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THE RIGHTS OF CRIME VICTIMS: CONSULTATION BY THE STATE ATTORNEY

by Jay C. Howell

One of the most important crime victim provisions in our Florida Statutes concerns the requirement that the State Attorney consult with the crime victim or their family in regard to several important proceedings in the criminal justice system. This statutory provision can be found in Section (g) of Chapter 960 of the Florida Statutes.

This consultation requirement does not apply to victims of all crimes. The procedure benefits the victim of a felony crime involving physical or emotional injury or trauma, all cases in which the victim of the crime is a minor child, and in all homicide cases. In those instances where the victim is a child, his or her guardian is consulted. In a homicide case, the family of the victim shall be consulted.

The purpose of this law is to require the State Attorney to obtain the views of the victim or family about the disposition of both criminal and juvenile cases.

First, the family or victim is to be consulted regarding the **release of the individual accused** of the crime while judicial proceedings are ongoing. This is commonly referred to as bail. The views of the victim or family may concern such subjects as the amount of bail and special conditions concerning the release of the individual, including provisions that the accused have no contact with the victim or the victim's family.

The second subject of consultation pertains to **plea agreements**. This concerns any agreements between the State Attorney and the attorney for the defendant to resolve the case.

Another area of consultation concerns participation in **pre-trial diversion** programs. Typically, these programs route the criminally accused into special programs that may involve mediation, counselling, restitution, and community service. The individual accused of the crime does not go to court, but is routed

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outside of the criminal justice system. The defendant does not receive a criminal conviction. Often the court records reflect that the charges were dropped.

The victim or their family is also to be consulted concerning the **sentencing** of the accused. It is important for the State Attorney to know whether or not the victim or family is supportive of a plea bargain arrangement or the court's sentence which will apply to the accused. The latest version of our statute concerning the rights of victims at sentencing (Florida Chapter 921.143) requires that, prior to the imposition of sentence upon any defendant who has been convicted of a felony, or who has pleaded "guilty" or "no contest" to any crime, the court shall permit the victim of the crime, or the next of kin if the victim has died of causes related to the crime, to appear before the sentencing court for the purposes of making a statement or submitting a written statement to the State Attorney which will be filed with the sentencing court. This statute requires that the State Attorney advise all victims or next of kin that their statements should relate to the facts of the case, the extent of any psychological or physical harm, financial losses, and any matter relevant to an appropriate disposition and sentence.