

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 Fiscal Policy

BILL: CS/SB 360

INTRODUCER: Criminal Justice Committee and Senator Clemens

SUBJECT: Victim Assistance

DATE: February 26, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 360 requires a law enforcement agency to give instructions outlining the replevin process for obtaining possession of the victim's property located in a pawnshop. The law enforcement agency is also required to promptly make reasonable efforts to give the victim the name and location of the pawn shop.

The bill has no significant fiscal impact.

II. Present Situation:

Victim Notification

Currently, Florida law provides for notifying victims regarding a variety of matters that affect them, such as:

- The state attorney or Department of Corrections (DOC) must notify victims within 6 months before the release of an inmate from the DOC, a private correctional facility, a release program, or parole;¹ and
- The Department of Children and Families must notify the victim as soon as practicable when a person is released from involuntary civil commitment under ch. 394, F.S.²

¹ Section 944.605(1), F.S.

² Section 394.926(1), F.S.

Section 960.001, F.S., places a number of requirements on various government entities to ensure that victims are treated fairly and notified of important matters. For example:

- Victims are generally provided the right to be informed, be present, and be heard when relevant, at all crucial stages of criminal and juvenile proceedings.³
- In cases involving specified offenses, the arresting law enforcement officer or victim assistance personnel must request a victim notification card with various contact information from the victim or the victim's next of kin.⁴
- The appropriate party shall make a reasonable attempt to notify an alleged victim or an alleged victim's next of kin within 4 hours following a defendant's release.⁵
- A victim or witness must be provided information explaining the steps available to law enforcement officers and state attorneys to shield the victim or witness from intimidation.⁶
- Law enforcement agencies and the state attorney shall promptly return the victim's property when there is no compelling law enforcement reason for retaining it.⁷

While Florida requires victim notification for a variety of circumstances, it does not currently require any entity to notify a victim that his or her property has been located in the possession of a pawnbroker.

Florida Pawnbroker Act

“Pawn” means any advancement of funds on the security of pledged goods on condition that the pledged goods are left in the possession of the pawnbroker for the duration of the pawn and may be redeemed by the pledgor on the terms and conditions contained in s. 539.001, F.S.⁸

“Pawnbroker” means any person who is engaged in the business of making pawns; who makes a public display containing the term “pawn,” “pawnbroker,” or “pawnshop” or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.⁹

A pawnbroker must maintain a copy of each completed pawnbroker transaction form for at least 1 year after the date of the transaction.¹⁰ On or before the end of each business day, the pawnbroker must deliver all original transaction forms for the previous business day to law enforcement. If the original transaction form is lost or destroyed by a law enforcement official, a

³ Section 960.001(1)(a)5., F.S. Victims who are incarcerated are provided the right to be informed and to submit written statements. *See* s. 960.001(1)(a)6., F.S.

⁴ Section 960.001(1)(b)1., F.S. Specified offenses include homicide, pursuant to ch. 782, F.S.; sexual offense, pursuant to ch. 794, F.S.; attempted murder or sexual offense, pursuant to ch. 777, F.S.; stalking, pursuant to s. 784.048, F.S.; or domestic violence, pursuant to s. 25.385, F.S.

⁵ Section 960.001(1)(b)3., F.S. The appropriate party to provide notice is the chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility.

⁶ Section 960.001(1)(c), F.S.

⁷ Section 960.001(1)(h), F.S.

⁸ Section 539.001(2)(h), F.S.

⁹ Section 539.001(2)(i), F.S.

¹⁰ Section 539.001(8), F.S. defines a “pawnbroker transaction form” as the instrument on which a pawnbroker records pawns and purchases. The form must contain information such as name, address, home telephone number, place of employment, date of birth, physical description, and right thumbprint of the seller.

copy may be used by the pawnbroker as evidence in court. When an electronic image of a seller identification is accepted for a transaction, the pawnbroker must maintain the electronic image in order to meet the same recordkeeping requirements as for the original transaction form. If a criminal investigation occurs, the pawnbroker must provide a clear and legible copy of the image to the appropriate law enforcement official.¹¹

To obtain possession of purchased or pledged goods held by a pawnbroker which a claimant claims to be misappropriated:¹²

- The claimant must notify the pawnbroker by certified mail or in person of the claim to the goods and the notice must include the law enforcement report concerning the misappropriation of the goods;
- If the claim isn't settled within 10 days of the notice, the claimant may file a lawsuit, and must serve the pawnbroker with a copy of the petition; and
- If the court finds that the property was misappropriated, the claimant may recover the cost of the action, including attorney fees from the pawnbroker.¹³

However, if the court finds that the claimant failed to comply with the above procedures, or finds against the claimant on any basis, the claimant is liable for the defendant's costs, including attorney fees.¹⁴

III. Effect of Proposed Changes:

The bill amends s. 960.001(1)(h), F.S., to require a law enforcement agency to give instructions outlining the replevin process for obtaining possession of the victim's property located in a pawnshop. The law enforcement agency is also required to promptly make reasonable efforts to give the victim the name and location of the pawn shop.

The bill is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹¹ Section 539.001(9), F.S.

¹² Section 539.001(2)(f), F.S., defines "misappropriated" as stolen, embezzled, converted, or otherwise wrongfully appropriated against the will of the rightful owner.

¹³ Section 539.001(15), F.S.

¹⁴ Section 539.001(15)(c), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires law enforcement agencies to comply with new victim notice requirements. To the extent that state and local law enforcement agencies must carry out the new notification requirements, the bill may have a minimal workload impact on local government expenditures, but no significant fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 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.)

CS by Criminal Justice on February 16, 2016:

The committee substitute amends the notification time by a law enforcement agency to victims whose property is in the possession of a pawnbroker. The bill required law enforcement to “immediately” notify the victim of the name and location of the pawnshop. The Committee Substitute requires that law enforcement “promptly make reasonable efforts” to provide the victim with the name and location of the pawnshop.

B. Amendments:

None.