

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 469 Victims of Criminal Offenses  
**SPONSOR(S):** Criminal Justice Subcommittee, Bartleman and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 466

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N, As CS	Yeager	Hall

### SUMMARY ANALYSIS

A crime victim has specific rights that are enumerated in the Florida Constitution and in statute. Among these rights, article I, section 16(b)(11) of the Florida Constitution provides that a crime victim has the right to:

- Be informed of his or her constitutional rights as a crime victim, and
- Seek the advice of an attorney to assist in enforcing such rights.

Section 960.001, F.S., provides a list of rights for victims and witnesses in the criminal justice system. To inform crime victims of their rights, law enforcement distributes information compiled by state attorneys and public defenders in each circuit applicable to their jurisdiction relating to victim services, victim rights, and the criminal justice system including:

- 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 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, including the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, and the next of kin of a homicide victim, 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 I, section 16(b) of the Florida Constitution;
- In the case of incarcerated victims, 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 right of a victim to a prompt and timely disposition of the case; and
- The right of a victim to employ private counsel.

Currently, under s. 960.001(1)(q), F.S., at the request of a victim of a sexual offense, or at the request of the victim's parent, guardian, or lawful representative, a victim advocate designated by the state attorney's office, sheriff's office, or municipal police department, or one representative from a not-for-profit victim services organization is permitted to attend and be present during any deposition of the victim.

CS/HB 469 amends s. 960.001, F.S., to also permit private counsel retained by a victim of a sexual offense to attend and be present during any deposition of the victim upon the request of the victim or the victim's parent, guardian, or lawful representative.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

#### Victim's Rights

##### *Florida Constitution*

On November 8, 1988, Florida voters approved an amendment to the state constitution to grant victims of crime,<sup>1</sup> and the next of kin of homicide victims, the qualified right to be informed, to be present, and to be heard at all crucial stages of criminal proceedings.<sup>2</sup> In November 2016, Florida voters approved Amendment 6, also known as Marsy's Law, which added specific rights for crime victims into the Florida Constitution.<sup>3</sup>

Article I, section 16 of the Florida Constitution provides that every crime victim is entitled to the following rights, beginning at the time of his or her victimization:

- 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.<sup>4</sup>

A crime victim is entitled to the following rights upon 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 proceedings, notwithstanding any rule to the contrary.
- The right to reasonable, accurate, and timely notice of any release or escape of the defendant or delinquent.
- The right to reasonable, accurate, and timely notice of 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.
- The right to be heard in 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

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<sup>1</sup> A "victim" is 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. Art. I, s. 16(11)(e), Fla. Const.

<sup>2</sup> Florida Division of Elections, *Rights of Victims of Crime*,

<https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=47> (last visited Jan. 26, 2024).

<sup>3</sup> Florida Division of Elections, *Rights of Crime Victims; Judges*,

<https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=11&seqnum=20> (last visited Jan. 26, 2024).

<sup>4</sup> Art. I, s. 16(b), Fla. Const.

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.
- 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.<sup>5</sup>

The Florida Constitution provides that all crime victims must be informed of these rights and that they may seek the advice of an attorney with respect to these rights.<sup>6</sup> Crime victims and members of the general public must be advised of their rights in the form of a card or other effective means.<sup>7</sup> The victim, retained attorney of the victim, lawful representative of the victim, or the office of the state attorney upon request of the victim, may assert and seek enforcement of these rights.<sup>8</sup> The court or other authority with jurisdiction over the case must act promptly upon such a request, affording a remedy by due course of law for the violation of any right.<sup>9</sup>

#### *Florida Statutes*

Section 960.001, F.S., provides a list of rights for victims and witnesses in the criminal justice system. To inform crime victims of their rights, law enforcement distributes information compiled by state attorneys and public defenders in each circuit applicable to their jurisdiction relating to victim services, victim rights, and the criminal justice system including:

- 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 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, including the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, and the next of kin of a homicide victim, 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 I, section 16(b) of the Florida Constitution;
- In the case of incarcerated victims, 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 right of a victim to a prompt and timely disposition of the case; and
- The right of a victim to employ private counsel.<sup>10</sup>

#### *Court Proceedings*

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<sup>5</sup> Art. I, s. 16(b)(6), Fla. Const.

<sup>6</sup> Art. I, s. 16(b)(11), Fla. Const.

<sup>7</sup> *Id.*

<sup>8</sup> Art. I, s. 16(c), Fla. Const.

<sup>9</sup> *Id.*

<sup>10</sup> S. 960.001(a), F.S.

Section 960.0021, F.S., provides that it is Legislature's intent that to ensure crime victims can effectively understand and exercise their rights under the Article I, section 16 of the Florida Constitution, victims must be properly advised of their rights by the courts in the state.<sup>11</sup> Courts may fulfill this obligation by displaying this information prominently on courtroom doors,<sup>12</sup> or by delivering the following announcement at any 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, upon request:

1. To be informed.
2. To be present.
3. To be heard at all stages of criminal proceedings.
4. To receive advance notification, when possible, of judicial proceedings and notification of scheduling changes, pursuant to s. 960.001, F.S.
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."<sup>13</sup>

### Depositions of Victims of Sexual Offenses

A deposition is a witness's sworn out-of-court testimony used to gather information.<sup>14</sup> It is a sworn statement given by a witness in response to questions from attorneys on both sides of a case to assist them in understanding what the witness knows about the case.<sup>15</sup> In Florida, a defendant's attorney is permitted to depose all witnesses in a felony case after formal charges have been filed and prior to a trial without leave of the court.<sup>16</sup> As such, a defendant's attorney may generally take the deposition of a victim of a felony sexual offense without leave of the court.<sup>17</sup>

Section 960.001, F.S., affords a victim of a sexual offense special protections in these proceedings.<sup>18</sup> Currently, at the request of the victim, or at the request of the victim's parent, guardian, or lawful representative, a victim advocate designated by the state attorney's office, sheriff's office, or municipal police department, or one representative from a not-for-profit victim services organization is permitted to attend and be present during any deposition of the victim.<sup>19</sup> A victim of a sexual offense also has the right to employ private counsel,<sup>20</sup> but such counsel is not guaranteed to be present and attend the victim's deposition under s. 960.001, F.S.

### **Effect of Proposed Changes**

CS/HB 469 amends s. 960.001, F.S., to also permit private counsel retained by a victim of a sexual offense to attend and be present during any deposition of the victim upon the request of the victim or the victim's parent, guardian, or lawful representative. This is an addition to the other authorized persons permitted to attend and be present during any deposition of the victim under current law.

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<sup>11</sup> S. 960.0021(1), F.S.

<sup>12</sup> S. 960.0021(2)(b), F.S.

<sup>13</sup> S. 960.0021(2)(a), F.S.

<sup>14</sup> Cornell Law School, Legal Information Institute, *Deposition*, <https://www.law.cornell.edu/wex/deposition> (last visited Jan. 26, 2024).

<sup>15</sup> Office of the Attorney General, *A Guide for Victims from the Office of Statewide Prosecution*,

<https://www.myfloridalegal.com/statewide-prosecutor/statewide-prosecutor-guide-for-victims> (last visited Jan. 26, 2024).

<sup>16</sup> Fla. R. Crim. P. 3.220.

<sup>17</sup> *Id.*

<sup>18</sup> Ch. 960, F.S.; Special protections are granted to a victim or witness of a sexual offense who was under the age of eighteen when he or she was the victim or witness to a sexual offense. The court may prohibit depositions of the victim or witness. S. 92.55(4), F.S.

<sup>19</sup> S. 960.001(1)(q), F.S.

<sup>20</sup> S. 960.001(a)8., F.S.

The bill provides an effective date of July 1, 2024.

**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, 2024.

**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:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 30, 2024, 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:

- Removed changes to s. 960.001, F.S., that provided immunity to victims of sexual offenses from prosecution for misdemeanor violations of ch. 893, F.S., based upon the results of his or her toxicology screening conducted in conjunction with a sexual assault forensic examination or upon a report of sexual violence.

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