

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 490

INTRODUCER: Senator Jones

SUBJECT: Family and Household Members of Homicide Victims and Deceased Minors

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Baird	McKay	CM	Pre-meeting
2.			CJ	
3.			AP	

I. Summary:

SB 490 requires certain employers with over 50 employees to grant 3 days of leave in any 12-month period to employees who have been employed for over 3 months if a member of their family or household was a victim of homicide. The leave can be paid or unpaid. Before using this leave all other types of leave must be exhausted, unless the employer waives this requirement.

Appropriate notice must be given to the employer in accordance with the employer's employment policies, including documentation if required. All information given to a private employer is to remain confidential.

An employee who uses this leave is protected. An employer may not discharge, demote, suspend, or retaliate for using the leave.

The bill also 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 certain information relating to contact information for the investigation, case number, list of minor's personal effects found on or with minor and information on how minor's next of kin can obtain such personal effects, and information regarding status of the investigation.

This information is exempt from being provided if doing so would jeopardize or otherwise interfere with an active investigation.

The effective date of the bill is July 1, 2023.

II. Present Situation:

Employment Leave

Most types of employee leave are governed by employers. However, in certain areas, federal and Florida law provides employees with additional protections related to the use of leave. The current law for various types of employee leave is outlined below:

TYPE OF LEAVE	PROTECTIONS	LAWS AT PLAY
Vacation/ Personal	No	Employers are not required to grant vacation leave, paid or unpaid. An employee must comply with the employer’s conditions in employment contract, unless the company fails to apply the same rules to all employees, ¹ and federal law protects against discriminatory application of personal leave. ²
Sick	No	Employers are not required to provide employees with sick leave, paid or unpaid. An employee must comply with terms of the employment contract. ³ There is an exception to this under the Family and Medical Leave Act. ⁴
Holiday (Private & Public)	Private: No	Private employers are not required to provide employees with holiday leave.
	Public: Yes	Public employers must give state holidays off to employees which are paid. In addition, each full-time employee is entitled to one personal holiday each year. ⁵
Jury Duty	Yes	Employers are required to provide employees with unpaid leave for an employee’s jury summons and for serving on a jury. The employees have job protection during their leave. ⁶
Voting	No	Florida employers are not required to grant voting leave.
Bereavement	No	Florida employers are not required to grant bereavement leave.
Family and Medical Leave Act	Yes	Allows leave for birth/care of child, care of immediate family members with a serious health condition, or care of their own serious health condition. Leave is not to exceed 6 months. Protects employee’s job upon returning from leave. It is not required to be paid. If leave is paid, the employee is entitled to all benefits under paid leave status. ⁷
Domestic Violence (Florida)	Yes	An employer who employs 50 or more employees shall permit an employee to request and take up to 3 working days of leave in any 12-month-period if the employee, family, or household member of the

¹ Florida Leave Laws, *Employment Law Handbook*, <https://www.employmentlawhandbook.com/employment-and-labor-laws/states/florida/leave-laws/#:~:text=Vacation%20Leave%20Florida%20has%20no%20laws%20requiring%20employers.employee%20accrued%20vacation%20leave%20upon%20separation%20from%20employment>.

² 42 U.S.C. 2000(e)(2). Unlawful Employment Practices, outlines general, unlawful employment practices.

³ *Id.*

⁴ Section 110.221, F.S.

⁵ Section 110.117, F.S.

⁶ 28 U.S.C. 1875. Protection of Jurors’ Employment, outlines that an employer may not fire a juror for serving on a jury.

⁷ 29 U.S.C. 2601, *et. seq.* Family and Medical Leave Act.

		employee is the victim of domestic violence or sexual violence. The leave can be paid or unpaid. Only applicable if that employee has been employed for 3 or more months. ⁸
Military	No	Federally protected, and Florida adds additional protections. Leave of absence may not exceed 240 working hours in any one annual period. ⁹
Homicide	No	Employers are not required to grant leave for family or household members of a homicide victim.

Family and Medical Leave Act

The Family and Medical Leave Act (FMLA)¹⁰ is a federal law that provides certain employees with up to 12 weeks of unpaid, job-protected leave per year. Group health benefits must be maintained during the leave and employees are entitled to return to their same or an equivalent job at the end of their FMLA leave.¹¹

FMLA applies to all public agencies, all public and private elementary and secondary schools, and companies with 50 or more employees. These employers must provide an eligible employee with up to 12 weeks of unpaid leave each year for any of the following reasons:¹²

- For the birth and care of the newborn child of an employee;
- For placement with the employee of a child for adoption or foster care;
- To care for an immediate family member (i.e., spouse, child, or parent) with a serious health condition; or
- To take medical leave when the employee is unable to work because of a serious health condition.
- To handle certain occurrences with military members.

Employees are eligible for FMLA leave if they:¹³

- Have worked for their employer at least 12 months,
- Have worked at least 1,250 hours over the past 12 months, and
- Work at a location where the company employs 50 or more employees within 75 miles.

FMLA allows an employee to elect, or the employer to require the employee, to use accrued paid vacation leave, paid sick or family leave for some or all of the FMLA leave period. An employee must follow the employer’s normal leave rules in order to substitute paid leave. When paid leave is used for an FMLA-covered reason, the leave is FMLA-protected.¹⁴

⁸ Section 741.313, F.S.

⁹ Section 115.07, F.S.

¹⁰ 29 U.S.C. 2601, *et. seq.*; 29 CFR Part 825.

¹¹ U.S. Department of Labor, *Family and Medical Leave (FMLA)*, <https://www.dol.gov/general/topic/benefits-leave/fmla> (last visited March 24, 2023).

¹² *Id.*

¹³ *Id.*

¹⁴ U.S. Department of Labor, *FMLA Frequently Asked Questions*, <https://www.dol.gov/agencies/whd/fmla/faq#:~:text=The%20FMLA%20only%20requires%20unpaid,of%20the%20FMLA%20leave%20period.> (last visited March 24, 2023).

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than 30 days in advance, the employee must provide notice as soon as practicable – generally, either the same or next business day. When the need for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, employees must comply with the employer’s usual and customary notice and procedural requirements for requesting leave.¹⁵

If an employer violates FMLA, an employee may:¹⁶

- File a complaint with the Secretary of Labor; or
- File a private lawsuit pursuant to the judicial enforcement provisions of the FMLA.

If the employee files a private lawsuit, it must be filed within two years after the last action which the employee contends was in violation of FMLA, or three years if the violation was willful.¹⁷

The employee may be granted the following relief:¹⁸

- Equitable relief for:
 - Employment,
 - Reinstatement, and
 - Promotion.
- Monetary relief for:
 - Wages,
 - Employment benefits,
 - Any actual monetary loss sustained by the employee as a direct result of the violation, and
 - Attorney fees.

Employers throughout the country, including Florida employers, must comply with FMLA, which allows eligible employees to take unpaid leave, with the right to reinstatement, for certain reasons. In addition, Florida law gives employees the right to take domestic or sexual violence leave, as explained below.

Generally, FMLA does not provide protections for employees who need leave for homicide-related reasons.

Florida Domestic Violence Leave Protections

In addition to the FMLA, there are protections for family or household members of sexual or domestic violence in Florida.¹⁹ If an employee has been employed by an employer with 50 or more employees for 3 or more months, that employee is entitled to take up to 3 days off in a 12-

¹⁵ *Id.*

¹⁶ 29 CFR 825.400(a)

¹⁷ 29 CFR 825.400(b)

¹⁸ 29 CFR 825.400(c)

¹⁹ Section 741.313, F.S.

month period if they themselves or a family or household member are a victim of domestic or sexual violence.²⁰ The 3 days of leave can be used to:²¹

- Seek an injunction for protection;
- Obtain medical care or mental health counseling;
- Obtain services from a victim's service organizations such as a violence shelter or a rape crisis center;
- Relocate or make the home more secure from perpetrator; or
- Seek legal assistance.

An employee seeking this leave must provide notice to their employer for seeking this leave, unless they are in imminent danger. All other forms of leave must be exhausted, but the employer can waive this requirement. Any person aggrieved by a violation of this law, can bring a civil suit for damages or equitable relief, or both.²²

Family Members of Homicide Victims Leave Laws in Other States

There are a few states that have adopted leave laws for family and household members of homicide victims. In California, an immediate family member of a victim who is deceased as the direct result of certain crimes may take leave to participate in a related jury trial or judicial proceeding.²³ There must be notice and proof that the employee was affected and needs this type of leave.²⁴

In 2021, Missouri signed the Victims' Economic Security and Safety Act (VESSA) into law.²⁵ Under VESSA, an employee receives leave if they or a family or household member is a victim of any "crime of violence," if the employer has 20 or more employees.²⁶ For employers with 20-49 employees, an employee has one week of leave, and for employers with 50 or more employees, an employee receives two weeks of leave. The leave can be paid or unpaid.²⁷ A crime of violence includes: homicide, sex offenses, assault, offenses involving bodily harm, harassment, armed violence, obscene communications, terrorism, and similar criminal actions.²⁸ The leave may be received intermittently or on a reduced work schedule.²⁹ VESSA also gives employment protection.³⁰

Illinois adopted a law similar to VESSA.³¹ Victims of crimes of violence or who have family or household members who are victims of such violence may take up to 12 weeks of unpaid leave

²⁰ Section 741.313(3), F.S.

²¹ Section 741.313(2)(a),(b), F.S.

²² Section 741.313(4),(6), F.S.

²³ Cal. Labor Code § 230.

²⁴ *Id.*

²⁵ Missouri HR-417 Victims Economic Safety and Security Act Leave.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ EPIC Brokers, Missouri Passes the Victims' Economic Safety and Security Act (2021), <https://www.epicbrokers.com/insights/missouri-passes-victims-economic-safety-security-act/#:~:text=On%20August%2028%2C%202021%2C%20Governor%20Mike%20Parson%20of,household%20member%20a re%20victims%20of%20violence%20or%20abuse> (last visited March 24, 2023).

³⁰ *Id.*

³¹ 820 Ill. Comp. Stat. 180/5.

in any 12-month period to seek medical help, legal advice, counseling, safety precautions, and other related activities.³²

Household Members of Homicide Victims

An estimated 1 in 10 Americans will lose a loved one to homicide during their lifetime.³³ In the immediate aftermath of a homicide a family member may incur burial and funeral expenses, possible economic or material hardships, and changes in family dynamics.³⁴ Household members of a homicide victim may need to attend funerals, ceremonies, court proceedings, and deal with safety concerns. Currently, Florida law doesn't address employment leave to cover such activities for family and household members of homicide victims.

Investigation Materials

Section 960.001, F.S., provides a list of rights for victims and witnesses in the criminal justice system. 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 following 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.³⁵
- 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.³⁶
- 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.³⁷
- 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.

³² Illinois Department of Labor, *Victims' Economic Security and Safety Act (VESSA)*, <https://labor.illinois.gov/laws-rules/conmed/vessa.html> (last visited March 24, 2023).

³³ Sara Bastomski, PhD & Marina Duane, MID, *Research brief: Homicide Co-Victimization*, Center for Victim Research (2018), <https://victimresearch.org/documents/hcv-research-brief-final.pdf>.

³⁴ *Id.*

³⁵ Section 960.001(1)(a)5., F.S.

³⁶ Section 960.001(1)(b), F.S.

³⁷ Section 960.001(1)(f), F.S.

- 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.³⁸
- 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.³⁹
- 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.
 - 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.⁴⁰
- 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.⁴¹

Curtis' Law

In 1997, 16-year-old Curtis Williamson was murdered in California.⁴² Afterwards, his mother, Patricia Ward, had difficulty obtaining information related to the investigation of his death.⁴³ Since then, his mother moved to Florida and began pushing for greater investigation information access for parents of deceased minors.⁴⁴ 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.⁴⁵ The proposed law is called Curtis' Law.⁴⁶

³⁸ Section 960.001(1)(e), F.S.

³⁹ Section 960.001(1)(g)1., F.S.

⁴⁰ Section 960.001(1)(g)2., F.S.

⁴¹ Section 960.001(1)(g)3., F.S.

⁴² Cole Heath, Action News Jax, *Proposed Curtis Law would give families of murdered children information about their child's case*, [Proposed Curtis Law would give families of murdered children information about their child's case – Action News Jax](#) (last visited March 24, 2023).

⁴³ Justice 4 Curtis, *Our Story*, [Our Story - Curtis's & Co for Children Gone to Soon \(justice4curtis.org\)](#) (last visited March 24, 2023).

⁴⁴ Action Jax News, *supra* note 42.

⁴⁵ Justice 4 Curtis, *supra* note 43.

⁴⁶ Justice 4 Curtis, *Curtis Law*, [The Proposed Law - Curtis's & Co for Children Gone to Soon \(justice4curtis.org\)](#) (last visited March 24, 2023).

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 guardian⁴⁷ with the:⁴⁸

- 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,
- 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.⁴⁹

III. Effect of Proposed Changes:

Employee Leave

The bill requires certain employers with over 50 employees to grant 3 days of leave in any 12-month period to employees who have been employed for over 3 months if a member of their family or household was a victim of homicide.

The definitions for "employee" and "employer" means the same as under the workers compensation statute:⁵⁰

- An "employee" is defined as any person who receives remuneration from an employer for the performance of any work or service while engaged in any employment under an appointment or contract for hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors.
- An "employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person.

A "family or household member" means the same as under the domestic violence leave law including spouses, former spouses, persons related by blood or marriage, persons residing together or have resided together in the past, or parents of a child in common. With the exception of people who have a child in common, the family or household members must have resided together in the past or were currently residing in the same dwelling unit prior to the homicide.⁵¹

⁴⁷ 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.

⁴⁸ Cal. Penal Code § 679.09.

⁴⁹ Id.

⁵⁰ Section 440.02(15), (16), F.S.

⁵¹ Section 741.28, F.S.

The leave must be used to:

- Make funeral or burial arrangements, attend a funeral or memorial service for a family or household member who is a homicide victim;
- Secure his or her home from the perpetrator, or his or her associates, of the homicide or seek new housing to escape;
- Attend meetings in person with a representative from a law enforcement agency or the state attorney's office responsible for investigating or prosecuting the homicide; or
- Attend or prepare for court or court-related proceedings arising from the homicide.

The leave can be paid or unpaid. Before using this type of leave, all other leaves must be exhausted unless the employer waives the requirement. Appropriate notice must be given to the employer in accordance with the employer's employment policies, including documentation if required. All information given to a private employer is to remain confidential.

An employee who uses this leave is protected. An employer may not discharge, demote, suspend, or retaliate for using the leave.

Investigation Materials

The bill 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, as well as the contact information for each law enforcement agency 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.

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 effective date of the bill is July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

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

VIII. Statutes Affected:

This bill substantially amends sections 448.046 and 960.001 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
