

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/CS/SB 510

INTRODUCER: Rules Committee; Criminal Justice Committee; and Senator Burgess

SUBJECT: Victim's Right to Candor in Criminal Proceedings

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	Fav/CS
2.	<u>Parker</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 510 amends s. 960.001, F.S., requiring a duty of candor to an alleged victim. The bill requires that each victim must be notified that he or she has the right, if contacted, to obtain information relating to a criminal proceeding by an attorney, an investigator, or any other agent acting on behalf of the criminal defendant.

The bill amends s. 92.55, F.S., to prohibit defense depositions of any victim of a sexual offense who is under the age of 18, or any victim who has an intellectual disability, unless good cause is shown. Additionally, the bill provides considerations for the court to determine whether to allow depositions of the specified victims in the listed cases.

The bill has an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2023.

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 Currently, there is no statutory duty of Candor.

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 post-judgment 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.
- 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.

¹ Section 16 (b), Art. I, Fla. Const.

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. FL Const. Art. 1, s. 16 (b)(3).

³ Section 16 (b)(10), Art. 1, Fla. Const., 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 Section 16 (b), Art. 1, Fla. Const.

- 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 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 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 s. 16(b), Art. 1, Fla. Const., 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:
 - 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;

⁵ Section 16 (b)(6), Art. 1, Fla. Const.

⁶ Section 16 (b)(11), Art. 1, Fla. Const.

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 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, upon request, to be informed and to submit written statements at all crucial states;
 - The right of a victim to a prompt and timely disposition of the case in order to minimize the period during which the victim must endure the responsibilities and stress involved; and
 - The right of a victim to employ private counsel. The Florida Bar is encouraged to develop a registry of attorneys who are willing to serve on a pro bono basis as advocates for crime victims.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

Proceedings Involving Vulnerable Victims and Witnesses

Section 92.55, F.S., contains protections for certain crime victims or witnesses during the criminal case process. Specifically, this section of law provides varying types of protection for

⁹ Section 960.001(1)(a)1.-8., 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.

vulnerable victims and witnesses who are either underage or intellectually disabled. Section 92.55(1), F.S., contains the following definitions:

- “Sexual offense victim or witness” means a person who was under the age of 18 when he or she was the victim of or a witness to a sexual offense; and
- “Sexual offense” means any offense specified in s. 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I), F.S.

A conviction of the offenses specified in s. 775.21(4)(a)1., F.S., and s. 943.0435(1)(h)1.a.(I), F.S., results in the person being designated as a sexual predator or sexual offender, respectively, under the criteria set forth in those sections of law.

Section 92.55, F.S., provides that a parent, guardian, attorney, guardian ad litem, or other advocate appointed by the court under s. 914.17, F.S., for a victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness, may file a motion with the court for an order to protect the victim or witness in any judicial proceeding or other official proceeding from severe emotional or mental harm due to the presence of the defendant if the victim or witness is required to testify in open court.¹²

Such court orders must relate to the taking of testimony and include, but are not limited to interviewing or the taking of depositions as part of a civil or criminal proceeding.¹³

In ruling upon the motion, the court must consider:

- The age of the child, the nature of the offense or act, the relationship of the child to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the child as a consequence of the defendant’s presence, and any other fact that the court deems relevant;
- The age of the person who has an intellectual disability, the functional capacity of such person, the nature of the offenses or act, the relationship of the person to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the person as a consequence of the defendant’s presence, and any other fact that the court deems relevant; or
- The age of the sexual offense victim or witness when the sexual offense occurred, the relationship of the sexual offense victim or witness to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the sexual offense victim or witness as a consequence of the defendant’s presence, and any other fact that the court deems relevant.¹⁴

Additionally, the court may enter orders:

- Limiting the number of times that a child, a person who has an intellectual disability, or a sexual offense victim or witness may be interviewed;
- Prohibiting depositions of the victim or witness;
- Requiring the submission of questions before the examination of the victim or witness;

¹² Section 92.55(2), F.S.

¹³ Section 92.55(2)(a), F.S.

¹⁴ Section 92.55(3), F.S.

- Setting the place and conditions for interviewing the victim or witness; or for conducting any other proceeding; or
- Permitting or prohibiting the attendance of any person at any proceeding.

The court shall enter any order necessary to protect the rights of all parties, including the defendant in any criminal action.¹⁵

III. Effect of Proposed Changes:

The bill creates s. 960.0023, F.S., requiring a duty of candor to an alleged victim. The bill requires that each victim must be notified that he or she has the right, if contacted, to obtain information relating to a criminal proceeding by an attorney, an investigator, or any other agent acting on behalf of the criminal defendant. The victim is 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 amends s. 92.55, F.S., to prohibit criminal defense depositions of any victim of a sexual offense who is under the age of 18, or any victim who has an intellectual disability, unless good cause is shown.

The court may authorize the taking of a deposition and may order protections deemed necessary upon the filing of a written motion and the court finding that:

- A deposition is necessary to assist at trial;
- The evidence sought is not reasonably available by any other means; and
- The probative value of the testimony outweighs the potential harm to the person to be deposed.

In ruling upon the motion the court may consider:

- The mental and physical age and maturity of the victim.
- The nature and duration of the offense.
- The relationship of the victim to the defendant.
- The complexity of the issues involved.
- Whether the victim would suffer moderate psychological harm as a consequence of being compelled to testify at a deposition.
- The functional capacity of the victim if he or she has an intellectual disability.
- The willingness of the victim to be deposed.
- Any other fact that the court deems relevant.

This bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁵ Section 92.55(4), F.S.

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 bill prohibits depositions of specified victims except upon a showing of good cause. It is possible that the additional hearings on whether to grant depositions will have an impact on judicial resources. However, it is also possible that if fewer depositions are taken in criminal cases, related costs such as court reporting and transcribing, as well as prosecutor and public defender time spent in depositions will off-set some of the expense of any additional motion hearings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 960.001 and 92.55.

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 Rules on April 19, 2023:

The committee substitute:

- Provides that absent a showing of good cause, defense depositions may not be taken of a victim in a sexual offense case who is under the age of 18, or any victim who has an intellectual disability.
- Provides that the court may authorize the taking of a deposition and may order protections deemed necessary upon the filing of a written motion and the court making certain findings.

CS by Criminal Justice on April 4, 2023:

The committee substitute:

- Requires that each victim must be notified of his or her right to candor.
- Requires that if the victim is contacted by an attorney, investigator, or any agent acting on behalf of the criminal defendant to obtain information, the victim is to be informed of the person's name and employer, and the fact that such person is acting on behalf of the defendant.

- B. **Amendments:**

None.