

STORAGE NAME: h1209s1.sgc.doc
DATE: March 5, 2002

**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: CS/HB 1209
RELATING TO: Crime Victims' Rights
SPONSOR(S): Council for Smarter Government and 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 YEAS 9 NAYS 0
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 13 NAYS 0
 - (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, which further provides that failure to announce the advisement does not invalidate a conviction, sentence or hearing.

Finally, this bill instructs circuit court administrators to coordinate efforts to ensure that victims' rights informational brochures are provided to the Clerks of Courts for the benefit of crime victims.

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

This bill appears to have a minimal fiscal impact on state government. This bill does not appear to have a fiscal impact on local governments.

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.

This bill instructs the circuit administrators to coordinate efforts to ensure that Clerks of Courts have victims' rights information brochures available to provide to victims.

Finally, this bill provides that a failure to make the specified oral advisement "shall not affect the validity of any hearing, conviction, or sentence."

D. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill requires courts to expend time making the required advisement. This requirement will increase judicial workload and correspondingly decrease judicial output. The fiscal effect is unknown. However, the staff of the Criminal Justice Appropriations Committee indicates that this bill will most likely not have any fiscal impact upon the courts or the state.⁹

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., s. 2(a), Fla. Const., 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 Telephone conversation with James DeBeaugrine, Staff Director, House Committee on Criminal Justice Appropriations, 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*,¹⁰ 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*,¹¹ held that a statute requiring presentence reports to be conducted in certain cases was unconstitutional because it conflicted with a rule of procedure; therefore, it infringed upon the rulemaking power of the Supreme Court. The dispositive issue in determining whether the law was substantive or procedural seemed to be that the Court had already preempted the Legislature from acting in this area by the Court's prior adoption of a rule governing presentence reports.¹²

In analyzing whether this bill encroaches upon the Supreme Court's rulemaking authority, a court may look at whether the Supreme Court has preempted the Legislature from acting in the area of victims' rights, as the *Johnson* court did. A court could find that the Legislature has, rather, exercised substantive lawmaking authority throughout the statutes concerning victims' rights.

However, even if a court finds that this 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 procedural rules in which it has a policy interest.¹³

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 might 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:

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 this effective date will not provide sufficient time to notify judges of the oral advisement requirement, or within which to distribute victims' rights information to Clerks of Courts.

¹⁰ 322 So.2d 473 (Fla. 1975).

¹¹ 308 So.2d 127 (Fla. 1st DCA 1975).

¹² *See id.* at 128.

¹³ *See, e.g., Kalway v. Singletary*, 708 So.2d 267 (Fla. 1998) (upholding a 30-day statute of limitations for the filing of an action challenging a prisoner disciplinary proceeding as a policy matter in which the Legislature had expertise).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 12, 2002, the Committee on Judicial Oversight adopted one amendment to HB 1209. 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 a 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.

The Committee then reported the bill favorably, as amended.

On February 21, 2002, the Committee on Crime Prevention, Corrections & Safety amended the traveling strike-all amendment. The amendment to the traveling amendment addresses a concern of the Association of Court Clerks that they do not currently create or provide victims' rights information. Under the amendment, this responsibility (of providing informational victims' rights brochures) is to be a coordinated effort between the circuit court administrators, such other agencies as are already authorized to make victims' rights information available, and the Clerks of Courts.

The Committee then reported the bill favorably, as amended.

On February 26, 2002, the Council for Smarter Government reported this bill favorably as a council substitute.

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

AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

David L. Jaroslav, J.D.

Council Director:

Don Rubottom