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## CRIME VICTIMS' RIGHTS

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As a victim of a crime, you should be aware that in this state you are afforded many rights to help protect you during this difficult time and process. Some of these rights are automatic, and others require you to “opt in” to get them. What follows is a lot of information to ensure that you are aware of all of your rights, and also there is contact information to talk to people who are available to assist you as you deal with the criminal justice system. If you have any questions, please contact us at [FILL IN THE BLANK]. We recognize that being a victim is not an easy thing, and we are here to help.

Signed,

[FILL IN THE BLANK]

# WHO IS A VICTIM?

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:

1. **the victim’s** lawful representative,
2. **the parent** or guardian of a minor, or
3. **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.*

Fla. Const. art. I, § 16(e).

# VICTIMS HAVE THESE STATE CONSTITUTIONAL RIGHTS

Fla. Const. art. I, § 16(b).

## Every victim, beginning at the time of the victimization, is entitled to the following rights:

- **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. However, nothing contained herein is intended to 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.
- **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 post-judgment proceedings.
- **The right to** be informed of [victims’ state constitutional] rights, and to be informed that victims can seek the advice of an attorney with respect to their rights.

*These rights are automatic, which means that unless a victim explicitly, knowingly and voluntarily waives them, they must be afforded.*

# THESE RIGHTS ARE AFFORDED “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 proceeding, notwithstanding any rule to the contrary. A victim shall also be provided 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.

- **The right to** be informed of all post-conviction 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 shall extend the right to be heard to any person harmed by 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 is made; and to be notified.

*Victims must be informed of their rights to request them!*

# ALL OF THESE RIGHTS ARE ENFORCEABLE!

The victim, the retained attorney of the victim, a 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 and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding the disposition of a victim’s right shall be clearly stated on the record.

Fla. Const. art. I, § 16(c).

# SELECT ADDITIONAL RIGHTS FOR VICTIMS

## *In Adult Criminal Proceedings*

### PROTECTION DURING THE PROCESS

**Victims have statutory and constitutional rights to protection.**

**Among these are:**

- **The right to** be reasonably protected from the accused and any person acting on behalf of the accused within the judicial process. Fla. Const. art. I, § 16(b)(3); Fla. Stat. § 960.001(1)(c);
- **The right to** have a victim-advocate present and instances when a courtroom can be cleared Fla. Stat. Ann. § 960.001(1)(q);
- **Victims also have the constitutional right to** be free from intimidation, harassment, and abuse and the right to prevent disclosure of information or records that could be used to locate or harass the victim or the victim's family. Fla. Const. art. I, § 16(b)(2), (5).
- **The court must consider the victim's safety** when setting a defendant's bail;
- **Although all victims have privacy rights**, victims of domestic violence may apply for the address confidentiality program if they fear for his/her/their safety or his/her/their children's safety. Fla. Const. art. I, § 16(b)(4); Fla. Stat. § 960.001(1)(c). The program allows the victim to designate the Attorney General as an agent for purposes of receiving mail.

### NOTIFICATION TO THE VICTIM'S EMPLOYER

A victim or witness may request the assistance of law enforcement or the State Attorney's Office to inform an employer that his/her/their involvement is necessary for the prosecution of a case and that such involvement may require absences from work. Fla. Stat. § 960.001(1)(i). Law enforcement and the State Attorney's Office, in select circumstances, shall also assist in explaining to creditors the basis for "serious financial strain" caused by the crime or their cooperation in a case. *Id.*

### CONFIDENTIALITY

A victim has the right to prevent disclosure of information or records which could disclose confidential or privileged information of the victim. Fla. Const. art. I, § 16(b)(5).

### VICTIM COMPENSATION

The Florida Attorney General's Office offers a Crime Victim Compensation Program. Fla. Stat. § 960.001(1)(a)(1). Victim compensation is a way for a victim to recover certain economic losses caused by defendant's crime, such as medical treatment, lost wages, counseling and funeral expenses. More information can be found on the Florida Attorney General's website and an online application can be found here. Victim advocates around the state may assist victims in completing the application and submitting it on their behalf. [Remove hyperlinks]

### SPEEDY RESOLUTION OF THE CASE

A victim has a right to a prompt and timely disposition of their case to minimize the time that they must endure the responsibilities and stress associated with a case. to the extent that this right does not interfere with the constitutional rights of the accused. See Fla. Const. art. I, § 16(b)(10)(a); Fla. Stat. § 960.001(1)(a)(7).

### STAGES OF THE CRIMINAL JUSTICE PROCESS

Victims' rights attach at the time of the victimization and continue throughout the criminal justice process, which is when the offender completes his/her/their sentence and is released from state supervision. The stages of the criminal justice process can be divided into three general categories: pretrial, trial and, if a person is convicted, post-conviction. In some cases there will not be a trial stage because the defendant enters a plea agreement or successfully completes a pretrial diversion program. A general overview of each stage and select victims' rights are provided below.

# PRETRIAL

## APPREHENSION AND ARREST

### After committing a crime:

- an offender may be arrested by a law enforcement officer, Fla. Stat. Ann. § 901.15;
- a court can issue an arrest warrant, Fla. Stat. Ann. § 901.02;
- a State Attorney's Office may file an information, Fla. Stat. Ann. § 932.48; or
- a grand jury may recommend charges by returning an indictment or presentment. Fla. Stat. Ann. § 905.34.

## FIRST APPEARANCE (FOLLOWING THE ARREST)

Within 24 hours of arrest, a defendant who is in custody will appear before a judge for a first appearance. Fla. R. Crim. P. 3.130. The court will decide whether to release the defendant and if any conditions should be set. At first appearance, commonly referred to as a "bond hearing," the court decides whether to release a defendant on his/her/their own recognizance; set a bond amount; or, in some instances, hold a defendant no bond. Courts can also set conditions, such as a No Contact Order to protect a victim. **Appropriate agencies must make reasonable attempts to notify victims as to the date, time, and location of the first appearance hearing.**

Victims have a right to confer with the prosecuting attorney concerning release of defendants. Fla. Const. art. I, § 16(b)(6)(c). Victims have the right to be present at bond hearings and all public hearings that contemplate a defendant's release and may request to exercise their right to be heard on the issue of release. Fla. Const. art. I, § 16(b)(6)(a)-(b). If there is an attempt to modify a condition of release that precludes contact with the victim, the victim shall be permitted to be heard at any proceeding in which such modification is considered, and the Assistant State Attorney shall notify the victim of the provisions of this subdivision and of the pendency of any such proceeding. Fla. R. Crim. P. 3.131. Victims may comment on whether to keep defendant in custody and/or whether and what release conditions are necessary for them to feel safe. **If the victim is unable to attend, the state attorney shall convey the victims' views to the court upon request.**

## INVESTIGATION

There are many steps to investigation and many rights attach. Two are highlighted here.

Victims of felony crimes will meet with an Assistant State Attorney to provide a sworn statement regarding the incident. Fla. R. Crim. P. 3.140 (requiring that the State Attorney or an Assistant State Attorney certify that he/she/they are filing an information in good faith after receiving sworn testimony from the material witness or witnesses). This meeting, sometimes referred to as a "pre-file conference," provides victims with an opportunity to discuss all aspects of the case, including impact of the crime, economic loss caused by the crime and desired outcome (e.g., restitution, trial, conviction and sentence).

Law enforcement, prosecuting attorneys or any other government official cannot ask or require a victim of a sexual offense to submit to a polygraph examination. Fla. Stat. § 960.001(1)(t).

## CHARGES FILED

The State Attorney's Office has absolute discretion whether to prosecute a person for a crime. The State Attorney's office must inform any victims in the case of this decision. Fla. Stat. § 960.001(1)(e)(3).

## ARRAIGNMENT

At an arraignment hearing the court advises defendants of the charges that have been formally filed. If a defendant does not have an attorney at this stage, the judge will appoint one. Fla. R. Crim. P. 3.160(e).

The Assistant State Attorney will notify victims of the arraignment date. The victim has the right to be present at the arraignment. Victims should be aware that defendants have the option of entering a change of plea and being sentenced at arraignment. Fla. R. Crim. P. 3.160(c). If a victim wishes to be present and/or confer with the Assistant State Attorney and be heard by the court regarding any potential plea, Fla. Const. art. I, § 16(b)(6)(a)-(c), the victim should ensure that the Assistant State Attorney knows that he/she/they is asserting their rights and that a plea hearing should not proceed without him/her/them present.

If the defendant does not enter into a plea agreement at arraignment, the next court date will be set.

## RELEASE HEARING (SETTING BOND)

If a defendant was unable to post a bond after the initial arrest, or if bond was not set, defendant is entitled to a bond hearing. Posting bond allows a defendant to be released from custody. The Assistant State Attorney may file a motion requesting that the defendant be held in custody pending trial. Fla. Stat. Ann. § 907.041; Fla. R. Crim. P. 3.132. If the motion is not filed, then the court will set a bond amount. Fla. R. Crim. P. 3.131(a). The State Attorney's Office will notify the victim of the scheduled hearing and the victim will have an opportunity to speak regarding the defendant's release/bond conditions. Fla. Const. art. I, § 16(b)(6)(a)-(c). If the victim does not wish to speak in open court then the Assistant State Attorney or the victim's attorney may read a statement on behalf of the victim.

## PRE-TRIAL CONFERENCE

There may be numerous pre-trial conferences. These allow the court to ensure the case is progressing in a timely manner. See Fla. Stat. Ann. § 960.001(1)(a)(7) (providing victims the right to a prompt and timely disposition of a case). These conferences are a means for the court and parties to check in and address discovery, pending motions, deposition progress and any known trial issues. Victims will receive notice of the hearing dates and may speak to the court. Fla. Const. art. I, § 16(b)(6)(a),(b). The court will set the trial date during these conferences.

Appearance by the victim at these hearings is not mandatory, unless subpoenaed (for example, to testify at a motion hearing), but a victim has the right to be present. Fla. Stat. Ann. § 960.001(1)(e). A victim advocate or the victim's attorney can accompany victims or attend these proceedings on their behalf, if the victim chooses. Fla. Stat. Ann. § 960.001(7) (authorizing victim's representative

## DISCOVERY (PREPARATION FOR TRIAL)

**Subpoenas.** Victims may receive a subpoena for trial, a deposition and other hearings. A subpoena summons a person to appear at the time, date and location specified. In addition or in the alternative, a subpoena may request physical items, such as a victim's records, to be turned over to a party in the case. The victim may challenge both types of subpoenas in court, however, ignoring or violating a subpoena can result in a person being held in contempt of court. Fla. R. Crim. P. 3.361(d).

## DISCOVERY (PREPARATION FOR TRIAL) CONT.

**Depositions.** The defendant's attorney can issue a subpoena for a victim to appear for a deposition. Fla. R. Crim. P. 3.220(h). At a deposition, the victim will be sworn in and the attorney may ask the victim questions concerning the victim's knowledge of the criminal offense and anything else that is relevant. This deposition generally occurs in an office setting with a prosecutor, defense attorney and court reporter. There are requirements on the location of a deposition; they can be held at the public defender's office and the State Attorney's Office. Testimony from the deposition can be compared to the testimony given at the trial. Victims have the right to request a victim advocate from the government or non-profit sector to attend the deposition with them. Fla. Stat. § 960.001(1)(q)(c). The Assistant State Attorney may make objections during the deposition and a victim may have a private attorney present during the deposition. Victims may seek a protective order from the court to limit the scope of the questions. Fla. R. Crim. P. 3.220(l).

## PLEA NEGOTIATION & AGREEMENTS

Many cases are settled through plea negotiations between the State Attorney's Office and defendant. The Assistant State Attorney must consult with the victim of a felony involving physical or emotional injury or trauma before finalizing the plea agreement with defendant. Fla. Stat. § 960.001(1)(g)(1)(b). After consulting, the Assistant State Attorney must consider the victim's views during the plea process. The victim has a right to confer with the state attorneys' office prior to a plea agreement being offered to the defendant. Once a plea agreement is reached, the Assistant State Attorney will notify the victim of the plea details and the date of the plea hearing. Fla. Stat. § 960.001(e)(3). The plea agreement is subject to acceptance by the judge, and the victim has the right to make a statement to the judge before the plea agreement is ruled upon. Fla. Const. art. I, §(b)(6)(b).

## PRE-TRIAL INTERVENTION / DIVERSION PROGRAM

Pursuant to their discretion and office policy, Assistant States Attorneys may leverage pretrial intervention and diversion programs.

**Pre-Trial Intervention Program.** Defendants with no more than one nonviolent misdemeanor, who is charged with any misdemeanor or felony of the third degree is eligible for release to the pretrial intervention program on the approval of the administrator of the program and the consent of the victim, the state attorney, and the judge. Fla. Stat. Ann. § 948.08(2). Successful completion of the program results in a dismissal of the charges.

**Diversion Program.** Diversion is similar to probation where the defendant accepts responsibility for the offense and is released under supervision for six months to a year. Restitution, counseling, obtaining employment, and community service work are typical components of diversion. During the program, the probation office supervises the defendant. Victims have a right to provide the State Attorney with their opinion on defendant's participation in the pretrial diversion program. Fla. Const. art. I, §16 (b)(6)(c); Fla. Stat. § 960.001(1)(g)(1)(c).

## TRIAL

If a case proceeds to trial, a jury or the judge (if it is a bench trial) will decide if defendant is guilty or not guilty of the charges. The prosecution presents its case in chief first then defense follows. Either side may call the victim to testify, but it is often the Assistant State Attorney who calls the victim to support the case against defendant.

Victims may not be excluded from any portion of any hearing, trial or proceeding pertaining to the offense, even if the victim will be a witness. Fla. Const. art. I, § 16(b)(6)(a). As practicable, victims shall be provided with assistance, such as transportation, parking, separate pretrial waiting areas and translator services. A victim advocate may accompany victims to the trial. Fla. Stat. § 960.001(1)(n).

A victim of a sexual offense shall be informed of the right to have the courtroom cleared of certain persons when the victim is testifying concerning the offense. Fla. Stat. § 960.001(1)(q).

## POST-CONVICTION

### PRE-SENTENCE INVESTIGATION

In many cases, the judge will order the probation department to conduct a pre-sentence investigation (PSI) of defendant. This process consists of consultation with the victim to provide input regarding the effects of the crime, as well as an interview with defendant to get his/her/their version of the criminal event. The PSI will also include a review of the facts of the crime, defendant's criminal record and social history. Upon completion, the probation office will provide a sentence recommendation to the judge; however, the judge makes the final sentence determination. Victims have the right to review the non-confidential portions of the pre-sentence investigation report prior to the sentencing hearing. See Fla. Stat. § 960.001(1)(g)(2).

### SENTENCING HEARING

If the defendant is found or pleads guilty, the judge then determines which sentence should be imposed using the sentencing guidelines and his/her/their discretion.

A victim has the right to provide an oral and/or written victim impact statement (VIS) with the court at any time before the court imposes sentence. This allows a victim to indicate what impact the crime has had upon his/her/their life. The Assistant State Attorney shall assist the victim in the preparation of the VIS if necessary. Any written VIS submitted to the court will be placed in the court file. Suggestions on what information to include in a VIS can be found here.

If the victim and the offender attend the same school, the victim's parents have the right to attend the sentencing or disposition of the offender and request that the offender be required to attend a different school. Fla. Stat. § 960.001(1)(s).

## **DEFENDANT’S CHALLENGE TO THE CONVICTION AND/OR SENTENCE**

All state-level appeals and collateral attacks on any judgment must be complete within two years from the date of appeal in non-capital cases and within five years from the date of appeal in capital cases, unless a court enters an order with specific findings as to why the court was unable to comply with this subparagraph and the circumstances causing the delay. Fla. Const. art. I, § 16(b)(10)(b).

## **RETURN OF PROPERTY**

Victims have the right to the prompt return of property when no longer needed as evidence. See, e.g., Fla. Const. art. I, §(b)(8); Fla. Stat. § 960.001(1)(h).

## **RELEASE FROM PHYSICAL CUSTODY**

Reasonable efforts shall be made to notify the victim prior to the release of the offender from county jail, municipal jail, juvenile detention facility or residential commitment facility. See, e.g., Fla. Const. art. I, § 16(b)(6) (f); Fla. Stat. § 960.001(1)(f). Such efforts are aided by a victim’s filing of a victim notification card.

Parole. If a parolee is charged with violating parole, the parolee shall be afforded a preliminary hearing within 30 days of arrest for the violation. Fla. Stat. § 947.23. Victims have a right to notice of the hearing and to participate in the post-conviction process.

Work release. The Department of Corrections will notify victims of a felony involving physical or emotional injury or trauma if their offender is approved for community work release. Fla. Stat. § 960.001(1)(g)(3).

## **VICTIM SERVICES**

[insert crisis interventions services, supportive or bereavement counseling, social service support referrals, and community-based victim treatment programs] Fla. Stat. § 960.001 (1)(a)(2)

