a victim to file an action and become a party. The victims’ rights amendment in the Florida Constitution does not expressly confer standing to either the victim or the state attorney. No provisions of Florida Statutes expressly provide that state attorneys have standing to assert the rights of the victim. However, state attorneys routinely assert the constitutional rights of victims in criminal trial proceedings.

When crime victims’ rights are at stake, the victim has standing to assert those rights because the right itself creates a sufficient interest. Nonetheless, a judge could erroneously deny victims the opportunity to assert a right, reasoning that neither the constitution nor the statutes expressly provide for standing.

This bill expressly grants standing to a crime victim and to the state attorney, with the consent of the victim, to assert the victim’s constitutional and legal rights.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

1. Victims' Constitutional and Statutory Rights:

The Florida Constitution grants crime victims "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." s. 16(b), art. I, Fla. Const. Chapter 960, F.S., entitled "Victim Assistance", contains numerous provisions relating to victims' rights and procedures. For example, section 960.21, establishes the Crimes Compensation Trust Fund. Section 960.292, provides that the crime victim may petition the court to enter a civil restitution lien against the offender. Section 960.001, the section amended by this bill, provides "guidelines for fair treatment of victims and witnesses" during criminal proceedings.

In addition to Chapter 960, there are various other provisions in Florida Statutes which grant victims' rights or establish privileges. Some examples follow. Section 921.231, provides that a presentence investigation report must include a statement describing the victim's loss or injury. Section 90.5036, provides that a victim's communications to a "domestic violence advocate" are confidential if they relate to an incident of domestic violence. Section 775.089, provides that in sentencing an offender, in addition to any other punishment, the court shall order restitution to the victim.

2. Victim and State Attorney Standing to Assert Rights:

"Standing" is a legal term used to describe the requirement that a person have a sufficient interest in the outcome of a controversy to make a claim in court. If the person is deemed to have the sufficient interest, he or she is said to have standing to litigate a claim. The term standing is used in a few distinct ways. Standing describes whether a person has a sufficient interest in the case to *become a party* to an action. See Macnamara v. Kissimmee River Valley Sportsmans' Ass'n, 648 So.2d 155 (Fla. 2nd DCA 1994). Also, standing describes whether a person, who is a party, has the sufficient interest in the legal claim of another person, *not a party*, to raise that other person's claim. See Cook v. Proctor & Gamble Cellulose Co., 648 So.2d 180, (Fla. 1st DCA 1994).

The victims' rights amendment in the Florida Constitution does not expressly confer standing to either the victim or the state attorney. There are no reported Florida appellate court cases on this point.

Certain provisions of Florida Statutes expressly confer standing by allowing a victim to file an action and become a party. For example, section 741.30, expressly provides standing to the victim of a domestic violence to seek a protective injunction. No provisions of Florida Statutes expressly provide that state attorneys have standing to assert the rights of the victim. However, state attorneys routinely assert the constitutional rights of victims in criminal trial proceedings and on other issues like restitution, (section 775.089). For example, in one reported trial court case, the judge granted the state attorney standing to assert the "privacy rights" of the families of murdered victims. State v. Rolling, 22 Media L. Rep. 2264 (Fla. Cir. Ct. 1994).

B. EFFECT OF PROPOSED CHANGES:

This bill grants standing to a crime victim and to the state attorney, with the consent of the victim, to assert the victim's constitutional and legal rights.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. Crime victims would have an express provision in Florida Statutes conferring on them standing to assert their own rights. In addition, crime victims would have the option of requesting that a state attorney assert standing on their behalf.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

- (5) Are families penalized for not participating in a program?

Not applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

1. Section 1.

Amends section 960.001, by expressly stating that the victim of a crime and the state attorney, with the consent of the victim, have standing to assert the rights of a crime victim which are provided by law or s. 16 (b). Art. I of the State Constitution.

2. Section 2.

Provides that the act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not impose a mandate on local government and thus the mandates provision is inapplicable.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue raising authority of local governments.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

Where a person has a sufficient interest, he or she is able to show standing to assert any rights in a case. Crime victims have constitutional and statutory rights. When these rights are at stake in a given case, the victim has standing to assert those rights because the right itself creates a sufficient interest. Nonetheless, a judge could erroneously deny victims the

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opportunity to assert a right, reasoning that neither the constitution nor the statutes expressly provide for standing.

This bill grants state attorneys standing to assert the rights of crime victims. State attorneys routinely assert these rights in various criminal proceedings, e.g., restitution hearings. This bill could be read to permit state attorneys to assert victims rights in all other proceedings.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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