

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 667 Victims of Crime
SPONSOR(S): Criminal Justice Subcommittee, Baker and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 510

FINAL HOUSE FLOOR ACTION: 112 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 667 passed the House on April 26, 2023. The bill was amended in the Senate on May 1, 2023, and was returned to the House. The House concurred in the Senate amendment as amended by the House on May 4, 2023, and returned the bill to the Senate. The Senate concurred in the amendment, as amended by the House, and passed the bill as amended on May 4, 2023. The bill includes portions of CS/HB 1037.

A crime victim has specific rights and protections that are enumerated in both the Florida Constitution and in statute. Section 960.001, F.S., outlines a list of services and rights provided to victims in the criminal justice system, including:

- A victim's right to be informed of specified rights;
- Information concerning law enforcement protection available to a victim or witness;
- Advance notification of judicial proceedings and the right to be present at such proceedings;
- A victim's right to be notified if a defendant is released from incarceration or escapes from incarceration;
- A victim's right to consult with a state attorney regarding the disposition of a felony involving physical or emotional injury;
- A victim's right to request restitution and to submit an impact statement; and
- The right to the presence of a victim advocate in specified circumstances.

Relating to court proceedings, under s. 92.55, F.S., a parent, guardian, attorney, guardian ad litem, or other advocate appointed by the court for a victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness, may file a motion with the court for an order to protect the victim or witness in any judicial proceeding or other official proceeding from severe emotional or mental harm due to the presence of the defendant if the victim or witness is required to testify in open court. In entering such a protective order, a court may prohibit a victim or witness from being deposed in a criminal proceeding.

The bill amends s. 960.001, F.S., to require that each victim be notified that he or she has the right, if contacted to obtain information relating to a criminal proceeding by an attorney, investigator, or any other agent acting on behalf of the criminal defendant, to be informed of:

- The person's name and employer; and
- The fact that such person is acting on behalf of the defendant.

Additionally, the bill amends s. 92.55, F.S., to require a court, before the defendant may take a discovery deposition in a criminal proceeding of a victim of a sexual offense who is under the age of 16, to conduct a hearing to determine whether it is appropriate to take a deposition of the victim and, if so, whether to order any limitations or other specific conditions under which the victim's deposition may be conducted. Under the bill, there is a presumption that the taking of a victim's deposition is not appropriate if the victim of a sexual offense is under the age of 12 and:

- The state has not filed a notice of intent to seek the death penalty; and
- A forensic interview of the sexual offense victim is available to the defendant.

The bill may increase judicial workload resulting from conducting hearings to authorize depositions that are currently permitted without such a hearing.

The bill was approved by the Governor on May 25, 2023, ch. 2023-148, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Victims' Rights

Background

Victims' Rights – Florida Constitution

Article I, section 16 of the Florida Constitution provides the following rights to a crime victim:¹

- 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.
- 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.

¹ "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 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.²

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....”³

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.⁴ A court or other authority with jurisdiction must act promptly on such a request, and afford a remedy for the violation of any right.⁵

Victims’ Rights – Florida Statutes

Section 960.001, F.S., outlines a list of services and rights provided to victims in the criminal justice system, including:

- A victim’s right to be informed of specified rights through distribution of a victim’s rights information card or brochure;
- Information concerning law enforcement protection available to a victim or witness;
- Notification of scheduling changes in criminal justice proceedings;
- Advance notification to a victim or to the victim’s relative concerning judicial proceedings and the right to be present at such proceedings;
- A victim’s right to be notified if a defendant is released from incarceration or escapes from incarceration;
- A victim’s right to consult with a state attorney regarding the disposition of a felony involving physical or emotional injury;
- A victim’s right to have property used for evidentiary purposes promptly returned by a law enforcement agency or the state attorney;
- Assistance by a law enforcement agency or a state attorney in notifying a victim’s employer if the victim’s cooperation with a prosecution requires the victim to be absent from work;
- A victim’s right to request restitution;
- A victim’s right to submit an impact statement; and
- The right to the presence of a victim advocate in specified circumstances.

No Contact Orders

If a defendant is arrested for committing an offense and released on bail, the court may order a defendant, as a condition of pretrial release, to have no contact with a victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure.⁶ An order of “no contact” prohibits a defendant from:

² Art I, s. 16(b)(6), Fla. Const.

³ Art. I, s. 16(b)(11), Fla. Const.

⁴ Art. I, s. 16(c), Fla. Const.

⁵ *Id.*

⁶ S. 903.047(1)(b), F.S.

- Communicating orally or in any written form, either in person, telephonically, electronically, or in any other manner, either directly or indirectly through a third person, with the victim or any other person named in the order.
- Having physical or violent contact with the victim or other named person or his or her property.
- Being within 500 feet of the victim's or other named person's residence, even if the defendant and the victim or other named person share the residence.
- Being within 500 feet of the victim's or other named person's vehicle, place of employment, or a specified place frequented regularly by such person.⁷

An order of no contact does not prohibit a defendant's attorney, consistent with rules regulating The Florida Bar, from communicating with any person protected by the no contact order for lawful purposes.⁸

Effect of the Bill – Victims' Rights

The bill amends s. 960.001, F.S., to require that each victim be notified that he or she has the right, if contacted to obtain information relating to a criminal proceeding by an attorney, investigator, or any other agent acting on behalf of the criminal defendant, to be informed of:

- The person's name and employer; and
- The fact that such person is acting on behalf of the defendant.

Depositions of Certain Victims of Sexual Offenses

Background

Depositions in Criminal Proceedings

A deposition is "out-of-court testimony made under oath and recorded by an authorized officer for later use in court."⁹ Generally, in a felony criminal proceeding, a party may take depositions at any time after the filing of the charging document.¹⁰ Depositions are not allowed in cases where a defendant is charged with a misdemeanor or criminal traffic offense unless good cause is shown to the trial court.¹¹ In determining whether to allow a deposition in such cases, a court may consider the:

- Consequences to the defendant;
- Complexity of the issues involved;
- Complexity of the witness' testimony; and
- Other opportunities available to the defendant to discover the information sought by deposition.¹²

The ability to depose a witness is also limited by the role of the person to be deposed in the criminal proceeding.¹³ Generally, a defendant may, without leave of court, depose any witness listed by the

⁷ *Id.*

⁸ S. 903.047(1)(b)1., F.S.

⁹ Merriam-Webster, <https://www.merriam-webster.com/dictionary/deposition> (last visited Apr. 7, 2023).

¹⁰ Fla. R. Crim. P. 3.220(h)(1), F.S.

¹¹ Fla. R. Crim. P. 3.220(h)(1)(D), F.S.

¹² *Id.*

¹³ *Id.*

prosecutor as a Category A witness¹⁴ or listed by a co-defendant as a witness to be called at trial. No party may take the deposition of a Category B¹⁵ witness except upon leave of court with good cause shown.¹⁶ In determining whether to allow a deposition, a court may consider the same factors for determining whether good cause exists to depose a witness in a misdemeanor or criminal traffic case.¹⁷ A Category C¹⁸ witness may not be deposed unless the court determines that the witness should be listed in another category.¹⁹

Depositions of children under the age of 18 are required to be videotaped unless a court orders otherwise.²⁰ A court may order the videotaping of a deposition of a witness with fragile emotional strength or an intellectual disability, or may order that such deposition be taken in the presence of the court or a special magistrate.²¹

Judicial Proceedings Involving Specified Victims or Witnesses

Section 92.55, F.S., contains protections for certain crime victims and witnesses in criminal proceedings, including a victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness.

“Sexual offense victim or witness” means a person who was under the age of 18 when he or she was the victim of or a witness to a sexual offense.²²

“Sexual offense” means any offense specified in s. 775.21(4)(a)1., F.S., or s. 943.0435(1)(h)1.a.(I), F.S.²³

A parent, guardian, attorney, guardian ad litem, or other advocate appointed by the court under s. 914.17, F.S., for a victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness, may file a motion with the court for an order to protect the victim or witness in any judicial proceeding or other official proceeding from severe emotional or mental harm due to the presence of the defendant if the victim or witness is required to testify in open court.²⁴ In entering such a protective order, a court may prohibit a victim or witness from being deposed in a criminal proceeding.²⁵

¹⁴ Category A witnesses include:

- Eye witnesses;
- Alibi witnesses and rebuttal to alibi witnesses;
- Witnesses who were present when a recorded or unrecorded statement was taken from or made by a defendant or codefendant, which shall be separately identified within this category;
- Investigating officers;
- Witnesses known by the prosecutor to have any material information that tends to negate the guilt of the defendant as to any offense charged;
- Child hearsay witnesses;
- Expert witnesses who have not provided a written report and a curriculum vitae or who are going to testify; and
- Informant witnesses, whether in custody, who offer testimony concerning the statements of a defendant about the issues for which the defendant is being tried. Fla. R. Crim. P. 3.220(b)(1)(A)(i), F.S.

¹⁵ Category B witnesses include all witnesses not listed in Category A or Category C. Fla. R. Crim. P. 3.220(b)(1)(A)(ii), F.S.

¹⁶ Fla. R. Crim. P. 3.220(h)(1)(B), F.S.

¹⁷ *Id.*

¹⁸ Category C witnesses include all witnesses who perform only ministerial functions or whom the prosecutor does not intend to call at trial and whose involvement with and knowledge of the case is fully set out in a police report or other statement furnished to the defense. Fla. R. Crim. P. 3.220(b)(1)(A)(iii), F.S.

¹⁹ Fla. R. Crim. P. 3.220(h)(1)(C), F.S.

²⁰ Fla. R. Crim. P. 3.220(h)(4), F.S.

²¹ *Id.*

²² S. 92.55(1)(a), F.S.

²³ S. 92.55(1)(b), F.S. A conviction for the offenses specified in s. 775.21(4)(a)1., F.S., and s. 943.0435(1)(h)1.a.(I), F.S., results in a person being designated as a sexual predator or sexual offender, respectively.

²⁴ S. 92.55(2), F.S.

²⁵ *Id.*

In ruling upon the motion, the court must consider:

- The age of the child, the nature of the offense or act, the relationship of the child to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the child as a consequence of the defendant's presence, and any other fact that the court deems relevant;
- The age of the person who has an intellectual disability, the functional capacity of such person, the nature of the offenses or act, the relationship of the person to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the person as a consequence of the defendant's presence, and any other fact that the court deems relevant; or
- The age of the sexual offense victim or witness when the sexual offense occurred, the relationship of the sexual offense victim or witness to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the sexual offense victim or witness as a consequence of the defendant's presence, and any other fact that the court deems relevant.²⁶

Additionally, the court may enter an order:

- Limiting the number of times that a child, a person who has an intellectual disability, or a sexual offense victim or witness may be interviewed;
- Prohibiting depositions of the victim or witness;
- Requiring the submission of questions before the examination of the victim or witness;
- Setting the place and conditions for interviewing the victim or witness, or for conducting any other proceeding; or
- Permitting or prohibiting the attendance of any person at any proceeding. The court shall enter any order necessary to protect the rights of all parties, including the defendant in any criminal action.²⁷

Effect of the Bill – Depositions of Certain Victims of Sexual Offenses

The bill amends s. 92.55, F.S., to require a court, before the defendant may take a discovery deposition in a criminal proceeding of a victim of a sexual offense who is under the age of 16, to conduct a hearing to determine whether it is appropriate to take a deposition of the victim and, if so, whether to order any limitations or other specific conditions under which the victim's deposition may be conducted. Under the bill, there is a presumption that the taking of a victim's deposition is not appropriate if the victim of a sexual offense is under the age of 12 and:

- The state has not filed a notice of intent to seek the death penalty; and
- A forensic interview of the sexual offense victim is available to the defendant.

In determining whether it is appropriate to take a deposition of a victim of a sexual offense who is under the age 16, the court must consider:

- The mental and physical age and maturity of the victim.
- The nature and duration of the offense.
- The relationship of the victim to the defendant.
- The complexity of the issues involved.
- Whether the evidence sought is reasonably available by other means, including whether the victim was the subject of a forensic interview related to the sexual offense.
- Any other factors the court deems relevant to ensure the protection of the victim and the integrity of the judicial process.

²⁶ S. 92.55(3), F.S.

²⁷ S. 92.55(4), F.S.

If the court determines the taking of the victim's deposition is appropriate, in addition to any other condition required by law, the court may order limitations or other specific conditions including, but not limited to:

- Requiring the defendant to submit questions to the court before the victim's deposition.
- Setting the appropriate place and conditions under which the victim's deposition may be conducted.
- Permitting or prohibiting the attendance of any person at the victim's deposition.
- Limiting the duration of the victim's deposition.
- Any other condition the court finds just and appropriate.

The bill requires a court to enter a written order finding whether the taking of the deposition of the victim is appropriate. If the court finds that the taking of the deposition of the victim is appropriate, such order must include any limitations or other specific conditions under which the victim's deposition must be conducted.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires a court, before the defendant may take a discovery deposition in a criminal proceeding of a victim of a sexual offense who is under the age of 16, to conduct a hearing to determine whether it is appropriate to take a deposition of the victim and, if so, whether to order any limitations or other specific conditions under which the victim's deposition may be conducted. Under current law, a defendant may generally take the depositions of such victims without authorization from the court. Thus, the bill may increase judicial workload resulting from conducting hearings to authorize depositions that are currently permitted without such a hearing.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

