

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 697 Victims of Crimes
SPONSOR(S): Judiciary Committee, Burton
TIED BILLS: IDEN./SIM. BILLS: SB 1012

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|---------|--|
| 1) Criminal Justice & Public Safety Subcommittee | 16 Y, 0 N | Padgett | Hall |
| 2) Justice Appropriations Subcommittee | 13 Y, 0 N | Saag | Keith |
| 3) Judiciary Committee | 20 Y, 0 N, As CS | Padgett | Kramer |

SUMMARY ANALYSIS

A crime victim has specific rights that are enumerated in both the Florida Constitution and in statute. Among these rights, article I, section 16(b)(11) of the Florida Constitution provides that a crime victim has the right to be informed of his or her constitutional rights as a crime victim, and seek the advice of an attorney to assist in enforcing such rights.

Section 960.001, F.S., provides a list of rights for victims and witnesses in the criminal justice system. In order to inform a victim about his or her rights, s. 960.001(1)(a), F.S., requires the state attorney and public defender in each circuit to gather specified information relating to victim services, victims' rights, and the criminal justice system within their jurisdiction including:

- The availability of crime victim compensation;
- Crisis intervention services, supportive or bereavement counseling, social service support referrals, and community-based victim treatment programs;
- The role of the victim in the criminal or juvenile justice process;
- The stages in the criminal or juvenile justice process which are of significance to the victim;
- The right of a victim to be informed, to be present, and to be heard at all crucial stages of a criminal or juvenile proceeding;
- In the case of incarcerated victims, the right to be informed and to submit written statements at all crucial stages of the criminal proceedings, parole proceedings, or juvenile proceedings; and
- The right of a victim to a prompt and timely disposition of the case.

The information collected must be provided to each law enforcement agency within the circuit. The law enforcement agency must provide such information to a victim at the earliest possible time following the commission of a crime, generally through a victims' rights information card or brochure.

CS/HB 697 amends s. 960.001, F.S., to require a law enforcement agency to inform a victim of the right to employ private counsel. The bill also encourages the Florida Bar to develop a registry of attorneys who are willing to provide legal counsel to victims pro bono.

The bill updates provisions in ss. 960.001 and 985.035, F.S., relating to victims' rights in criminal and juvenile proceedings to align with those rights provided to victims in the Florida Constitution. Specifically, the bill provides that a victim, upon request, has the right to be informed, to be present, and to be heard at all stages of a criminal or juvenile proceeding. The bill also amends provisions of the verbal notice that a court must provide to crime victims in s. 960.0021, F.S., to reflect the amendments to the Florida Constitution and statute.

The Florida Constitution requires a crime victim to be notified of his or her right to retain private counsel and of the right to be informed, to be present, and to be heard at all stages of a criminal proceeding. Since the bill codifies existing constitutional requirements, law enforcement agencies already providing such information should not incur any additional costs in updating victim information materials.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Victims' Rights

Florida Constitution

In 1988, voters approved an amendment to the Florida Constitution granting crime victims the right to be informed, to be present, and to be heard at all crucial stages of criminal proceedings, to the extent such rights do not interfere with the constitutional rights of the accused.¹ The 2017-2018 Constitution Revision Commission (CRC) proposed an amendment to expand the rights of crime victims under the state constitution.² Voters approved the CRC-proposed amendment on November 6, 2018.³

Article I, section 16 of the Florida Constitution provides the following rights to a crime victim:⁴

- The right to due process and to be treated with fairness and respect for the victim's dignity.
- The right to be free from intimidation, harassment, and abuse.
- The right, within the judicial process, to be reasonably protected from the accused and any person acting on behalf of the accused.
- 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.
- 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.
- The right to the prompt return of the victim's property when no longer needed as evidence in the case.
- 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.
- The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related postjudgment proceedings.
- 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.

The following rights are provided to a crime victim at his or her request:

- 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.
- The right to 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.

¹ Florida Division of Elections, *Rights of Victims of Crime*, <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=47> (last visited Feb. 1, 2022).

² The CRC proposal is commonly referred to as "Marsy's Law." 2017-2018 Constitution Revision Commission, *P 6001: Rights of Crime Victims; Judges*, <http://library.law.fsu.edu/Digital-Collections/CRC/CRC-2018/Proposals/Commissioner/2017/6001.html?Tab=BillText> (last visited Feb. 1, 2022).

³ Florida Division of Elections, *Rights of Crime Victims; Judges*, <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=11&seqnum=20> (last visited Feb. 1, 2022).

⁴ "Victim" means 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. Art. I, s. 16(e), Fla. Const.

- 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.
- 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.
- 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.
- 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.
- 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.
- 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 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.⁵

A crime victim is required to be notified of his or her rights provided under the Florida Constitution "in the form of a card or by other means intended to effectively advise the victim of their rights..."⁶

A victim, the victim's attorney, a lawful representative of the victim, or the state attorney may assert and seek enforcement of a victim's rights in any trial or appellate court, or before any other authority with jurisdiction over the case.⁷ A court or other authority with jurisdiction must act promptly on such a request, and afford a remedy for the violation of any right.⁸

Florida Statutes

Section 960.001, F.S., provides a list of rights for victims and witnesses in the criminal justice system. In order to inform a victim about his or her rights, s. 960.001(1)(a), F.S., requires the state attorney and public defender in each circuit to gather specified information relating to victim services, victims' rights, and the criminal justice system within their jurisdiction including:

- The availability of crime victim compensation;
- Crisis intervention services, supportive or bereavement counseling, social service support referrals, and community-based victim treatment programs;
- The role of the victim in the criminal or juvenile justice process, including what the victim may expect from the system as well as what the system expects from the victim;
- The stages in the criminal or juvenile justice process which are of significance to the victim and the manner in which information about such stages can be obtained;
- The right of a victim, who is not incarcerated, including the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, and the next of kin of a homicide victim, to be informed, to be present, and to be heard when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent that this right does not interfere with the constitutional rights of the accused;
- In the case of incarcerated victims, the right to be informed and to submit written statements at all crucial stages of the criminal proceedings, parole proceedings, or juvenile proceedings; and

⁵ Art I, s. 16(b)(6), Fla. Const.

⁶ Art. I, s. 16(b)(11), Fla. Const.

⁷ Art. I, s. 16(c), Fla. Const.

⁸ *Id.*

- The right of a victim to a prompt and timely disposition of the case in order to minimize the period during which the victim must endure the responsibilities and stress involved to the extent that this right does not interfere with the constitutional rights of the accused.

The state attorney and public defender must provide the information collected to each law enforcement agency within the circuit.⁹ The law enforcement agency must provide such information to a victim at the earliest possible time following the commission of a crime through distribution of a victims' rights information card or brochure.¹⁰

Similarly, s. 985.035, F.S., provides for the rights of a victim in a case involving a juvenile offender. In such cases, a victim; a victim's parent, guardian, or lawful representative if the victim is a minor; or the next of kin if the victim is a homicide victim have the right to be informed of, be present during, and to be heard when relevant at, all crucial stages of proceedings that involve a juvenile offender to the extent that such rights do not interfere with the constitutional rights of the juvenile offender.

Court Proceedings

Section 960.0021, F.S., provides legislative findings that, in order to ensure that crime victims can effectively understand and exercise their rights as a victim under article I, section 16 of the Florida Constitution and to promote law enforcement that considers the interests of crime victims, victims must be properly advised of such rights in court proceedings. Courts may fulfill their obligation to advise crime victims by prominently posting victims' rights information on courtroom doors or by announcing the following at any arraignment, sentencing, or case-management proceeding:

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

- To be informed.
- To be present.
- 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.
- To receive advance notification, when possible, of judicial proceedings and notification of scheduling changes, pursuant to s. 960.001, F.S.
- To seek crimes compensation and restitution.
- To consult with the state attorney's office in certain felony cases regarding the disposition of the case.
- 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."¹¹

The Florida Bar

The Florida Bar (Bar) is the organization of all lawyers who are licensed by the Supreme Court of Florida to practice law in the state.¹² The Bar operates a general lawyer referral service, as well as a referral service providing legal advice for low fees in the areas of disability and elder law.¹³ The Bar does not appear to maintain a statewide registry of attorneys that provide pro bono legal services.

Effect of Proposed Changes

CS/HB 697 amends s. 960.001, F.S., to require a law enforcement agency to inform a victim through distribution of an information card or brochure of the right to employ private counsel, mirroring the same right granted to a crime victim under article I, section 16(b)(11) of the Florida Constitution. The bill also

⁹ S. 960.001(1)(a), F.S.

¹⁰ *Id.*

¹¹ S. 960.0021(2), F.S.

¹² The Florida Bar, *Frequently Asked Questions*, <https://www.floridabar.org/about/faq/> (last visited Feb. 1, 2022).

¹³ The Florida Bar, *What We Do*, <https://www.floridabar.org/about/faq/what-we-do/#Findingyoulawyer> (last visited Feb. 1, 2022).

encourages, but does not require, the Florida Bar to develop a registry of attorneys who are willing to provide legal counsel to crime victims pro bono.

The bill updates provisions in ss. 960.001 and 985.035, F.S., relating to victims' rights in criminal and juvenile proceedings to align with those rights provided to victims in the Florida Constitution following the 2018 amendment. Specifically, the bill provides that a victim, upon request, has the right to be informed, to be present, and to be heard at all stages of a criminal or juvenile proceeding. The bill also amends provisions of the verbal notice a court must provide to crime victims in s. 960.0021, F.S., to reflect the amendments to the Florida Constitution and statute.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 960.001, F.S., relating to guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.

Section 2: Amends s. 960.0021, F.S., relating to legislative intent; advisement to victims.

Section 3: Amends s. 985.036, F.S., relating to rights of victims; juvenile proceedings.

Section 4: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Florida Constitution has required a crime victim to be notified of his or her right to retain private counsel and the right to be informed, to be present, and to be heard at all stages of a criminal proceeding since the CRC amendment to article I, section 16 went into effect on January 8, 2019. Since the bill codifies existing constitutional requirements, law enforcement agencies already providing such information should not incur any additional costs in updating victim information materials.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2022, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Updated provisions in ss. 960.001 and 985.035, F.S., relating to victims' rights in criminal and juvenile proceedings to align with those rights provided to victims in the Florida Constitution following the 2018 amendment. Specifically, the amendment provided that a victim, upon request, has the right to be informed, to be present, and to be heard at all stages of a criminal or juvenile proceeding.
- Revised provisions of the verbal notice a court must provide to crime victims in s. 960.0021, F.S., to reflect the amendments to the Florida Constitution and statute.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.