

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 Rules

BILL: CS/SB 1012

INTRODUCER: Judiciary Committee and Senators Burgess, and others

SUBJECT: Victims of Crimes

DATE: February 8, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Stokes</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1012 amends three statutes that address the rights of victims of crimes.

Section 960.001, F.S., specifies what information must be supplied to victims of crimes. The statute is amended to provide that, in addition to other enumerated information, victims must be informed of their right to employ private counsel. A new provision is added that encourages The Florida Bar to develop a registry of attorneys who are willing to serve on a pro bono basis as advocates for crime victims.

This statute is further amended to clarify that victims who are not incarcerated, or their representatives, may, *upon request*, be informed, be present, and be heard at all stages of criminal and juvenile proceedings, but this occurs when the victim or victim's representative requests to be notified.

Sections 960.0021 and 985.036, F.S., which pertain to a court's responsibility to inform victims of their rights and the rights of a victim in a juvenile proceeding, respectively, are similarly amended. Each statute is revised to add that the victim must be informed "upon request." The bill does not appear to require law enforcement agencies to incur any additional costs. See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2022.

II. Present Situation:

Victim Rights

Victims of crime in Florida are guaranteed certain rights that are provided in the Florida Constitution as well as in the Florida Statutes. In 2018, Florida voters passed Marsy's Law, an amendment to the Florida Constitution, to expand victim's rights.¹

Florida Constitution

Marsy's Law provides that every victim, beginning at the time of his or her victimization, has the right to:

- Due process and to be treated with fairness and respect for the victim's dignity.
- Be free from intimidation, harassment, and abuse.
- Within the judicial process, to be reasonably protected from the accused and any person acting on behalf of the accused.²
- 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.
- 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 prompt return of the victim's property when no longer needed as evidence.
- 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.
- Proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related postjudgment proceedings.^{3,4}

Additionally, Marsy's law provides that, upon request, victims have 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. A victim must also be provided reasonable, accurate, and timely notice of any release or escape of the offender and any proceeding during which a right of the victim is implicated.

¹ FLA CONST. art. 1, s. 16 (b).

² This does not create a special relationship between the crime victim and any law enforcement agency or office absent a special relationship or duty as defined by Florida Law. FLA. CONST. art. 1, s. 16 (b)(3).

³ FLA CONST. art. 1, s. 16 (b)(10), provides that the state attorney may file in a good faith demand for a speedy trial and the trial court must hold a calendar call, with notice, within 15 days of the filing demand, to schedule a trial to commence on a date at least 5 days but no more than 60 days after the date of the calendar call unless the trial judge enters an order with specific findings of fact justifying a trial date more than 60 days after the calendar call. Additionally, all state-level appeals and collateral attacks on any judgment must be complete within 2 years from the date of appeal in non-capital cases and within 5 years from the date of appeal in capital cases, unless a court enters an order with specific finding as to why the court was unable to comply with this requirement and the circumstances causing the delay. Each year, the chief judge of any district court of appeal or the chief justice of the Supreme Court must report on a case by case basis to the Speaker of the House of Representatives and the President of the Senate all cases where the court entered an order regarding inability to comply with this requirement. The Legislature may enact legislation to implement this requirement.

⁴ FLA CONST. art. 1, s. 16 (b).

- 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.
- Confer with the prosecuting attorney concerning any plea agreements, participation in pretrial diversion programs, release, restitution, sentencing, or any other disposition of the case.
- 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.
- 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.
- 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.
- 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 parole or early release authority must extend the right to be heard to any person harmed by the offender.
- Be informed of clemency and expunction procedures, to provide information to the governor, the court, any clemency board, and other authority in these procedures, and to have the information considered before a clemency or expunction decision is made; and to be notified of such decision in advance of any release of the offender.⁵

Additionally, victims have a constitutional right to be informed of these rights, and to be informed that they may seek the advice of an attorney with respect to their rights. This information must be made available to the general public and provided to all crime victims in the form of a card or by other means intended to effectively advise the victim of their rights.⁶

Florida Statutes

Section 960.001, F.S., provides that certain agencies⁷ within the criminal justice system must develop and implement guidelines for the use of their agencies, which are consistent with article 1, section 16(b) of the Florida Constitution and achieve the following objectives by providing:

- A victim's rights information card or brochure.⁸
- Information concerning services available to victims of adult and juvenile crimes, including:

⁵ FLA. CONST. art. 1, s. 16 (b)(6).

⁶ FLA. CONST. art. 1, s. 16 (b)(11).

⁷ Section 960.001(1), F.S., provides that 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 FDLE, and every sheriff's department, police department, or other law enforcement agency as defined in s. 943.10(4), F.S., must develop such guidelines.

⁸ Section 960.001(1)(o), F.S., provides that a victim of a crime must be provided with a victim's rights information card or brochure containing essential information concerning the rights of a victim and services available to a victim as required by state law.

- The availability of crime victim compensation, if applicable;
- Crisis intervention services, supportive or bereavement counseling, social service support referrals, and community-based victim treatment programs;
- The role of the victim in the criminal or juvenile justice process, including what the victim may expect from the system as well as what the system expects from the victim;
- The stages in the criminal or juvenile justice process which are of significance to the victim and the manner in which information about such stages can be obtained;
- The right of a victim who is not incarcerated, or the victim's representative, to be informed, to be present, and to be heard when relevant, at all crucial stages;
- The right of an incarcerated victim to be informed and submit written statements at all crucial states; and
- The right of a victim to a prompt and timely disposition of the case.⁹
- Information regarding the "victim notification card,"¹⁰ for purposes of notifying a victim or other appropriate contact.
- Consultation with the victim or guardian, or family of the victim.
- Information concerning victim or witness protection.
- Presence of a victim advocate during discovery deposition, or a forensic medical exam. The victim of a sexual offense must be advised of his or her right to have the courtroom cleared of certain persons when testifying.
- Local witness coordination services.
- Notification regarding judicial proceedings, the rights to be present, submit an impact statement, and of any scheduling changes.
- General victim assistance.
- Notification that the victim may request the offender attend a different school, if the victim attends the same school as the offender.
- Information concerning the release or escape of an offender.
- Notification of the rights to request restitution, and return of the victim's property.
- Notification to a victim's employer or creditor that the victim is needed in the prosecution of the case, or has been subjected to financial strain because of the case.
- Victim assistance education and training.
- Crime prevention programs.
- Prohibition of a government official asking or requiring a victim of a sexual offense submit to a polygraph examination or other truth-telling device.¹¹

The Florida Bar

The Florida Bar (Bar) is the organization of all lawyers who are licensed by the Supreme Court of Florida to practice law in the state. The Supreme Court of Florida has exclusive and ultimate authority to regulate the admission of persons to the practice of law and the discipline of those

⁹ Section 960.001(1)(a)1.-7., F.S.

¹⁰ Section 960.001(1)(b), F.S., provides the notification card must contain at minimum, the name, address, and phone number of the victim, or when appropriate, the next of kin or other designated contact, and any relevant identification or case numbers assigned to the case. The victim, next of kin, or other designated contact must be given an opportunity to complete such card, however he or she may choose not to complete it.

¹¹ Section 960.001(1)(a)-(u), F.S.

persons. The Court does this through both the Bar, and the Florida Board of Bar Examiners. Neither the Bar nor the Florida Board of Bar Examiners is supported by state tax dollars.¹²

The Bar's core functions are to prosecute unethical lawyers, administer a client protection fund to cover certain financial losses a client may suffer due to misappropriation by a lawyer, administer a substance abuse program, and provide continuing education services for lawyers.¹³ The Bar operates a general lawyer referral service, as well as a referral service providing legal advice for low fees in the areas of disability and elder law.¹⁴ The Bar does not appear to maintain a statewide registry of attorneys that provide pro bono legal services.

A Court's Responsibility to Advise Victims of Their Rights

Courts have a responsibility under the law to advise victims of crime about their rights.

Section 960.0021(2), F.S., states that courts may fulfill that responsibility by:

(a) Making an announcement at an arraignment, sentencing, or case-management proceeding: "If you are the victim of a crime with a case pending before this court, you are advised that you have the right:

1. To be informed.
 2. To be present.
 3. 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.
 4. To receive advance notification, when possible, of judicial proceedings and notification of scheduling changes, pursuant to section 960.001, Florida Statutes.
 5. To seek crimes compensation and restitution.
 6. To consult with the state attorney's office in certain felony cases regarding the disposition of the case.
 7. To make an oral or written victim impact statement at the time of sentencing of a defendant.
- For further information regarding additional rights afforded to victims of crime, you may contact the state attorney's office or obtain a listing of your rights from the Clerk of Court."

(b) Displaying prominently on the courtroom doors posters giving notice of the existence of the rights of victims under Florida law.

Rights of Victims in Juvenile Proceedings

Section 985.036(1), F.S., states that nothing in the Juvenile Justice chapter, ch. 985, F.S., prohibits:

- (a) The victim of the offense;
- (b) The victim's parent or guardian if the victim is a minor;
- (c) The lawful representative of the victim or of the victim's parent or guardian if the victim is a minor; or
- (d) The next of kin if the victim is a homicide victim, from the right to be informed of, to be present during, and to be heard when relevant at, all crucial stages of the proceedings involving the juvenile offender, to the extent that such rights do not interfere with the constitutional rights

¹² The Florida Bar, *Frequently Asked Questions*, <https://www.floridabar.org/about/faq/> (last visited Jan. 27, 2022).

¹³ *Id.*

¹⁴ The Florida Bar, *What We Do*, <https://www.floridabar.org/about/faq/what-we-do/#Findingyoulawyer> (last visited Jan. 27, 2022).

of the juvenile offender. A person enumerated in this section may not reveal to any outside party any confidential information obtained under this subsection regarding a case involving a juvenile offense, except as is reasonably necessary to pursue legal remedies.

III. Effect of Proposed Changes:

Guidelines for the Fair Treatment of Victims and Witnesses (Section 1)

This bill amends three subparagraphs contained in s. 960.001, F.S., that address information that victims of crime must be given.

The Right to Employ Private Counsel

A new subparagraph 8. is added to provide that, in addition to other specified information, victims must be informed of their right to employ private counsel consistent with the constitutional rights of the accused. Additionally, this bill encourages The Florida Bar to develop a registry of attorneys who are willing to serve on a pro bono basis as advocates for crime victims.

Victims Who Are Not Incarcerated

Section 960.001(1)(a)5., F.S., is amended to add and delete language pertaining to a victim's rights. That statute, as amended, states that a victim, who is not incarcerated, and the victim's parents, guardian if a minor, or lawful representative, and the next of kin of a homicide victim have a right "upon request" to be informed, to be present, and to be heard at all stages of a criminal or juvenile proceeding, as provided by article 1, section 16(b) of the Florida Constitution. Language is deleted from the existing statute that removes the conditions "when relevant," at a "crucial" stage, and "to the extent that this right does not interfere with constitutional right of the accused."

Victims Who Are Incarcerated

In a similar manner, s. 960.001(1)(a)6., F.S., is also amended to add the phrase "*upon request*" such that incarcerated victims, have the right "upon request" to be informed and to submit written statements at all stages of the criminal proceedings, parole proceedings, or juvenile proceedings. The amended language no longer requires that the stage be a "crucial" stage for the incarcerated victim to be informed and submit statements at proceedings.

The Responsibility of Courts to Advise Victims of Their Rights (Section 2) and Rights of Victims in Juvenile Proceedings (Section 3)

Two additional statutes that address victims' rights are amended to reflect the changes made above to s. 96.001(1)(a), F.S.

Sections 960.0021(2) and 985.036(1), F.S., are very similarly amended to provide that a victim, *upon request*, may be heard at all stages of criminal and juvenile proceedings.

This bill is effective July 1, 2022.

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:

None.

C. Government Sector Impact:

The Florida Constitution has required a crime victim to be notified of his or her right to retain private counsel since the amendment to article I, section 16 went into effect on January 8, 2019. Since the bill codifies an existing constitutional requirement, law enforcement agencies already providing such information should not incur any additional costs in updating victim information materials.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 960.001, Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on January 31, 2022:

Several provisions are added to the committee substitute which were not in the underlying bill. In general terms, these provisions state that:

- Victims, or their representatives, may receive notice and provide input, but only when they request to be notified.
- Their input is not limited to being “relevant” for them to be informed, present, or heard.
- The proceedings do not need to be deemed “crucial” for the victim or victim’s representative to be involved.

Additionally, language is deleted which states that the victim’s rights may be exercised to the extent that they do not interfere with the accused’s constitutional rights.

- B. **Amendments:**

None.