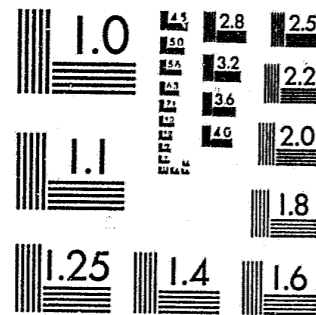


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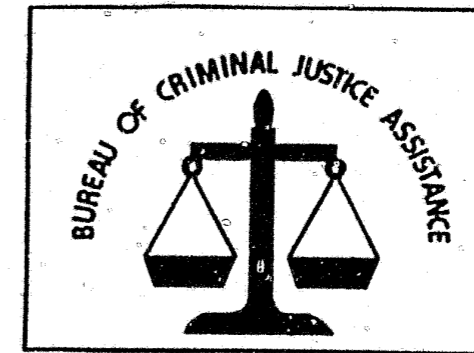
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STATED VICTIM/WITNESS CONCERNS:
FLORIDA
MINUTES, SUMMARIES, and IMPLICATIONS

Bureau of Criminal Justice Assistance
Division of Public Safety Planning and Assistance
Department of Veteran and Community Affairs

89529

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ACQUISITIONS

A C K N O W L E D G E M E N T S

The Bureau of Criminal Justice Assistance would like to express its appreciation to the following people in developing and reviewing the "Selected Victim/Witness Concerns: Florida Statutes, Summaries and Implications."

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INTRODUCTION

"Selected Victim/Witness Concerns: Florida Statutes, Summaries and Implications" was developed by Bureau of Criminal Justice Assistance staff to highlight the broad scope of victim/witness issues in the Florida criminal justice system and to link existing legislation with selected areas of victim/witness concerns. The section, "Implications for Victims/Witnesses of Crime", reflects staff interpretation of the legislation and its effect on victim/witness issues in this state.

SELECTED VICTIM/WITNESS CONCERNS: FLORIDA STATUTES, SUMMARIES AND IMPLICATIONS

<u>Area of Concern</u>	<u>Chapter Heading Chapter #/Section</u>	<u>Summary</u>	<u>Implications for V/W of Crime</u>
CHILD ABUSE	<u>Public Records</u> 119.011	Definition 119.011(3)(a)2. - Exclusion of identity of victim of the crimes of sexual battery or child abuse	Protects victims of sexual battery, as defined Chapter 794 and child abuse, Chapter 827
	<u>Public Health</u> <u>Children's Medical Services</u> 391	Summary provides for health care for children	Services for sexually abused children funded through this statute
	<u>Social Welfare (HRS)</u> <u>Social & Economic Assistance</u> 409.145(b)	Child in need of protective supervision determined by intake/court	State recognizes need of child victim for protection
	409.2551	Parents responsible for support	Must pay for attorney if needed
	<u>Social Welfare (HRS)</u> 409.405	Court placement of delinquent children	Can restitution be included in penalty to delinquent child?
	<u>Abuse of Children or</u> <u>Disabled Persons</u> 827 (1980 Supp.)	Prohibits child abuse, neglect and non-support	Child victim resource
	<u>Offender Counseling</u> 948 (Chapter 81-198; H.B.799)	Probation. The court must require out-patient counseling as a con- dition of probation for a person who has been convicted of a speci- fied sexual offense involving a child and who has been determined by the court to be in need of	Possible victim resource for child sexual abuse

<u>Area of Concern</u>	<u>Chapter Heading Chapter #/Section</u>	<u>Summary</u>	<u>Implications for V/W of Crime</u>
CHILD ABUSE (cont.)	Offender Counseling	treatment. Prescribes requirements relating to diagnosis and evaluation and sources of counseling. The counseling plan must be provided to the court for review. Effective October 1, 1981	
CITIZEN COMPLAINT	Citizen's Assistance Office (Governor's Office) <u>14.26</u>	Coordinate complaint-handling activities of state agencies	Suggests a service to V/W
	Mental Health "The Florida Mental Health Act" "The Baker Act" <u>394.459</u>	Rights of Patients: (1) individual dignity (2) right to treatment (3) right to express informed patient consent (4) quality of treatment (5) communication, abuse reporting (6) care and custody of personal effects of patients (9) clinical record confidentiality (10) Habeas Corpus (11) transportation (12) designation of representatives; notice of admission (13) liability for violation	Note: Mental patients are subject to involuntary treatment and segregation from society similar to that of the criminal, but under improved conditions
	Appearance of Victim to Present Oral or Written Statement at Sentence Hearing <u>921.143</u>	Provides for either an oral or written statement by victim at sentence hearing when defendant has pleaded guilty or nolo contendere	May impact on victim restitution

<u>Area of Concern</u>	<u>Chapter Heading Chapter #/Section</u>	<u>Summary</u>	<u>Implications for V/W of Crime</u>
CORRECTIONS/PAROLE/ PROBATION	<u>Parole Commission</u> 947	Parole and Probation Commission duties defined	Can require restitution, community service, etc.
	<u>Intent</u> 947.002	To establish an objective means for determining parole dates for inmates	May be possible to notify victims/witnesses of inmates' release if requested
COURTS	<u>Money Paid Into Court</u> 43.18 - 43.195	Method of obtaining money from Court Registrar; disposal of physical evidence	Possible aid in the return of property
	<u>Sex Offenses - Testimony of Person Under 16</u> 918.16	Provides for clearing of courtroom of spectators when person under 16 years of age testifies concerning sex offenses	Victim/Witness reference
	<u>Appearance of Victim to Present Oral or Written Statement at Sentence Hearing</u> 921.43	Provides for either an oral or written statement by victim at sentence hearing when defendant has pleaded guilty or nolo contendere	Victim/Witness reference
	<u>Probation</u> 948	Probation - terms and conditions defined	Possible source of notification for V/W
CRIME COMPENSATION	<u>Vocational Rehabilitation Part II</u> 413.20(5, 6)	Vocational training and development of occupational shelters to gain physical restoration	Avenue for victim/witness advocate to pursue for inquiries received from a crime
	<u>Surcharge to Fines</u> 775.0835 (1980 Supp.)	Provides for additional fine to be allocated to Crimes Compensation Trust Fund in Chapter 960	Greater protection to victims of crime from habitual offenders

<u>Area of Concern</u>	<u>Chapter Heading</u> <u>Chapter #/Section</u>	<u>Summary</u>	<u>Implications for</u> <u>V/W of Crime</u>
CRIME COMPENSATION (cont.)	<u>Victims of Crimes</u> 960 (See 1980 Supp.)	Provides for compensation by the State to victims or dependents of victims of crime	Victim/Witness compensation
	<u>Crimes Compensation</u> 960.24	Duties and functions of the Department of Labor and Employment Security, Bureau of Crimes Compensation: (1) Seek to identify the victims of crime; inform them of provisions of this chapter (2) Serve as a clearinghouse for information relating to problems encountered by victims of crime (3) Enlist assistance of public and voluntary health, education, welfare and rehabilitation agencies or groups to aid victims of crime (4) Assist public agencies and local governments to provide assistance for victims of crime (5) Act as advocate for victims of crime to obtain aid, services from public or private health, education, welfare, or rehabilitation agencies or groups to treat victims	Summary is self-explanatory
CRIME AND THE ELDERLY/ HANDICAPPED	<u>Office of Governor</u> 23.0193	Data bank on older Floridians - determine types of data, dissemination of data	Suggests a service for elderly V/W
	<u>Public Business</u> 286.26	Public meetings to be accessible to handicapped <u>when so requested</u>	Applicable only to physically handicapped witness or victim

<u>Area of Concern</u>	<u>Chapter Heading Chapter #/Section</u>	<u>Summary</u>	<u>Implications for V/W of Crime</u>
CRIME AND THE ELDERLY/ HANDICAPPED (cont.)	<u>Aging and Adult Services</u> 410.016 (a-m) 410.102	(2) protective services (3) abuse/maltreatment	Provides services for elderly and handicapped victims
	<u>Prevention of Crimes Against the Elderly</u> 943.405	Provides for the development and implementation of an annual plan providing programs and projects for preventing crimes against the elderly	Victim/witness (elderly)
CRIME PREVENTION	<u>Arson; Burglary; Theft, Robbery, etc.</u> 806 810 812 (see 1980 Supp.)	Defines various crimes of Arson, Burglary, Theft, Robbery	For victim reference purposes
JUVENILES	<u>Visitation Rights</u> 63.08	Court may award visitation rights to grandparents where one spouse has died or deserted	Possible resource for abused children
	<u>Detention Homes and School for Delinquent Children</u> 416.03	Circuit judge may parole child to probation officer after notice and conference with judge who made commitment	It appears that victims and witnesses are not notified
PLANNING	<u>Florida Council on Criminal Justice & Bureau of Criminal Justice Assistance</u> 23.152 (1980 Supp.)	Encourages local and regional comprehensive criminal justice planning efforts, i.e. the estab- lishment of goals, implementation, etc.	Provides criminal justice planning; provides crime pre- vention planning for elderly victims and witnesses.
LAW ENFORCEMENT	<u>Communications</u> 401.29	(3) a statewide emergency reporting telephone number	This may provide way for a state- wide hotline number that victims

<u>Area of Concern</u>	<u>Chapter #/Section</u>	<u>Summary</u>	<u>Implications for V/W of Crime</u>
LAW ENFORCEMENT (cont.)	Communications	<ul style="list-style-type: none"> (4) a system of patient referral (5) state and areawide communications system (6) Minimum standards of communications for all appropriate medical components (effective July 1, 1982) 	in need of medical services can use; open/expand referral system and programs to respond; and include in minimum standards V/W concerns
MEDICAL/HOSPITAL	<u>Hospital Licensing and Regulations</u> 395.19	<p>Treatment of sexual assault victims All licensed hospitals under this chapter that provide emergency room services may arrange for rendering this type of treatment</p> <p>Appropriate medical attention and treatment to victims of sexual assault</p>	Provides for treatment of sexual assault victims, but not for payment for medical examination or evidence
	<u>Medical Telecommunications and Transport</u> 401	Development of statewide system of coordination with the Division of Communications, of the Department of General Services	Opportunity for quick, efficient response to medical needs; transportation to medical care - training interface with law enforcement dispatchers/operation
	<u>Communications</u> 401.29	<ul style="list-style-type: none"> (3) a statewide emergency reporting telephone number (4) a system of patient referral (5) state and areawide communications (6) minimum standards of communications for all appropriate medical components (effective July 1, 1982) 	May assist victim with emergency needs

<u>Area of Concern</u>	<u>Chapter Heading Chapter #/Section</u>	<u>Summary</u>	<u>Implications for V/W of Crime</u>
MEDICAL/HOSPITAL (cont.)	<u>EMS (Emergency Medical Service)</u> 401.45	No denial of Emergency Medical Services by licensees providing such services but may refer patient to other facility	May have direct effect on victims of crime requiring EMS, where failure to render treatment will cause a deterioration in victims' condition
	<u>Health & Rehabilitative Services (HRS) -Miscellaneous Provisions Community Mental Health</u> 402.20	County contracts authorized - provision for contractual source for mentally ill or retarded	Possible resource to treat mental illness as a result of victimization
	<u>Medical Examiners</u> 406.09	Medical examiners entitled to expert witness fees when giving expert testimony in the trial of a civil action/at a coroner's inquest (See 90.231)	Testimony may be beneficial to survivors of homicide victims, etc.
	<u>Transportation Services</u> 427.012	Council on the Transportation Disadvantaged - surveys needs of transportation disadvantaged, etc.	Can transportation for medical follow-up be provided to victims?
	<u>Abortion Law</u> 797	Only licensed physician to perform except in emergency care situation	Sexual assault victim may need service
	<u>Mentally Deficient and Mentally Ill Defendants</u> 916 and consider Mentally Disordered Sex Offender (MDSO)	Procedure for release of mentally ill defendants	Awareness reference for all potential victims as well as victim of mentally ill defendant to be released
MISCELLANEOUS: COORDINATION, PLANNING, ETC.	<u>Office of Governor</u> 23.012	Coordinate planning of services of state agencies respecting crime, social welfare	Possible resource to V/W

<u>Area of Concern</u>	<u>Chapter Heading Chapter #/Section</u>	<u>Summary</u>	<u>Implications for V/W of Crime</u>
MISCELLANEOUS: COORDINATION, PLANNING, ETC. (cont.)	<u>Parties</u> 46.021	Cause of action survives death of a person	Victim survivor reference
	<u>Transportation Services</u> 427.011	(1) Definitions	Possible facilitation of appearances of victims and witnesses for criminal justice activities
	<u>Coordinating Council on the Transportation Disadvantaged</u> 427.012	Surveys needs of transportation disadvantaged, etc.	Possible transportation for medical follow-up for victims
MISCELLANEOUS CRIMINAL CODES	<u>Florida Criminal Code</u> 775.012 (6)	Legislative intent in providing punishment for crimes - to insure the public safety by determining commission of offenses...and pro- viding for the confinement by offenders when required in the interests of public protection	Legislative intent appears to have two-fold implication for victims of crime: 1. a lessening in the crime index; and 2. preventing the reoccurrence of crimes to additional victims by a prior offender
	<u>Jail or Prison Terms - All Crimes</u> 775.022	Provides various amounts in incar- ceration for differing degrees of crimes - all crimes	This statute controls the amounts of incarceration and severity of incarceration for all crimes
	<u>Fines - All Crimes</u> 775.083	For all crimes - provides varying amounts of fines for all crimes of differing degrees	Control statute for all crimes - in addition to other punishment
	<u>Use of Weapon</u> 775.087	Reclassifies degree of felony to a higher degree where weapon is used in the felony	Greater protection to victims of crime by determining use of a weapon

<u>Area of Concern</u>	<u>Chapter Heading Chapter #/Section</u>	<u>Summary</u>	<u>Implications for V/W of Crime</u>
MISCELLANEOUS CRIMINAL CODE (cont.)	<u>Registration by Felons</u> 775.13	All persons having prior conviction of felony must register their presence in every county when there for more than 48 hours (unless civil rights restored)	Protection to potential victims of crime from prior felons
	<u>Withheld Sentences</u> 775.14	Five-year limitation on withheld sentences - all crimes	If a sentence is withheld for 5 years, the offender may not thereafter be sentenced. Disadvantage to victim
	<u>Time Limitations</u> 775.15	All crimes - provides varying time limitations (except for a capital felony) for differing degrees of crimes. (Note exceptions (3) to (6))	Even the most serious felony charge has a 4-year limitation, unless prosecution is commenced within that period
	<u>Justifiable Use of Force</u> 776	Defines justifiable use of force	For potential victims
	<u>Prevention of Escape</u> 776.07	Use of force to prevent escape from penal institution	Protection to public from escaped offenders
	<u>Principals and Accessories</u> 777	Defines "Principal", "Accessory" and "attempt"	For reference by victim
	<u>Homicide</u> 782	Defines varying types of homicide and degrees of severity	For reference by victim
	<u>Assault; Battery</u> 784 (1980 Supp.)	Defines Assaults; Battery; varying degrees	For reference by victim

<u>Area of Concern</u>	<u>Chapter Heading Chapter #/Section</u>	<u>Summary</u>	<u>Implications for V/W of Crime</u>
PROSECUTION/PUBLIC DEFENDERS	<u>State Attorneys</u> 27.03; 27.04	Summoning and examining witnesses for state	Makes no provision for duty to victims and/or witnesses
	<u>Public Defenders</u> 27.51 (1980 Supp.) 27.59	May tender advice to inmates when not represented, but makes no provision for duty to victims or witnesses	No mention of duty to V/W
	<u>Release of Criminals, Impunity Acquittals and Persons Incompetent to Stand Trial</u> 394.90(4)(5)	The State Attorney's Office is notified before proposed release; in a criminal case, release is by order of the committing court	This section does not appear to provide notification to V/W
RESTITUTION	<u>Legal Affairs Revolving Trust Fund</u> 16.53	Creates fund to investigate, prosecute and enforce RICO Act, etc.	Possible resource to V/W
	<u>Offenses Concerning Racketeering and Illegal Debts (RICO)</u> 895	Spells out offenses and civil remedies	May be possible recovery resource for crime victim
	<u>Disposition Hearing for Delinquency Cases</u> 39.09(3)7g	Juvenile proceedings	Restitution may be ordered by court as part of placement
	<u>Court Placement of Delinquent Children</u> 409.405	Court placement of delinquent children	Possible consideration for work/restitution as part of placement
	<u>Restitution</u> 775.089	Parole commission may receive restitution	Restitution
	<u>Presentence Investigation Reports</u> 921.231	Presentence investigation reports	May impact on victim restitution

<u>Area of Concern</u>	<u>Chapter Heading Chapter #/Section</u>	<u>Summary</u>	<u>Implications for V/W of Crime</u>
RESTITUTION (cont.)	<u>Victim Restitution</u> 947.181 (947.21 Violations of Parole)	Provides for the Parole and Probation Commission to require, as a condition of parole, reparation or restitution to the aggrieved party for the damage or loss caused by the offense for which the parolee was imprisoned	Victim reference - restitution
	<u>Terms and Conditions of Probation</u> 948.03(g)	Court may impose, in addition to any other sentence authorized by the law, an order of restitution on persons convicted of offense	Restitution
	<u>Victims of Crimes - "Florida Crimes Compensation Act"</u> 960 (See 1980 Supp.)	Provides for compensation by the State to victims or dependents of victims of crime	Victim/Witness compensation
	<u>Awards</u> 960.13(5)a	Crimes compensation award from or on behalf of perpetrator	Restitution
	<u>Awards Constitute Debt Owed To State</u> 960.17(3)	Parole and Probation Commission may make payment of debt to state a condition of parole	Restitution; offender may repay victim
	<u>Duties and Functions of the Department</u> 960.24	Describes duties of the Division of Worker's Compensation of the Department of Labor and Employment Security	Resource for victims of crime
SEXUAL BATTERY	<u>Public Records</u> 119.07(3)(h)	Exempting from public access of identity of victims of sexual battery Chapter 794 or child abuse Chapter 827	Protects identity of victim

<u>Area of Concern</u>	<u>Chapter Heading Chapter #/Section</u>	<u>Summary</u>	<u>Implications for V/W of Crime</u>
SEXUAL BATTERY (cont.)	<u>Hospital Licensing and Regulations</u> 395.19	Treatment of sexual assault victims. All licensed hospitals under this chapter that provide emergency room services may arrange for rendering this type of treatment	Provides for treatment of sexual assault victims, but not for payment for medical examination or evidence
	<u>Sexual Battery</u> 794.011(1)	(g) "Victim" means the person alleging to have been the object of a sexual offense	For reference by victim
	<u>Ignorance or Belief as to Victim's Age No Defense</u> 794.021	Ignorance or belief as to victim's age no defense	For reference by victim and witness
	<u>Unlawful to Publish or Broadcast Information Identifying Sexual Offense Victim</u> 794.03	Unlawful to publish or broadcast information identifying sexual offense victim - providing degree of severity for the offense	Protection to victims from being identified to the public
SPOUSE ABUSE	<u>Provision for Order to Restrain Abusive Spouse</u> 409.605-607	Spouse abuse centers for spouse abuse victims-Provides for funding of spouse abuse shelters and certification. Law enforcement officers can advise person subject to abuse of center availability	Service for abused spouses
	<u>Arrest & Warrant</u> 907.15	Domestic violence	Law enforcement powers in cases of spouse abuse
WITNESS MANAGEMENT	<u>Adequate Prior Notice Florida Rules of Criminal Procedure:</u> 3.050	Florida Rules of Criminal Procedure, attempts to spell out "due notice" and provide for lengthening the time where	This provision advises V/W of his rights to "adequate notice" under the law

<u>Area of Concern</u>	<u>Chapter Heading Chapter #/Section</u>	<u>Summary</u>	<u>Implications for V/W of Crime</u>
WITNESS MANAGEMENT (cont.)	Adequate Prior Notice	insufficient time to appear was not given to the V/W. The effect of this provision as proposed is simply to state a maxim already available	
	<u>State Attorneys</u> 27.03; 27.04	Summoning and examining witnesses for State	Makes no provision for duty to V/W
	<u>Payment of Witnesses</u> 40; 40.32	Witness paid on requisition from the State Comptroller	Witness pay
	<u>Venue</u> 47.122; 47.181	Change of venue for convenience of witness; use of deposition	Provides service for witnesses
	<u>Habeas Corpus</u> 79.07	Affidavit of witness may be received where personal attendance is inconvenient to procure	Provides convenience for witness
	<u>Evidence Code</u> 90; 90.404	Generally (e) character of victim; (c) character of witness	Suggests a vulnerability needing protection of V/W
	<u>Privileges Recognized Only as Provided</u> 90.501	Refusal to be a witness	Duties of and services for V/W
	<u>General Rule of Competency</u> 90.601	Competency to be a witness	"
	<u>Disqualification of Witnesses</u> 90.603	Disqualification of witnesses	"
	<u>Interpreter Services for Deaf Persons</u> 90.6063 (1980)	Interpreter services for deaf witness in court	"
	<u>Calling Witnesses by the Court</u> 90.615	Court may call witnesses	"

<u>Area of Concern</u>	<u>Chapter Heading Chapter #/Section</u>	<u>Summary</u>	<u>Implications for V/W of Crime</u>
WITNESS MANAGEMENT (cont.)	<u>Witness Pay</u> 92.142	\$5.00 a day and 6¢ a mile, except in criminal cases where witness is required to go out of his county and more than 50 miles in which case he gets per diem as provided in FS 112.061	Witness paid by county or state
	<u>Production of Documents by Witnesses; Reimbursement Costs</u> 92.153	Reimbursement of "disinterested witness" summoned in any investigation, administrative or judicial proceeding	Same as above
	<u>Administrative Procedure Act</u> 120.58	(3) Witness subpoenas may be forced in circuit court	Denotes witness duty
	<u>Medical Examiners</u> 406.09	Medical examiners entitled to expert witness fees when giving expert testimony in the trial of a civil action/at a coroner's inquest (see 90.231)	Testimony may be beneficial to survivors of homicide victims
	<u>Undertaking by Witness</u> 902	Provides for written recognizance by material witnesses to capital crimes. Provides for detention of material witnesses to capital crimes. Provides for financial liability of complainant who fails to appear at court proceeding. Provides for denying compensation to voluntary witness unless a true bill is returned and information filed, or party charged is held for trial.	Self-explanatory in Summary

Area of Concern

Chapter #/Section

Summary

Implications for
V/W of Crime

WITNESS MANAGEMENT (cont.)

Undertaking by Witness

Provides for denying compensation to a voluntary witness in misdemeanor trials unless the trial results in a conviction

Self-explanatory in Summary

Witnesses, Criminal Proceedings
914

Provides for inclusion of the names of all witnesses in one subpoena. Provides for attendance of witnesses; provides for 5th amendment rights of witnesses; provides for compensation of expert witnesses; provides for compensation of witnesses summoned in two or more cases; provides for compensation of witnesses in cases involving indigent defendants

Sexual Battery or Child Abuse Cases; Videotaping of Testimony of Victim Under 12 Years of Age
918.17

Provides for videotape presentation of testimony by victims of sexual battery or child abuse if victim is under 12 years of age

Self-explanatory in Summary

Pay of Defendant's Witnesses
939.07

Provides for county payment of defendant witness costs in those instances in which the defendant is insolvent or discharged

Self-explanatory

Interstate Extradition of Witnesses
942

Provides for the summons of witnesses from Florida to other states and from other states to Florida. Provides for exempting such witnesses from arrest or service of process

Self-explanatory

END