

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 233 Next of Kin of Deceased Minors

SPONSOR(S): Constitutional Rights, Rule of Law & Government Operations Subcommittee, Regulatory Reform & Economic Development Subcommittee, Michael and others

TIED BILLS: HB 789 **IDEN./SIM. BILLS:** SB 490

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N, As CS	Mortellaro	Anstead
2) Constitutional Rights, Rule of Law & Government Operations Subcommittee	11 Y, 0 N, As CS	Wagoner	Miller
3) Commerce Committee			

SUMMARY ANALYSIS

Currently, Florida law provides a list of rights for victims and witnesses of crimes. There are several enumerated rights for families of certain victims of crime, but no specific mandate that law enforcement agencies provide certain investigative and contact information to the next of kin of deceased minors who were the victim of a homicide.

The PCS defines “next of kin” and requires that, during the criminal investigation of the death of a minor, the law enforcement agency that initiates or bears the primary responsibility for the investigation must provide the minor's next of kin with all of the following information:

- The contact information for the primary investigator and each law enforcement agency for the investigation.
- The case number for the investigation, if applicable.
- A list of the minor's personal effects and information on how the minor's next of kin can collect such personal effects, unless providing the information would jeopardize or otherwise interfere with an active investigation.
- Information regarding the status of the investigation, at the discretion of the law enforcement agency.

The PCS prohibits the law enforcement agency from providing any of the above information if doing so would jeopardize or otherwise interfere with an active investigation. The law enforcement agency is not required to provide investigative records generated during its investigation to a minor's next of kin for inspection.

The bill does not appear to have a significant fiscal impact on local or state governments.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Investigation Materials

Under the Florida Constitution, victims of crime and their families are guaranteed certain rights and protections.¹ Florida law provides a list of rights for victims and witnesses in the criminal justice system.² The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Florida Commission on Offender Review, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff's department, police department, or other law enforcement agency are required to develop and implement guidelines for the use of their respective agencies to achieve the statutory objectives.

Related to rights of a victim's parent, guardian, or next of kin:

- Law enforcement officers must distribute victim's rights cards or brochures informing on the right of 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.³
- In the case of a homicide, sexual offense, attempted murder or sexual offense, stalking, or domestic violence, law enforcement officers or personnel of an organization that provides assistance to the appropriate next of kin of the victim must request that the next of kin of the victim complete a victim notification card, which provides a way of notification if a defendant is released from custody.⁴
- The chief administrator of a county jail, municipal jail, juvenile detention facility, or residential commitment facility must make a reasonable attempt to notify the appropriate next of kin or designated contact of a victim homicide, sexual offense, attempted murder or sexual offense, stalking, or domestic violence before the defendant's or offender's release from custody, if the victim notification card has been provided.⁵
- The appropriate agency must provide notification of certain judicial and post judicial proceedings to the parent or guardian of a minor victim and a relative of a homicide victim.
 - A victim's parent or guardian if the victim is a minor, or a victim's next of kin may not be excluded from any portion of any proceeding, unless the court determines such person's presence to be prejudicial.⁶
- The state attorney must consult the guardian or family of a victim of a felony involving physical or emotional injury, trauma, or homicide, in order to obtain the views of the victim or family about the disposition of any criminal or juvenile case brought as a result of such crime.⁷
- Upon request, the state attorney must allow the victim's parent or guardian if the victim is a minor, or the victim's next of kin in the case of a homicide to review a copy of the presentence investigation report before the sentencing hearing if one was completed.
 - Any confidential information that pertains to medical history, mental health, or substance abuse and any information that pertains to any other victim must be redacted from the copy of the report.

¹ Art. I, s. 16, Fla. Const.

² S. 960.001, F.S.

³ S. 960.001(1)(a)5., F.S.

⁴ S. 960.001(1)(b), F.S.

⁵ S. 960.001(1)(f), F.S.

⁶ S. 960.001(1)(e), F.S.

⁷ S. 960.001(1)(g)1., F.S.

- Any person who reviews the report pursuant to this paragraph must maintain the confidentiality of the report and may not disclose its contents to any person except statements made to the state attorney or the court.⁸
- The Department of Corrections must, upon request, notify the victim’s parent or guardian if the victim is a minor, or the victim’s next of kin if the victim is a homicide victim if an inmate has been approved for community work release.⁹

Curtis’ Law

In 1997, 16-year-old Curtis Williamson was murdered in California.¹⁰ Afterwards, his mother, Patricia Ward, had difficulty obtaining information related to the investigation of his death.¹¹ Since then, his mother moved to Florida and began pushing for greater investigation information access for parents of deceased minors.¹² An organization, Curtis’s & Co for Children Gone to Soon, Inc., was formed to advocate for law reform nationwide to mandate that certain investigative and contact information be made available to surviving family members in certain circumstances.¹³ The proposed law is called Curtis’ Law.¹⁴

In 2022, California passed SB 1268, a version of Curtis’ Law, which requires the law enforcement agency that bears the primary responsibility for the investigation to provide a deceased minor victim’s parent or guardian¹⁵ with the:¹⁶

- Contact information of the primary law enforcement agency and the primary contact at such agency;
- Case number;
- List of personal effects found with the minor and contact information to recover such effects, unless doing so would interfere with an investigation; and
- Status of the investigation, at the discretion of the law enforcement agency.

Law enforcement is not required to provide any information that would jeopardize or otherwise allow an individual to interfere with the ongoing investigation or any records generated pursuant to their investigation for inspection by a victim’s family. Law enforcement agencies providing information may require any family member receiving the information to confirm their identity through a certified declaration.¹⁷

Neither the Florida Constitution nor the statutory guidelines for fair treatment of victims of crime define “family” or “next of kin.”

Next of Kin

⁸ S. 960.001(1)(g)2., F.S.

⁹ S. 960.001(1)(g)3., F.S.

¹⁰ Cole Heath, Action News Jax, *Proposed Curtis Law would give families of murdered children information about their child’s case*, <https://www.actionnewsjax.com/news/local/proposed-curtis-law-would-give-families-of-murdered-children-information-about-their-childrens-case/502708049/> (last visited March 24, 2023).

¹¹ Justice 4 Curtis, *Our Story*, <https://justice4curtis.org/our-story/> (last visited March 24, 2023).

¹² Action Jax News, *supra* note 39.

¹³ Justice 4 Curtis, *supra* note 40.

¹⁴ Justice 4 Curtis, *Curtis Law*, <https://justice4curtis.org/the-proposed-law/> (last visited March 24, 2023).

¹⁵ Or immediate family if a parent or guardian cannot be located. “Immediate family” means the victim’s spouse, parent, guardian, grandparent, aunt, uncle, brother, sister, and children or grandchildren who are related by blood, marriage, or adoption.

¹⁶ Cal. Penal Code § 679.09

¹⁷ *Id.*

Generally, “next of kin” means the nearest blood relation according to the law of consanguinity.¹⁸ However, Florida statutes provide more specific definitions in different contexts. For example, in proceedings pertaining to the protection or custody of children, “next of kin” is defined an adult relative of a child who is the child’s brother, sister, aunt, uncle, or first cousin.¹⁹ In the same statute, “family” is defined as a collective body of persons consisting of a child and parent, legal custodian, or adult relative who live together or where there is a legal responsibility to care for the child,²⁰ “guardian” is described as a relative, nonrelative, next of kin, or fictive kin who has physical custody of a child,²¹ and “parent” is the woman who gives birth to a child or the legal father or adoptive father.²²

Effect of the PCS

The PCS, cited as Curtis’ Law, amends s. 960.001, F.S., to require that, during the investigation of the death of a minor, the law enforcement agency that initiates or bears the primary responsibility for the investigation must provide the minor’s next of kin with all of the following information:

- The contact information for the primary contact, if known, for the particular investigation, and if more than one law enforcement agency is involved in the investigation, as well as the contact information for each law enforcement agencies involved in the investigation.
- The case number for the investigation, if applicable.
- A list of the minor’s personal effects that were found on or with the minor and information on how the minor’s next of kin can collect such personal effects. A law enforcement agency may withhold the information if providing the information would jeopardize or otherwise interfere with an active investigation.
- Information regarding the status of the investigation, at the discretion of the law enforcement agency.

The law enforcement agency may not provide any of the above information if doing so would jeopardize or otherwise interfere with an active investigation. Further, the law enforcement agency is not required to provide investigative records generated during its investigation to a minor’s next of kin for inspection.

The PCS adds cross-referenced definitions to describe “next of kin” to include “parent,” “guardian,” “family,” and “next of kin” as defined in section 39.01, F.S.

B. SECTION DIRECTORY:

Section 1: Provides the act may be cited as “Curtis’ Law.”

Section 2: Amends s. 960.001, F.S., providing a definition and requiring certain law enforcement agencies to provide certain investigation information.

Section 3: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

¹⁸ Black’s Law Dictionary 1044 (6th Edition 1990).

¹⁹ S. 39.01(51), F.S.

²⁰ S. 39.01(27), F.S.

²¹ S. 39.01(30), F.S. “Fictive Kin” is a person unrelated by birth, marriage, or adoption who has an emotionally significant relationship with to a child. S. 39.01(28), F.S.

²² S. 39.01(56), F.S.

1. Revenues:

None.

2. Expenditures:

Indeterminant. The bill may require more local agencies to comply with information requests by the next of kin of deceased minors.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more employees to attend judicial, funeral, and safety events with employee leave protections.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Law enforcement agencies will need to create guidelines for transmitting certain investigative information to a deceased child's next of kin.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 9, 2023, the Regulatory Reform and Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarified when an employee does not need to give their employer advanced notice of using their leave.
- Removed recourse for a person who is denied leave.
- Expanded the list of investigative information required to be given to parents or guardians of deceased children to include contact information for any secondary law enforcement agencies.
- Made clarifying and conforming changes.

On March 28, 2023 the Constitutional Rights, Rule of Law & Government Operations Subcommittee adopted a PCS and reported the bill favorably as a committee substitute. The PCS removed the requirement for leave for employees who had a family member that became a homicide victim. The PCS clarified the definition of "next of kin." Further, the PCS provided that if there is an investigation into the death of a minor, the law enforcement agency responsible for the investigation is responsible for providing information to the minor's next of kin.

This analysis is drawn to the bill as amended by the Constitutional Rights, Rule of Law & Government Operations Subcommittee.