

By Commissioner Cerio

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1                   A proposal to amend  
2           Section 16 of Article I of the State Constitution to  
3           revise and establish additional rights of victims of  
4           crime.

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6 Be It Proposed by the Constitution Revision Commission of  
7 Florida:

8  
9           Section 16 of Article I of the State Constitution is  
10 amended to read:

11                                   ARTICLE I

12   DECLARATION OF RIGHTS

13           SECTION 16. Rights of accused and of victims.—

14           (a) In all criminal prosecutions the accused shall, upon  
15 demand, be informed of the nature and cause of the accusation,  
16 and shall be furnished a copy of the charges, and shall have the  
17 right to have compulsory process for witnesses, to confront at  
18 trial adverse witnesses, to be heard in person, by counsel or  
19 both, and to have a speedy and public trial by impartial jury in  
20 the county where the crime was committed. If the county is not  
21 known, the indictment or information may charge venue in two or  
22 more counties conjunctively and proof that the crime was  
23 committed in that area shall be sufficient; but before pleading  
24 the accused may elect in which of those counties the trial will  
25 take place. Venue for prosecution of crimes committed beyond the  
26 boundaries of the state shall be fixed by law.

27           (b) To preserve and protect the right of crime victims to  
28 achieve justice, to ensure a meaningful role throughout the  
29 criminal and juvenile justice systems for crime victims, and to  
30 ensure that crime victims' rights and interests are respected  
31 and protected by law in a manner no less vigorous than  
32 protections afforded to criminal defendants and juvenile

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33 delinquents, every victim is entitled to the following rights,  
34 beginning at the time of his or her victimization:

35 (1) The right to due process and to be treated with  
36 fairness and respect for the victim's dignity.

37 (2) The right to be free from intimidation, harassment, and  
38 abuse.

39 (3) The right to be reasonably protected from the accused  
40 and any person acting on behalf of the accused.

41 (4) The right to have the safety and welfare of the victim  
42 and the victim's family considered when setting bail, including  
43 setting pre-trial release conditions that protect the safety and  
44 welfare of the victim and the victim's family.

45 (5) The right to prevent the disclosure of information or  
46 records that could be used to locate or harass the victim or the  
47 victim's family, or which could disclose confidential or  
48 privileged information of the victim.

49 (6) The right to privacy, which includes the right to  
50 refuse an interview, deposition, or other discovery request by  
51 the defense or anyone acting on behalf of the defendant and to  
52 set reasonable conditions on the conduct of any such interaction  
53 to which the victim consents.

54 (7) A victim shall have the following specific rights upon  
55 request:

56 a. The right to reasonable, accurate, and timely notice of,  
57 and to be present at, all public proceedings involving the  
58 criminal conduct, including, but not limited to, trial, plea,  
59 sentencing, or adjudication, even if the victim will be a  
60 witness at the proceeding, notwithstanding any rule to the  
61 contrary. A victim shall also be provided reasonable, accurate,

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62 and timely notice of any release or escape of the defendant or  
63 delinquent, and any proceeding during which a right of the  
64 victim is implicated.

65 b. The right to be heard in any public proceeding involving  
66 pretrial or other release from any form of legal constraint,  
67 plea, sentencing, adjudication, or parole, and any proceeding  
68 during which a right of the victim is implicated.

69 c. The right to confer with the state attorney concerning  
70 any plea agreements, participation in pre-trial diversion  
71 programs, release, restitution, sentencing, or any other  
72 disposition of the case.

73 d. The right to provide information regarding the impact of  
74 the offender's conduct on the victim and the victim's family to  
75 the individual responsible for conducting any pre-sentence  
76 investigation or compiling any pre-sentence investigation  
77 report, and to have any such information considered in any  
78 sentencing recommendations submitted to the court.

79 e. The right to receive a copy of any pre-sentence report,  
80 and any other report or record relevant to the exercise of a  
81 victim's right, except for such portions made confidential or  
82 exempt by law.

83 f. The right to be informed of the conviction, sentence,  
84 adjudication, place and time of incarceration, or other  
85 disposition of the convicted offender, any scheduled release  
86 date of the offender, and the release of or the escape of the  
87 offender from custody.

88 g. The right to be informed of all post-conviction  
89 processes and procedures, to participate in such processes and  
90 procedures, to provide information to the release authority to

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91 be considered before any release decision is made, and to be  
92 notified of any release decision regarding the offender. The  
93 parole or early release authority shall extend the right to be  
94 heard to any person harmed by the offender.

95 h. The right to be informed of clemency and expungement  
96 procedures, to provide information to the governor, the court,  
97 any clemency board, and other authority in these procedures, and  
98 to have that information considered before a clemency or  
99 expungement decision is made; and to be notified of such  
100 decision in advance of any release of the offender.

101 (8) The rights of the victim, as provided in subparagraph  
102 (7)a., subparagraph (7)b., or subparagraph (7)c., that apply to  
103 any first appearance proceeding are satisfied by a reasonable  
104 attempt by the appropriate agency to notify the victim and  
105 convey the victim's views to the court.

106 (9) The right to the prompt return of the victim's property  
107 when no longer needed as evidence in the case.

108 (10) The right to full and timely restitution in every case  
109 and from each convicted offender for all losses suffered, both  
110 directly and indirectly, by the victim as a result of the  
111 criminal conduct. All monies and property collected from any  
112 person who has been ordered to make restitution shall be first  
113 applied to the restitution owed to the victim before paying any  
114 amounts owed to the government.

115 (11) The right to proceedings free from unreasonable delay,  
116 and to a prompt and final conclusion of the case and any related  
117 post-judgment proceedings.

118 a. The state attorney may file a good faith demand for a  
119 speedy trial and the trial court shall hold a hearing within

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120 five days to schedule a trial within fifteen days unless the  
121 trial judge enters an order with written findings of fact  
122 justifying a trial date more than fifteen days after the  
123 hearing.

124 b. All state-level appeals and collateral attacks on any  
125 judgment must be complete within two years from the date of  
126 appeal in non-capital cases and five years in capital cases.  
127 Each year, the chief judge of any district court of appeal or  
128 the chief justice of the supreme court shall report on a case-  
129 by-case basis to the speaker of the house of representatives and  
130 the president of the senate all cases where the court was unable  
131 to comply with this subparagraph and the circumstances causing  
132 the delay. The legislature may adopt legislation to implement  
133 this subparagraph.

134 (12) The right to be informed of these rights, and to be  
135 informed that victims can seek the advice of an attorney with  
136 respect to their rights. This information shall be made  
137 available to the general public and provided to all crime  
138 victims in the form of a card.

139 (c) The victim, the retained attorney of the victim, a  
140 lawful representative of the victim, or the office of the state  
141 attorney upon request of the victim may assert and seek  
142 enforcement of the rights enumerated in this section and any  
143 other right afforded to a victim by law in any trial or  
144 appellate court, or before any other authority with jurisdiction  
145 over the case, as a matter of right. The court or other  
146 authority with jurisdiction shall act promptly on such a  
147 request, affording a remedy by due course of law for the  
148 violation of any right. The reasons for any decision regarding

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149 the disposition of a victim's right shall be clearly stated on  
150 the record.

151 (d) The granting of these rights enumerated in this section  
152 to victims may not be construed to deny or impair any other  
153 rights possessed by victims. The provisions of this section  
154 apply throughout criminal and juvenile justice processes are  
155 self-executing and do not require implementing legislation.

156 (e) As used in this section, a "victim" is a person who  
157 suffers direct or threatened physical, psychological, or  
158 financial harm as a result of the commission or attempted  
159 commission of a crime or delinquent act or against whom the  
160 crime or delinquent act is committed. The term "victim" shall  
161 include their lawful representative, the parent or guardian of a  
162 minor, or the next of kin of a homicide victim, except upon a  
163 showing that the interest of such individual would be in actual  
164 or potential conflict with the interests of the victim. The term  
165 "victim" does not include the accused. The terms "crime" and  
166 "criminal" include delinquent acts and conduct ~~Victims of crime~~  
167 ~~or their lawful representatives, including the next of kin of~~  
168 ~~homicide victims, are entitled to the right to be informed, to~~  
169 ~~be present, and to be heard when relevant, at all crucial stages~~  
170 ~~of criminal proceedings, to the extent that these rights do not~~  
171 ~~interfere with the constitutional rights of the accused.~~