

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 667 Victim's Right to Candor in Criminal Proceedings

SPONSOR(S): Criminal Justice Subcommittee, Baker

TIED BILLS: **IDEN./SIM. BILLS:** SB 510

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	18 Y, 0 N, As CS	Padgett	Hall
2) Judiciary Committee	22 Y, 0 N	Padgett	Kramer

SUMMARY ANALYSIS

A crime victim has specific rights 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 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.

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. An order of "no contact" prohibits a defendant from:

- 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.

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.

CS/HB 667 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.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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.
- 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.

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 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:

- 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.

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.

- 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 Proposed Changes

CS/HB 667 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.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 960.001, F.S., relating to guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.

Section 2: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

⁷ *Id.*

⁸ S. 903.047(1)(b)1., F.S.

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2023, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill as it deleted a second degree misdemeanor offense that prohibited a defendant or person acting on his or her behalf from failing to disclose to a victim his or her identity and, in the case of an attorney or agent, the identity of the person who he or she represents or on whose behalf he or she is working and his or her relationship to that person.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.