

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 Appropriations

BILL: CS/CS/SB 490

INTRODUCER: Appropriations Committee; Commerce and Tourism Committee; and Senator Jones and others

SUBJECT: Investigations into the Deaths of Minors

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Baird</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Stokes</u>	<u>CJ</u>	<u>Favorable</u>
3.	<u>Kolich</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 490 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 the minor's personal effects found on or with the minor and information on how the minor's next of kin can obtain such personal effects, and information regarding the status of the investigation.

The law enforcement agency may not provide any of the above-mentioned information if doing so would jeopardize or otherwise interfere with an active investigation.

The law enforcement agency is not required under these new provisions to provide investigative records generated during its investigation to a minor's next of kin.

The bill also amends s. 497.005, F.S., relating to the Florida Funeral, Cemetery, and Consumer Services Act, to prevent *any* person that has been arrested for committing an act of domestic violence against the deceased or any act that resulted in or contributed to the death of the deceased from being awarded any legal benefit under the Florida Funeral, Cemetery, and Consumer Services Act.

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

II. Present Situation:

Curtis' Law

In 1997, 16-year-old Curtis Williamson was murdered in California.¹ Afterwards, his mother, Patricia Ward, had difficulty obtaining information related to the investigation of his death.² Since then, his mother moved to Florida and began pushing for greater investigation information access for parents of deceased minors.³ 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.⁴ The proposed law is called Curtis' Law.⁵

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 guardian with the following information:⁶

- 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, and
- Status of the investigation, at the discretion of the law enforcement agency.⁷

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.⁸

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

¹ 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 28, 2023).

² Justice 4 Curtis, *Our Story*, [Our Story - Curtis's & Co for Children Gone to Soon \(justice4curtis.org\)](#) (last visited March 28, 2023).

³ Action Jax News, *supra*, at note 42.

⁴ Justice 4 Curtis, *supra*, at note 43.

⁵ Justice 4 Curtis, Curtis Law, [The Proposed Law - Curtis's & Co for Children Gone to Soon \(justice4curtis.org\)](#) (last visited March 28, 2023).

⁶ Cal. Penal Code s. 679.09.

⁷ This requirement also applies to 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.

⁸ *Id.*

proceeding.⁹ There must be notice and proof that the employee was affected and needs this type of leave.¹⁰

In 2021, Missouri signed the Victims' Economic Security and Safety Act (VESSA) into law.¹¹ Under the 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.¹² 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.¹³ A crime of violence includes: homicide, sex offenses, assault, an offense involving bodily harm, harassment, armed violence, obscene communications, terrorism, and any similar criminal action.¹⁴ The leave may be received intermittently or on a reduced work schedule.¹⁵ The VESSA also gives employment protection.¹⁶

Illinois adopted a law similar to the VESSA.¹⁷ 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 in any 12-month period to seek medical help, legal advice, counseling, safety precautions, and other related activities.¹⁸

Household Members of Homicide Victims

An estimated 1 in 10 Americans will lose a loved one to homicide during their lifetime.¹⁹ 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.²⁰ 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.

Victim Rights

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

⁹ Cal. Labor Code s. 230.

¹⁰ *Id.*

¹¹ Missouri HR-417 Victims Economic Safety and Security Act Leave.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ EPIC Brokers, *Missouri Passes the Victims' Economic Safety and Security Act*, <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%20are%20victims%20of%20violence%20or%20abuse> (last visited March 28, 2023).

¹⁶ *Id.*

¹⁷ 820 Ill. Comp. Stat. 180/5.

¹⁸ Illinois Department of Labor, *Victims' Economic Security and Safety Act (VESSA)*, <https://labor.illinois.gov/laws-rules/commed/vessa.html> (last visited March 24, 2023).

¹⁹ 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> (last visited March 28, 2023).

²⁰ *Id.*

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 specified objectives. While s. 960.001, F.S., provides rights to victims of many different crimes, the following rights are related to rights of the next of kin of a victim of homicide:

- 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.²¹
- In the case of a homicide, 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.²²
- 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 of homicide before the defendant's or offender's release from custody, if the victim notification card has been provided.²³
- 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.
 - 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.²⁴
- The state attorney must consult the guardian or family of a victim of a 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.²⁵
- 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.²⁶
- 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.²⁷

²¹ Section 960.001(1)(a)5., F.S.

²² Section 960.001(1)(b), F.S.

²³ Section 960.001(1)(f), F.S.

²⁴ Section 960.001(1)(e), F.S.

²⁵ Section 960.001(1)(g)1., F.S.

²⁶ Section 960.001(1)(g)2., F.S.

²⁷ Section 960.001(1)(g)3., F.S.

The Florida Funeral, Cemetery, and Consumer Services Act

Chapter 497, F.S., known as the Florida Funeral, Cemetery, and Consumer Services Act (the Act), generally regulates funeral and cemetery services.²⁸ The Act authorizes the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services to regulate cemeteries, columbaria, cremation services and practices, cemetery companies, dealers and monument builders, funeral directors, and funeral establishments.²⁹

Section 497.005(43), F.S., defines the term “legally authorized person” by providing a priority listing which begins with the decedent (when written inter vivos authorizations and directions are provided by the decedent) and includes relatives of the decedent.³⁰ Additionally, the definition provides for other persons who may qualify— such as a public health officer, medical examiner or county commission – should a family member not exist or be available.³¹ Thus, if a legally authorized person is not available, a court of competent jurisdiction may provide the written authorization prior to the disinterment and reinterment of a dead human body.³²

Killers Can Not Benefit Under Will or Probate Code

Section 732.802, F.S., provides that any surviving person who unlawfully and intentionally kills or participates in procuring the death of the decedent is not entitled to any benefits that they may normally be entitled to under a valid will or through the probate process. Instead, property appointed by the will of the decedent passes as if the killer had predeceased the decedent.³³ The same general principal of the killer or accomplice to the killer not being allowed to benefit applies to situations such as property inheritance,³⁴ beneficiary of bonds or life insurance and other contractual agreements.³⁵

III. Effect of Proposed Changes:

The bill provides that the act may be cited as “Curtis’ Law.”

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.

²⁸ See Section 497.001, F.S.

²⁹ Sections 497.101 and 497.103, F.S.

³⁰ Section 497.005(43), F.S.

³¹ *Id.*

³² Section 497.384(3), F.S.

³³ Section 732.802(1), F.S.

³⁴ Sections 732.802(2) and 732.802(4), F.S.

³⁵ Section 732.802(3), F.S.

- 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-mentioned information if doing so would jeopardize or otherwise interfere with an active investigation.

The law enforcement agency is not required under these new provisions to provide investigative records generated during its investigation to a minor's next of kin for inspection.³⁶

The bill also amends s. 497.005, F.S., relating to the Florida Funeral, Cemetery, and Consumer Services Act, to prevent *any* person that has been arrested for committing an act of domestic violence against the deceased or any act that resulted in or contributed to the death of the deceased from being awarded any legal benefit under the Florida Funeral, Cemetery, and Consumer Services Act.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Art. VII, s. 18 of the State Constitution.

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.

³⁶ This is not a public records exemption. The bill is simply stating that the new provisions in s. 960.01, F.S., do not obligate the law enforcement agency to provide the investigative records generated during its investigation to a minor's next of kin for inspection. If the information is available in active investigation records, it is exempt from public disclosure pursuant to s. 119.071(2)(a), F.S.; if not, it would be available for inspection upon public request the same as any other non-exempt public record.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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 the following sections of the Florida Statutes: 960.001 and 497.005

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 13, 2023:

The committee substitute amends s. 497.005, F.S., relating to the Florida Funeral, Cemetery, and Consumer Services Act, to prevent *any* person that has been arrested for committing an act of domestic violence against the deceased or any act that resulted in or contributed to the death of the deceased from being awarded any legal benefit under the Florida Funeral, Cemetery, and Consumer Services Act.

CS by Commerce and Tourism on March 27, 2023:

The committee substitute removes Section 2 from the bill which provided leave and work accommodations for family or household members of homicide victims.

B. Amendments:

None.