

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1974

SPONSOR: Judiciary and Criminal Justice Committees and Senator Crist

SUBJECT: Crime Victims

DATE: March 6, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for CS/SB 1974 requires the courts to inform crime victims of their constitutional and statutory rights in one of two manners. The judge presiding over a criminal docket for arraignment, sentencing, or a case management proceeding, can orally advise crime victims of their constitutional and statutory rights. This oral advisement would parallel the language in the constitutional amendment for crime victims, as well as the statutory language in the guidelines for crime victims and witnesses. Alternatively, the courts may display posters on the courtroom doors that advise crime victims of the aforementioned rights. The posters are to be provided by the Department of Legal affairs.

The CS requires the circuit court administrator to provide the clerk of the court with victim rights information. It also provides a statement that the failure of the court to advise a victim of his or her rights does not affect the validity of the sentence, conviction, or hearing.

This CS creates section 960.0021 of the Florida Statutes.

II. Present Situation:

The Florida Constitution grants crime victims “the right to be informed, to be present, and 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.” Art. I, s. 16(b), Fla. Const.

Chapter 960, F.S., entitled “Victim Assistance,” contains numerous provisions relating to victims’ rights and procedures. For example, s. 960.21, F.S., establishes the Crimes Compensation Trust Fund. Section 960.292, F.S., provides that the crime victim may petition the court to enter a civil restitution lien against the offender. Section 960.003, F.S., gives victims the right to request that an offender’s HIV test results be disclosed to the victim under certain circumstances.

Section 960.001, F.S., provides comprehensive “guidelines for fair treatment of victims and witnesses” during criminal proceedings. The statute specifies the criminal justice agencies that are responsible for implementing these guidelines, including the following: the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Parole Commission, the Department of Legal Affairs, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and all sheriff’s offices, police departments, and other law enforcement agencies.

The guidelines include notice and the right to be heard during all criminal proceedings, the right to consult with the state attorney about the disposition of the case, the right to submit victim impact statements, the right to receive advance notification of judicial proceedings (when possible) and of scheduling changes, the right to request victim restitution, and the right to other general victim assistance. The guidelines require that victims receive information about their rights at numerous different stages of their involvement in the system, from the initial contact with law enforcement all the way through the time a convicted defendant is released from prison. Specifically, crime victims should receive information from:

- law enforcement personnel at the crime scene (s. 960.001(1)(a), F.S.);
- law enforcement personnel during the criminal investigation (s. 960.001(1)(a), F.S.);
- the chief administrator of a jail or juvenile detention facility when the arrested defendant is released on bail or from residential detention or commitment (s. 960.001(1)(b), F.S.);
- the chief administrator of a correctional or residential commitment facility when the convicted defendant is released from incarceration (s. 960.001(1)(b), F.S.);
- the agency scheduling the victim’s appearance in a criminal or juvenile proceeding (s. 960.001(1)(d), F.S.);
- the appropriate agency (arresting law enforcement agency, Attorney General, or state attorney) whenever the defendant or delinquent is scheduled for any proceeding or hearing related to arrest, arraignment, filing of the accusatory instrument, trial or adjudicatory hearing, sentencing or disposition hearing, appellate review, modification of sentence, collateral attack, parole hearing, and release from incarceration (s.960.001(1)(e), F.S.)

Additionally, various agencies are required by ch. 960, F.S., to inform victims about: rights to restitution; the escape from incarceration of the convicted defendant; HIV testing results revealing a positive result for the offender; compensation under the Crime Victims Compensation Act; rights to receive initial forensic physical examinations; and rights to receive relocation assistance for victims of domestic violence.

Furthermore, s. 960.23, F.S., requires every Florida hospital to display prominently in the lobbies or waiting areas of their emergency rooms posters giving notification of the existence and general provisions of ch. 960, F.S. The Department of Legal Affairs is required to provide such posters, application forms, and general information regarding the provisions of ch. 960, F.S., to each hospital. Section 960.23, F.S., also requires the department to provide the aforementioned posters, documents, and information to each law enforcement agency in the state.

In addition to Ch. 960, F.S., there are various other statutory provisions that grant victims rights or establish privileges. For example, s. 921.231, F.S., provides that a presentence investigation

report must include a statement describing the victim's loss or injury; s. 921.143, F.S., requires the court to allow a victim to make a victim impact statement at the sentencing hearing and to file a written statement with the court; and s. 775.089, F.S., provides that in sentencing an offender, in addition to any other punishment, the court shall order restitution to the victim.

III. Effect of Proposed Changes:

The Committee Substitute for CS/SB 1974 provides legislative findings that in order to ensure that crime victims are able to effectively understand and exercise their constitutional rights, they must be advised of those rights in court. Further findings provide that to promote law enforcement that considers the interests of crime victims, the court must advise victims of their rights in court. The courts can fulfill this obligation by:

- Orally advising crime victims of their constitutional and statutory rights at any arraignment, sentencing, or case management proceeding; or
- Displaying prominently on the courtroom doors posters giving notification of the existence and general provisions of ch. 960, F.S.

The oral advisement would parallel the language in the constitutional amendment for crime victims, as well as the statutory language in the guidelines for crime victims and witnesses relating to their right to advance notification of proceedings, crime compensation, consulting with the state attorney, and victim impact statements. The advisement would also inform victims that they could contact the state attorney's office or the clerk of the court for further information.

The posters to be displayed on the courtroom doors would be provided to the courts by the Department of Legal Affairs. The department is currently required, pursuant to s. 960.23, F.S., to provide such posters to hospitals in the state.

The circuit court administrator is required to provide the clerk of the court with victim rights information. Finally, the CS for CS/SB 1974 provides that the failure of the court to advise a victim of his or her rights would not affect the validity of the sentence, conviction, or hearing.

The bill takes effect on July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Legislature is responsible for enacting substantive law, while the Supreme Court is responsible for promulgating rules of practice and procedure pursuant to Art.V., s.2(a), Fla. Const. The Legislature has the constitutional authority to repeal a rule by a two-third 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*, 322 So.2d 473,475 (1975), 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*, 308 So.2d 127 (1st DCA 1975), held that a statute requiring presentence reports to be conducted in certain cases was unconstitutional because it conflicted with a court rule; therefore, it infringed upon the rule making power of the Florida Supreme Court. The dispositive issue in determining whether the law was substantive or procedural seemed to be that the Court had already “pre-empted” the Legislature from acting in this area by the Court’s prior adoption of a rule governing presentence reports. *Id.* at 128.

In analyzing whether this CS encroaches upon the Court’s rulemaking authority, the Court could look at whether it has “pre-empted” the Legislature from acting in the area of victims’ rights, as the *Johnson* court did. In this instance, it will find the opposite to be true, that the Legislature has in fact exercised its substantive law making authority throughout the statutes concerning the rights of crime victims.

Moreover, even if the Court finds that the CS’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 the court’s procedural rules. *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).

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
