

STORAGE NAME: h1209.cpcs.doc

DATE: February 18, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 1209

RELATING TO: Crime Victims' Rights

SPONSOR(S): Representatives Gardiner and Needelman

TIED BILL(S): none

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

- (1) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
- (2) CRIME PREVENTION, CORRECTIONS & SAFETY
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Crime victims have a number of rights in Florida, provided both by statute and in the state constitution. This bill requires a court conducting arraignment, sentencing or a case management hearing to announce a specific advisement that informs crime victims of their constitutional and statutory rights. The text of the oral advisement is provided for in the bill.

There are constitutional and other concerns regarding this bill. See Section V. Comments herein.

This bill does not appear to have a fiscal impact.

Note: On February 12, 2002, the Committee on Judicial Oversight adopted one amendment that is traveling with the bill. The amendment specifies that failure to announce the bill's specified advisement does not invalidate a conviction, sentence or hearing.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill requires courts to make a new announcement prior to many criminal proceedings.

B. PRESENT SITUATION:

In general, Article I., Section 16(b), Florida Constitution, provides for the rights of crime victims. It provides:

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

Additionally, crime victims have a number of statutory rights. These include rights to:

- receive advance notification of judicial proceedings, when possible;¹
- receive prompt notice of scheduling changes with respect to any required appearance by the victim;²
- seek crimes compensation from the state,³ and/or restitution from the defendant;⁴
- consult with the state attorney regarding disposition of felony cases "involving physical or emotional injury or trauma";⁵
- give relevant oral or written victim-impact testimony at sentencing;⁶ and
- "such other assistance, such as transportation, parking, separate pretrial waiting areas, and translator services in attending court, as is practicable."⁷

Finally, a crime victim shall be provided with "a victim's rights information card or brochure containing essential information concerning the rights of a victim and services available to a victim as required by state law."⁸ The statute does not specify who is to provide the victim with such a card or brochure.

¹ See s. 960.001(1)(e), F.S.

² See s. 960.001(1)(d), F.S.

³ See ss. 960.01-960.28, F.S.

⁴ See s. 775.089, F.S.

⁵ Section 960.001(1)(g), F.S.

⁶ See s. 921.143(1), F.S.

⁷ Section 960.001(1)(n), F.S.

⁸ Section 960.001(1)(o), F.S.

C. EFFECT OF PROPOSED CHANGES:

This bill contains legislative findings that crime victims must be advised of their rights under Article I., Section 16, Florida Constitution, in order to effectively understand and exercise those rights. This bill further finds that victims must be advised of those rights in order to promote law enforcement that considers the rights of victims.

This bill requires a court conducting arraignment, sentencing or case management to announce a specific advisement to crime victims of their rights. This oral advisement also informs victims that they may obtain further information about their rights from the state attorney's office or the Clerk of Court. The advisement reads:

If you are the victim of a crime with a case pending before this court, you are advised that you have the right:

- (1) To be informed.
- (2) To be present.
- (3) 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.
- (4) To receive advance notification, when possible, of judicial proceedings and notification of scheduling changes, pursuant to section 960.001, Florida Statutes.
- (5) To seek crimes compensation and restitution.
- (6) To consult with the state attorney's office in certain felony cases regarding the disposition of the case.
- (7) To make an oral or written victim-impact statement at the time of sentencing of a defendant.

For further information regarding additional rights afforded to victims of crime, you may contact the state attorney's office or obtain a listing of your rights from the Clerk of Court.

The bill does not specifically express when the court must make the oral advisement.

D. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Comments of staff of the Crime Prevention, Corrections & Safety Committee

The staff of the Criminal Justice Appropriations Committee has indicated that HB 1209 will most likely not have any fiscal impact upon the courts or the state.⁹

Comments of staff of the Judicial Oversight Committee

This bill requires courts to expend time making the required advisement. This requirement will increase judicial workload and correspondingly decrease judicial throughput. The fiscal effect is unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues in the aggregate.

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

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Article V., Section 2(a), Florida Constitution, provides that the "Supreme Court shall adopt rules for the practice and procedure in all courts." This bill's imposition of a specific oral advisement to be announced by courts may raise concerns under this provision.

⁹ Pursuant to telephone conversation with the Staff Director of the Criminal Justice Appropriations Committee on February 14, 2002.

The Legislature is responsible for enacting substantive law, while the Supreme Court is responsible for promulgating rules of practice and procedure. The Legislature has the constitutional authority to repeal a rule by a two-thirds vote; it has no authority to enact a law relating to practice and procedure. The question of whether a law is substantive or procedural is one that occurs frequently, but is nevertheless difficult to determine.

In *Benyard v. Wainwright*, 322 So. 2d 473,475 (1975), the Supreme Court stated that substantive law prescribes rights and duties under our system of government, whereas procedural law concerns the means and method to apply and enforce those rights. The First District Court of Appeal, in *Johnson v. State*, 308 So.2d 127 (1st DCA 1975), held that a statute requiring presentence reports to be conducted in certain cases was unconstitutional because it conflicted with a Court rule; therefore, it infringed upon the rulemaking power of the Court. The dispositive issue in determining whether the law was substantive or procedural seemed to be that the Court had already “pre-empted” the Legislature from acting in this area by the Court’s prior adoption of a rule governing presentence reports. *Id.* at 128.

In analyzing whether this bill encroaches upon the Court’s rulemaking authority, the Court may look at whether it has “pre-empted” the Legislature from acting in the area of victims’ rights, as the *Johnson* court did. The Court could find that the Legislature has in fact exercised its substantive law making authority throughout the statutes concerning the rights of crime victims.

However, even if the Court finds that the bill’s required advisement is procedural, it could decide to uphold the statute by deferring, as it sometimes does, to the Legislature’s expertise in implementing the Court’s procedural rules. *Kalway v. Singletary*, 708 So.2d 267 (Fla. 1998).¹⁰

Given this bill’s express legislative findings of public policy served by the oral advisement, it is possible that a Court that treated the advisement requirement as procedural would still defer to the Legislature. It is also possible that such a Court would instead strike down the required advisement as encroaching on the judiciary’s rulemaking power.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

A court’s failure to provide the advisement required by this bill could conceivably be used by a criminal defendant to argue that proceedings in his or her case were invalid.¹¹

The bill does not specifically express when the court must make the advisement. It is unclear whether the advisement must be proclaimed before each case on the docket, or before the beginning of each docket.

The bill does not differentiate between situations in which the victim is in the courtroom and situations in which there is no victim involved in the case, or when there is no victim present in the courtroom.

The bill will be effective upon becoming law. It is possible that such an effective date will not give the court enough time to notify the judges of the oral advisement which must be given, nor gather any appropriate victim’s rights brochures to be distributed.

¹⁰ In this case, the court upheld a 30-day statute of limitations for the filing of an action challenging a prisoner disciplinary proceeding.

¹¹ Comments of the staff of the Committee on Judicial Oversight.

The Association of Court Clerks has expressed concern with the section of the bill that directs crime victims to the Clerk of Courts for a listing of their rights as victims. According to the Association, offices of the Clerk of Court do not have, nor do they provide, such a listing of victim rights.¹²

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 12, 2002, the Committee on Judicial Oversight adopted one amendment, which is traveling with the bill. In addition to the original language of the bill, this strike-all amendment provides that “a failure to comply with this section shall not affect the validity of any hearing, conviction, or sentence.” This change ensures that a criminal defendant will not be able to appeal a conviction or sentence based on an alleged failure to comply with the technical requirements set forth in this bill. The strike-all amendment also eliminates the specific reference to Article I, Section 16, Florida Constitution, and instead refers simply to “crime victims ... effectively understand[ing] and exercis[ing] their rights.” Finally, the strike-all amendment adds stylistic changes.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

David L. Jaroslav, J.D.

Staff Director:

Nathan L. Bond, J.D.

AS REVISED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Melinda Granlund

Staff Director:

Trina Kramer

¹² Pursuant to email correspondence with legislative analyst for Judicial Oversight Committee.